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October 25, 2014

Via Electronic Mail at rule-comments@sec.gov

Honorable Mary Jo White, Chairperson
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Comments on SEC Proposed Rule re Section 3(b): Release Nos. 34-71120; 39-2493; File No. S7-11-13

Dear Chair White,

I write to you both as a securities law practitioner in private practice for more than 35 years, primarily representing issuers in the area of small business capital formation, and one who has been outspoken on issues pertinent to the Commission's JOBS Act rulemaking, including Title IV and what has been popularly referred to as "Regulation A+.

First, I wish to commend the Commission for adopting the Proposed Rules in furtherance of Title IV, recognizing that this was the only provision in the JOBS Act both dependent upon SEC rulemaking and containing no statutory deadline for rules to be proposed and implemented. Given the current rulemaking backlog at the SEC, and its limited resources, I am appreciative of the Commission having made Title IV rule implementation a priority.

Second, as I have done in the past, I also wish to commend the Commission for taking a bold and forward-thinking approach in defining who is a "Qualified Purchaser" within the meaning of Title IV, thus pre-empting the authority of states to independently review and qualify these new offerings.

The reason for this third Comment Letter to the Commission on the subject of Title IV is single-minded. Though I have commended the Commission's broadly inclusive approach on the issue of pre-emption of state review for "Tier II" offerings, I cannot help but conclude that the divisiveness of this issue, expressed most vociferously and persistently by the North American State Securities Administrators, has created a deadlock of sorts, both at the Commission level and within the Division of Corporation Finance. Deadlocks often call for thoughtful compromises, particularly where decisive action is held hostage by endless division. This may be precisely that occasion.

Having had the opportunity this past week to spend some time with both a current and former NASAA President, where the issue of Title IV did *not* come up, I came to the conclusion that common ground can

exist, even on the most fiercely debated legislative and regulatory issues. Hence, this letter – and a suggestion.

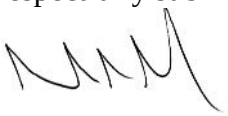
Though the scope, indeed the very necessity, of state review of offerings concurrently reviewed by the SEC can be endlessly debated, I propose for the Commission's consideration the narrowing of the definition of "Qualified Purchaser" if this becomes necessary to remove an insurmountable obstacle to final rules. The Proposed Rules go to great lengths to protect all prospective investors, both through rigorous disclosure and limiting the amount a person can invest as a "Qualified Purchaser." As an unintended consequence, however, this shifts the burden largely to the states to address consequences to the most vulnerable class of investors – those who can least afford the risk – and attendant losses which invariably accompany an investor's complaint to securities regulators.

Rather than throwing out the baby with the bathwater, and re-fashioning a definition of Qualified Investor which more closely resembles that of an "Accredited Investor" under Regulation D, perhaps, as a matter of compromise, the Commission ought to consider a lower income and/or net worth threshold for non-Accredited Investors to qualify as "Qualified Purchasers," and remove all investment caps for Accredited Investors. This would still leave *all* investors to purchase these same securities in the secondary market, a necessary component of a vibrant Regulation A+ exemption, and by the same token would allow state securities administrators to review what may be lower quality investments, where participation by lower income/net worth require additional protections.

Though I will refrain from comment on what the exact amounts of these income/net worth thresholds ought to be, suffice it to say that there are many current examples for the Commission to evaluate in the context of existing state securities laws which restrict participation investors with varying levels of income and net worth well below the Accredited Investor threshold. And to discourage prospective investors from misrepresenting their income or net worth, appropriate penalties ought to attach to a knowingly false "self-certification."

In my opinion, all that remains in order to allow Regulation A+ to flourish as both a useful and used tool for small business capital formation, apart from the very issuance of final rules themselves, is exempting Tier II securities from the Section 12(g) caps. The Proposed Rules, in their present form, will undoubtedly discourage many issuers from utilizing Regulation A+ out of fear of inadvertently triggering full 1934 Act reporting requirements as a result of active secondary trading, thus leaving behind the more streamlined disclosure contemplated by both Title IV and the Commission's current Proposed Rules. Though Congress has not yet seen fit to exempt Title IV securities from Section 12(g) caps, as it has explicitly done with Title III "crowdfunded" securities, as I noted in a prior Comment Letter it nonetheless appears that the Commission retains the statutory authority under pre-JOBS Act law to exempt issuers from Section 12(g) by Order of the Commission.

Respectfully submitted,



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