

January 8<sup>th</sup>, 2020

VIA ELECTRONIC MAIL

[rule-comments@SEC.gov](mailto:rule-comments@SEC.gov)

Vanessa A. Countryman Acting Secretary Securities and Exchange Commission

100 F Street, NE Washington, DC 20549-1090

Re: File No. S7-08-19; Fed. Reg. 30460 (June 26, 2019) SEC Concept Release on Harmonization of Securities Offering Exemptions Release Nos. 33-10649; 34-86129; IA-5256; IC-33512

Ms. Countryman,

I would like to thank the commission for the opportunity to comment on “Harmonization of Securities Offerings” and applaud your continuing effort to enact common sense legislation to provide innovative paths to capital formation, while protecting the interests of shareholders.

I have been a beneficial partner in Spencer Winston Securities for three decades, and am currently in the concept stage of developing an electronic market for private placements in public entities (PIPEs) and secondary trading in these restricted securities.

During my tenure in the finance industry, the means of facilitating capital raises via PIPEs, an exempt offering through Reg D, has barely evolved. Meanwhile, changes in regulatory obligations, most notably FINRA Regulatory Notice 09-05, have severely hampered public companies’ (primarily small and micro cap) ability to raise capital through follow-on offerings.

The burdens imposed on custodians, clearing agents, and BDs to verify both the legitimacy of the paper certificate and the transaction by which it originated has resulted in almost no clearing firms accepting certificates and therefore few options to sell shares acquired through PIPE offerings. More importantly, the current regulatory environment resulting from Notice 09-05, now ten years old, has resulted in few options for OTC and illiquid listed companies to raise the capital necessary for them to sustain and grow their businesses.

The following proposed rules, some of which borrow from existing exemptions, can potentially help the Commission work toward their goal of transparency and liquidity for exempt offerings:

**Require PIPE offerings to be administered through a centralized electronic platform**

Simply put, Reg D PIPE offerings, like crowdfunding offerings, should be administered electronically, through an SEC registered ATS or funding portal. This requirement accomplishes the following:

**For Investors:**

1. Resolves questions with regard to share origination (Notice 09-05)
2. Makes offerings available to a larger pool of investors
3. Consolidates availability of issuer information on disclosures, filings, news, etc.
4. Electronically indicates timing with regards to restriction and tacking for resales
5. Provides market transparency
6. Efficient market= improved price discovery= less dilution for existing shareholders

For Issuers:

1. Consolidates filings and disclosures
2. Electronically tracks limitations on issuance
3. Greater access to capital through a transparent market

For Regulators:

1. Electronically monitors offering
2. Electronically monitors issuer's status (shell, promotion, bad actor)
3. Simplifies investor oversight (shorting vs restricted shares)
4. Monitors and mitigates suspicious activity and AML issues

**Expand the definition of accredited investor to existing shareholders**

Existing shareholders in the issuer facilitating the PIPE were already determined to be suitable to own the shares in the company through the BD from which the shares were purchased. As shareholders, they are familiar with the issue that is being placed in the exempt offering. This familiarity and previously determined suitability makes a strong case for existing shareholders to be considered suitable to buy and hold restricted shares in the same security,

This accreditation standard has been in place on most Canadian exchanges for several years. They impose dollar investment limits of C\$10,000 or C\$15,000 on a twelve month rolling basis. Another approach may be to match the investor's existing holdings in the free trading shares with their accreditation to purchase exempt shares.

**Require public companies offering exempt shares under Reg D to file a Form D 15 days prior to the initial placement**

This regulatory modification would provide transparency for existing shareholders and would improve price discovery for the PIPE by pricing in the existence of the exempt offering. Additionally, it would require the issuer to make the investing public aware of the offering, which protects existing shareholders while widening the pool of potential investors.

**Require public companies to offer shares to existing shareholders *first* in PIPE offerings**

This requirement would protect shareholder interests. Considering existing shareholders are the most greatly affected by dilutive capital raises, in the spirit of shareholder preeminence they should have the first opportunity to invest in the exempt offering. Methods for placement may include a Dutch Auction with or without pricing thresholds or a limited ‘pre-placement’ exclusively for existing shareholders consistent with the terms of the exempt offering. This would widen the pool of prospective investors, thereby improving the issuer’s chances for a successful capital raise. Additionally, the ‘pre-offering’ would serve as a valuable tool for price discovery and give investors confidence and a greater impetus to invest in small and micro caps.

**Make a comprehensive list of current PIPE offerings available on EDGAR**

Listing includes basic information about the exempt offering consistent with a ‘tombstone’ as well as possibly an electronic link to the placement agent. This further takes the ‘*private*’ out of *private placement*, expanding opportunities for a wider pool of investors, improving prospects for a successful capital raise, as well as centralizing regulatory oversight of this currently opaque

type of offering.

Ultimately, as markets evolve in different directions, it is necessary to find a regulatory framework that improves opportunities for both companies and investors, while protecting investors through the enhancement of regulatory oversight. The above ideas were conceived with exactly this in mind.

I appreciate your consideration of these concepts.

Respectfully,

/s/ Jason Weisz

Jason Weisz

Spencer Winston Securities

