

May 14, 2014

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-11-13

Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act, Release Nos. 33-9497; 34-71120; 39-2493

Ladies and Gentlemen:

This letter is submitted on behalf of the International Securities and Capital Markets Committee (the “ISCM Committee”) of the Section of International Law (the “International Section”) of the American Bar Association (the “ABA”) in response to the request for comments by the U.S. Securities and Exchange Commission (the “Commission”) in its December 18, 2013 proposing release referenced above (the “Proposing Release”).¹ The comments expressed in this letter represent the views of the ISCM Committee, but do not represent the official position of the International Section, and have not been reviewed or approved by the Federal Regulation of Securities Committee of the Business Law Section. In addition, the comments expressed in this letter have not been approved by the ABA’s House of Delegates or Board of Governors and, therefore, do not represent the official position of the ABA.

Introduction

Section 401 of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”)² created a new subsection (2) to Section 3(b) of the Securities Act of 1933, as amended, requiring the Commission to adopt an exemption allowing companies to issue up to \$50 million in securities within a twelve-month period, subject to certain conditions and requirements, in order to achieve the Congressional purpose of assisting smaller companies in the United States in raising the capital they need to spur growth and create jobs.

We support the general approach taken by the Commission in its rulemaking proposal. We also support a large number of the specific rulemaking proposals as set forth in the Proposing Release, except for the position that foreign private issuers, other than Canadian issuers, would not be eligible to rely on the Section 3(b)(1) and (2) exemptions. We believe the failure to make

¹ 78 Fed. Reg. 3926 (Jan. 23, 2014).

² Public Law 112-106, 126 Stat. 306.

these exemptions available to all foreign private issuers will result in the regulation being unavailable in circumstances where inclusion of such issuers would better support the Congressional mandate.

Foreign Private Issuer Eligibility

The Commission has proposed to make the Regulation A exemption available only to entities organized under laws of the United States or Canada, or any political subdivisions thereof, with their principal places of business in the United States or Canada. This eligibility requirement was made part of Regulation A in 1953, in response to concern regarding the difficulty of obtaining jurisdiction over an issuer in the context of a fraud claim. The principal policy concern behind the Regulation A provisions of the JOBS Act is job creation and economic growth in the United States.

Limiting eligibility to only United States and Canadian companies, simply because such limitation is in the current rule, rather than focusing on the statutory goals of the JOBS Act, may result in an outcome that is contrary to these goals. For example, consider a situation involving a non-Canadian foreign private issuer, with a significant business presence in the United States, and a Canadian issuer with its principal place of business in Canada and little or no U.S. presence. Under the Commission's proposal, the Canadian company could rely on Regulation A to raise capital, but given its situation it is likely such capital will be spent to support the issuer's business outside the United States. However, the non-Canadian foreign private issuer, which is positioned in the United States in a way that makes it much more likely that capital raised in a Regulation A offering will be spent in the United States, would be ineligible for the Regulation A exemption.

Added Benefit of the Proposed Change

Adopting our proposed change also would have the potential added benefit of increasing the attractiveness of the U.S. capital markets. In the Proposing Release, the Commission asked whether allowing access to the Regulation A market in the United States will diminish available funds for U.S. companies, thereby raising their cost of capital. There are two items to note in this regard. First, the United States has a very deep and liquid market and is very likely able to provide at a reasonable cost funds required for these offerings. Second, the competitive global environment for the U.S. capital markets has changed significantly over the last 20 years. More markets around the globe can satisfy issuers' capital needs. As a result, the United States also needs to be focused on attracting more foreign private issuers and investors to the U.S. capital markets, in addition to promoting jobs and economic development. Some of the Regulation A issuers will grow larger, with the potential to raise significant sums in capital markets. With early exposure to the U.S. capital markets Regulation A issuers, hopefully, will ultimately undertake much larger financings in the United States.

Suggested Revision

We would respectfully suggest that the eligibility requirements of Regulation A be as broad as possible to support more fully the Congressional objective underlying this portion of the

JOBS Act. Requiring that an issuer have a principal place of business in the United States seems appropriate, provided the condition applies equally to all foreign private issuers.

These comments have been reviewed and approved by the leadership of the Section of International Law as technical comments with the section's special expertise. We appreciate the opportunity to provide these comments to the Commission, and we would be pleased to discuss with you any of the matters set forth in this letter.

Sincerely

A handwritten signature in black ink that reads "Gabrielle M. Buckley". The signature is written in a cursive style with a large initial 'G'.

Gabrielle M. Buckley
Chair