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September 24, 2019

U.S. Securities and Exchange Commission
Office of the Chairman
By Electronic Submission

Re: S7-08-19. Concept Release on Harmonization of Securities Offering Exemptions

Dear Sir or Madam:

North Capital Investment Technology ("NCIT") is a financial technology company and a leading provider of software services and infrastructure to support the primary issuances of securities under Reg D, Reg S, Reg A+ and Reg CF. Through NCIT's wholly-owned subsidiary, North Capital Private Securities Corporation ("NCPS"), a registered clearing and carrying broker-dealer, we are driving the evolution of online placements, clearing, custody and secondary trading through the application of open technology systems, infrastructure, and procedures. Our registered investment advisor, North Capital Inc., is dedicated to expanding the scope and improving the quality of advisory services for retail investors.

Three themes underpin our technology and financial services business: improving access, liquidity, and transparency of investments and advisory services. NCPS was founded on the premise that both issuers seeking risk capital and investors seeking access to new investment opportunities benefit from the involvement of financial professionals working through regulated entities to advise and vet issuers, structure investment offerings, and facilitate full and fair disclosure to investors. As such, we welcome the opportunity to submit our comments on whether changes should be made to improve the consistency, accessibility, and effectiveness of the Commission's exempt offerings regime.

We would like to offer the following three specific changes to the exempt existing offerings regime:

(1) Permit *verified* accredited investors to invest in *all* Reg D, 506(b) offerings.

Regulation D, 506(b) requires an issuer (or its agent) to establish a substantive, pre-existing relationship with an investor prior to making an offer of securities under this exemption from

registration. When a relationship is "pre-existing" and what makes it "substantive" have been difficult determinations for issuers and broker-dealers involved in private offerings for decades. The rules, no action letters, and related guidance applicable to this exemption do little to assist them in making these determinations. For example, while the CitizenVC no action letter de-emphasized the importance of the "pre-existing" element of a relationship, it underscored previous Commission guidance that an issuer is precluded from offering securities to an investor with whom it establishes a relationship *after* the commencement of a private offering.

We recommend that the Commission offer new guidance for private offerings under Reg D, 506(b) to provide that if an issuer or a broker-dealer has ***verified*** that an investor is an accredited investor as defined in Rule 501, it may offer securities to such investor under Reg D, 506(b) ***without the need to establish a substantive, pre-existing relationship***. This change would provide consistency between the Reg D, 506(b) and 506(c) exemptions, while preserving the substance of the 506(b) private offering exemption. The timing of an investor's relationship with the issuer does not add meaningful qualification to an investor already verified as accredited. The current rule and guidance are especially problematic, given that the investor could invest in the same deal if the issuer reclassified its offering as a "general solicitation" deal under 506(c).

(2) Clarify the limitations of 240.3a4-1 of the Securities Exchange Act of 1934 - Associated persons of an issuer deemed not to be brokers.

The proliferation of unregistered funding platforms to facilitate capital raises from accredited investors through private solicitation (offerings behind a user-protected firewall) and general solicitation (offerings via a publicly viewable website), while generally positive for both issuers and investors, has created significant confusion among investors and an uneven playing field for registered broker-dealers involved in private markets. While many platforms are affiliated (under common control) or associated with a registered broker-dealer to offer securities, a number of the most active platforms sell securities direct to retail with no direct or indirect involvement of a registered entity.

Investors are harmed when unregistered entities can conduct securities brokerage business that would otherwise require registration, simply by engineering the form of their offerings---offering multiple "series" within a single offering (each series with distinct commercial terms), or creating multiple affiliated issuer entities--- so that the sponsors can claim exemption from broker-dealer registration requirements under the "issuer's exemption."

We recommend that the Commission revise section 240.3a4-1(a)(4)(ii)(c) to read: "The associated person does not participate in selling an offering of securities ***or a series thereof***, for any issuer ***and its affiliates,*** more than once every 12 months other than in reliance on paragraph (a)(4)(i) or (iii) of this section, except that for securities issued pursuant to rule 415 under the

Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one rule 415 registration."

This change would preserve the Commission's intended use of the issuer's exemption, while ensuring that funding platforms and other serial issuers conduct their business in a responsible, consistent manner, through regulated broker-dealers who are subject to direct supervision by the Commission and FINRA.

(3) <u>Expand the scope of "qualified purchaser" under Section 18 of the Securities Act to facilitate the development of secondary markets for exempt securities.</u>

One of the most exciting developments affecting exempt securities has been the growing desire of both issuers and investors to develop secondary trading markets to improve liquidity, transparency, and price discovery. Investors want access to secondary markets to invest in securities that might otherwise be inaccessible to them (like shares of high performing private companies), to value their existing private investments, and to sell investments prior to a liquidity event. Issuers may be willing to facilitate secondary markets in their securities in order to expand the potential investor market at the time of issuance.

Investments in private securities have traditionally offered liquidity only upon the occurrence of a "liquidity event," such as a change of control (usually in a private sale), or an initial public offering. Over the past 10 years, limited secondary markets have developed for a small subset of private securities, but trades are typically arranged "by appointment only," at high cost and without any standardization or infrastructure.

Beginning in 2017, the flash development of blockchain-based "token offerings" foretold the new capital formation that could be unleashed if private markets had standardized trading and settlement protocols and infrastructure. While we do not support the mania of that period, nor do we condone the unscrupulous tactics of fraudulent issuers or their agent-promoters, or the rampant disregard for investor protection reflected in much of this activity, the explosive growth of the market nevertheless showed that investors want to trade private securities. We believe that the open standards underpinning this blockchain-based boom offer a means by which responsible, regulated broker-dealers and ATSs can develop market protocols and systems for trading private securities on secondary markets.

However, such secondary markets will never develop to their full potential without federal preemption of the Blue Sky requirements that states impose on secondary sales of securities. Simply put, without federal preemption, secondary markets for exempt securities are dead before launch. They will be crippled by the high cost of compliance. The failure of Reg A / Tier 1 offers convincing evidence of this point. And without secondary markets, the development of

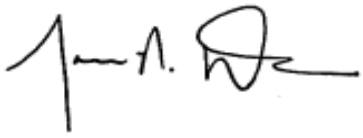
primary markets will likewise be severely constrained, to the detriment of both issuers and investors.

We recommend that the Commission address this concern by expanding the scope of "qualified purchaser," in the context of the definition of "federal covered security" under Section 18 of the Securities Act, to include any purchaser of securities on a registered Alternative Trading System (ATS), or from a registered broker-dealer acting as principal, provided that (1) such purchaser is (a) an accredited investor, or (b) the purchase is limited to the higher of 10% of such investor's income or 10% of their investment assets, and (2) the issuer of the securities has agreed to make annual and semiannual information and financial reports through EDGAR or a private data service accessible to the public.

This change would effectively extend Blue Sky preemption to secondary trading of the same types of exempt securities that are already not subject to Blue Sky review in primary offerings: Reg D, Reg A+, Reg CF. We believe the benefits to investors from liquidity that we believe would develop vastly outweigh the risk from limiting states' review of the secondary trading activity.

We thank the Commission for the opportunity to submit our comments for your consideration, to facilitate further discourse on how best to make the exempt securities regime operate safely and effectively for both issuers and investors.

Best regards,



James P. Dowd
Chief Executive Officer