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September 24, 2019

Re: Harmonization of Securities Offerings
Release No. 33-10649
File No. S7-08-19

via e-mail: rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Countryman:

We are submitting this letter in response to the Commission's request for comment on the above-referenced concept release. We appreciate the Commission's willingness to solicit comments on its proposal to "Harmonize Securities Offerings" in the areas of safe harbors and exemptions for primary offerings ("**Exempt Offerings**").

The Commission made some key observations, including that capital raised through Exempt Offerings is double the capital raised in registered offerings in 2018, and capital raised relying on Rule 506(b), Rule 506(c), Regulation A, and Regulation Crowdfunding show an upward trend. The Commission also noted that aggregate investments in exempt offerings in 2018 in which non-accredited investors participated represented less than one percent of investment in all exempt offerings. As a result, the Commission is asking whether to make a broader range of investment opportunities available to non-accredited investors and whether the existing exempt offering framework provides appropriate options for different types of issuers to raise capital at key stages of their business cycle.

Addressing investment opportunities for non-accredited investors, we agree with the Advisory Committee on Small and Emerging Companies recommendations to leave the current income and net worth thresholds in place, except to adjust on a going-forward basis to reflect inflation. Such adjustments, however, should only be made periodically to avoid an additional burden in the compliance process. It is also reasonable to expand the pool of accredited investors to include individuals who have passed exams that test their knowledge in the areas of securities, including the Series 7, Series 65, Series 82, and CFA examinations and equivalent examinations and to allow otherwise non-accredited investors to retain professionals to advise them in order to qualify as accredited investors. Retaining some key metrics, while expanding the definition, is a reasonable step while protecting investors who do not have sufficient knowledge about capital markets.

Currently, if non-accredited investors are participating in an offering under Rule 506(b), the issuer must furnish to non-accredited investors the information required by Rule 502(b) prior to the sale of securities and provide non-accredited investors with the opportunity to ask questions and receive answers about the offering. The Commission notes that Rule 506(b) continues to dominate the market for exempt securities offerings and while offerings under Rule 506(b) can have up to 35 non-accredited investors, non-accredited investors were reported as participating in only approximately 6% of Rule 506(b) offerings in each of 2015, 2016, 2017, and 2018.

We agree that issuers may be limiting their Rule 506(b) offerings to accredited investors to avoid these disclosure requirements, which are generally similar to the non-financial disclosure requirements of a Regulation A offering. The release asks for comment, among other things, whether the current information requirements in Rule 506(b) are appropriate and whether requirements should be aligned with other Exempt Offerings, such as Regulation A. We agree that harmonizing Regulation A requirements that limit investment amounts according to investor's annual income and net worth could help align requirements for non-accredited investors.

The Commission is seeking comment on whether the threshold amounts for the size of offerings under regulation A should be increased. We do not believe they should, since the current thresholds are high and larger offerings should benefit from full SEC protection.

While we are not commenting on particular recommendations for Regulation Crowdfunding, we think that harmonizing limits on investment amounts for non-accredited investors and keeping no limits on investment amounts for accredited investors makes sense in the spirit to harmonize all Exempt Offerings.

With respect to integration of offerings, the Commission makes the observation that market participants have requested the Commission clarify the relationship between exempt offerings in which general solicitation is not permitted, such as Section

4(a)(2) and Rule 506(b) offerings, and exempt offerings in which general solicitation is permitted, such as Rule 506(c) offerings. The 2016, 2017 and 2018 Small Business Forums each recommended that the Commission clarify that the facts and circumstances integration analysis the Commission applies to the integration of concurrent private and registered offerings, would also apply to concurrent exempt offerings where one prohibits general solicitation and the other permits it. We agree that harmonizing the analysis is appropriate and generally beneficial.

Small Business Forums also recommended that the Commission clarify that Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule 506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption. Because the current language of Rule 152 does not provide an integration safe harbor for an issuer that conducts a Rule 506(c) offering and then subsequently engages in a registered offering, the Commission would need to amend Rule 152 to provide the recommended integration safe harbor. We agree that harmonizing the safe harbor provision is helpful. We do not see any issues with general solicitation for exempt offerings for integration purposes, provided solicitation involves sophisticated investors.

With respect to integration, we generally welcome harmonizing Exempt Offerings with more bright-line rules and, as long as each Exempt Offering complies with its applicable rules, effective deregulation should result in each offering standing on its own.

The Commission is also seeking comment on whether it should decrease the six month waiting period under the safe harbor Rule 502(a) of Regulation D. Over the years, market participants have expressed concern that such a long delay could inhibit issuers from meeting their capital needs. In 2007, the Commission proposed, but ultimately never adopted, amendments to shorten the integration safe harbor Rule 502(a) from six month to 90 days. We agree with the Commission that 90 days is appropriate, as it would provide additional flexibility, permitting issuers to rely on the safe harbor once every fiscal quarter, while still requiring issuers to wait a sufficient period of time before initiating a substantially similar offering in reliance on the safe harbor rule.

Finally, our investment management practice group has submitted a separate comment letter addressing issues specific to investments in private equity funds. We believe, as explained in the separate comment letter, that the current regulatory framework deprives many investors access to these attractive investment opportunities at a time when people are struggling to build sufficient savings for retirement.

We appreciate the opportunity to participate in the process, and would be pleased to discuss our comments or any questions that the Commission or its staff may have, which may be directed to Michael Kaplan, Joseph A. Hall, Maurice Blanco, or Richard D. Truesdell, Jr., of this firm at 212-450-4000.

Very truly yours,

Davis Polk & Wardwell LLP