September 24, 2019

Submitted Electronically

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1019

Re: Concept Release on Harmonization of Securities Offering Exemptions
File No. S7-08-19

Dear Ms. Countryman:

Zanbato Securities LLC ("Zanbato") appreciates the opportunity to provide its comments with respect to the Concept Release on Harmonization of Securities Offering Exemptions (the "Concept Release"), which the U.S. Securities and Exchange Commission (the "SEC") issued on June 18, 2019. Zanbato's comments relate to Section V of the Concept Release, regarding "Secondary Trading of Certain Securities."

Zanbato is a broker-dealer registered with the SEC and a member of the Financial Industry Regulatory Authority. In addition, Zanbato is registered as an "alternative trading system" with the SEC and operates pursuant to the exemption from registration as an exchange provided under Securities Exchange Act Rule 3a1-1(a). Zanbato operates a non-exchange trading venue that matches buyers and sellers of private company shares and facilitates transactions. As one of the largest trading venues for private company shares, Zanbato is uniquely positioned to describe the current state of the secondary market for private company shares and the limitations of the existing exemptions for resales of securities.

Start-up companies are remaining private for much longer periods than in the past and now constitute a substantial asset class. According to the Wall Street Journal's "Billion-Dollar Startup Club" online chart, as of September 2019, there were 88 privately-held venture-backed companies with valuations of over $1 billion (as opposed to 45 in January 2014), with a total value of $274.8 billion.[1] Following an alphabet soup of funding rounds, the securities of many private venture-backed companies are widely held. Private company investors, which include venture capital funds, hedge funds, endowments, foundations and mutual funds, have divergent interests and objectives. After holding an asset in its portfolio for three to five years, many institutional investors are seeking an exit. According to data from PitchBook, late-stage venture-backed private company shares are a $1.5 trillion asset class globally, a number that has grown at a compounded annual growth rate of over 46% since 1997.[2]

---

[1] See https://www.wsj.com/graphics/billion-dollar-club/

[2] PitchBook data; "late-stage" defined as companies valued at ≥ $500mn

The secondary market for these securities is not a retail market. Investors who are "qualified institutional buyers" ("QIBs") as defined in Rule 144A(a)(1) constitute the preponderance of the buyers and sellers transacting through Zanbato's alternative trading system, and the average ticket size is $14 million.

Although there is strong interest among institutional investors in selling and purchasing private company shares, the liquidity of the secondary market is severely impeded by the limitations of the existing resale exemptions. The rules governing exemptions for resales of securities were simply not designed for today's secondary market. There are several problems.

First, with the exception of sales by non-affiliates (where the holding period is satisfied) pursuant to Rule 144, each of the statutory offering exemptions has an information requirement, rendering those exemptions inadequate to private market participants. Private companies are uniformly unwilling to disclose to potential purchasers the information required by Rule 144 (with respect to sales by affiliates), Rule 144A and Section 4(a)(7) - the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for that part of the two preceding fiscal years in which it has been in operation. While the largest shareholders in a class often negotiate with the issuer for information rights, they are prohibited from sharing such information with third parties.

Second, Rule 144, which provides a safe harbor for the public resale of restricted securities if several conditions are satisfied, is an imperfect fit in the private market, where the intention of all parties is for the purchaser to receive restricted securities. Moreover, as the failure to comply strictly with the various requirements of Rule 144 could result in the seller being deemed an underwriter that has sold without registration and the broker-dealer being unable to claim the exemption in Section 4(a)(3) or 4(a)(4) of the Securities Act, parties may feel compelled to seek an opinion of outside legal counsel prior to engaging in an unregistered resale transaction. The opinion process creates significant friction, adds an additional layer of expense and can take several weeks, further complicating what are already highly negotiated transactions.

Finally, those sellers who cannot satisfy the requirements of Rule 144 are left to rely on the case-law derived resale exemption known as "Section 4(a)(1½)," which has been used in connection with private resales which are effected "in a manner similar to" private placements by issuers under Section 4(a)(2). A legal opinion letter may be thought to be required, since the availability of the exemption is based entirely on facts and circumstances. Further complicating reliance on Section 4(a)(1½), state securities laws are not preempted. The need to analyze the blue sky laws of multiple states significantly increases transaction costs. There is no consistency in the state laws for resales of securities acquired in exempt offerings. While some of the states have exemptions for "isolated non-issuer transactions," most states provide scarce (if any) guidance on the meaning of this phrase, which differs from state to state. Similarly, the "institutional investor exemption" has not been adopted by all states and varies widely among the states.

In order to create a more liquid and efficient resale market for unregistered securities, Zanbato urges the SEC to consider adopting a new statutory resale exemption that would permit institutional investors to engage in private resales of securities acquired in exempt offerings, without an information disclosure requirement, and on the basis of standardized representations.

Each seller would be required to (a) disclose whether it is an affiliate of the issuer or has been an affiliate within the prior three-month period, and (b) represent and warrant that it has held the shares for at least twelve months. Each purchaser would be required to represent and warrant that it (i) meets certain sophistication requirements, and (ii) has conducted its own diligence and has independently derived a valuation for the securities offered for resale. Each offer and sale would be required to be conducted without general solicitation, and the value of the securities proposed to be transferred could be no less than $1 million. The new exemption would preempt state securities law registration and qualification requirements. Securities acquired under this new exemption would be "restricted securities" and not transferrable except pursuant to registration or another exemption from registration.

The proposed new exemption is grounded on the belief that highly sophisticated investors are able to determine for themselves whether they have gathered sufficient information on which to base an investment decision. While there are significant information asymmetries in the private markets, they are not one-sided; well-resourced institutional buyers may well possess more current information about the issuer and its securities than a shareholder who has only limited information rights. We suggest that initially the proposed new exemption be limited to sales to QIBs, as the primary buyers in the secondary market for private company securities are venture capital funds, private equity funds, and family office entities.

A new resale exemption as described above, would promote capital formation and pricing efficiency by injecting liquidity into a largely illiquid market. Early investors in successful private companies, as well as early employees of those companies, would be able to sell their shares with legal certainty, with minimal transaction costs. Moreover, making it easier to resell private securities is unlikely to result in a proliferation of record holders, since private company issuers typically have a contractual right of first refusal, allowing them to control the number of transactions and maintain current information about their shareholders.

Zanbato appreciates the opportunity to submit its observations about the current state of the market for private securities, and its suggestion for a new registration exemption for private resales of securities. If you have questions, please do not hesitate to contact me.

Best regards,

DocuSigned by:

09E9F1749633490...

Gregory L. Wright
President and Head of Banking