ÉS152775

JEB HENSARLING, TX, CHAIRMAN

MAXINE WATERS, CA, RANKING MEMBER

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

December 4, 2014

The Honorable Mary Jo White, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chair White:

You received a comment letter (enclosed) from Groundfloor Finance Inc. regarding the Securities and Exchange Commission's (SEC) proposed Regulation A+ rule (Release No.33-9497) and Groundfloor's concerns with the SEC's potential preemption of state law. As the first issuer to participate in the North American Securities Administrators Association's (NASAA) new Coordinated Review program, Groundfloor wrote that they "have found value in participating in the Coordinated Review program, and believe that other issuers will find the same."

In passing Title IV of the Jumpstart Our Business Startups Act of 2012, Congress balanced the need to promote small business capital formation by tailoring the public offering process, while preserving strong investor protections, including state regulator oversight for securities sold to retail investors. The state regulators have now done the same, by streamlining their own registration processes. Groundfloor notes that "Combined state and federal registration along with the new Coordinated Review program presents a threshold that legitimate businesses can meet, while creating a disincentive for speculative and unscrupulous issuers."

We strongly urge you to closely examine NASAA's Coordinated Review program, and not undermine crucial investor protections by preempting the states' regulators.

Sincerely,

The Honorable Maxine Waters
Ranking Member

The Honorable Stephen F. Lynch
Member of Congress

Enclosure

cc: The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

ES152775

GROUNDFLOOR

Groundfloor Finance Inc.
3355 Lenox Road, Suite 750
Atlanta, GA 30326

November 18, 2014

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Dear Chair White,

Thank you for the opportunity to comment on the proposed Regulation A+ rule (Release No. 33-9497). We are currently the first and only issuer to have filed a Regulation A offering through NASAA's new Coordinated Review program. We are also undertaking one of the largest and most complex Regulation A offerings to date. We believe we are speaking from a position of actual experience.

Comment Summary:

We strongly disagree with the proposal to preempt state registration. In our experience, meeting state Registration by Qualification requirements is concomitant with meeting Form 1-A requirements. The only material cost increases are associated with state filing fees, which become reasonable given the proposed revised offering cap in Tier 2 Regulation A+. The Coordinated Review program has created value by defining concrete service standards. For us, the value of receiving comments in a timely fashion outweighs the marginal costs of filing in multiple states. The legal certainty this affords is substantial, and does not exist in federal reveiw. The uniform application of NASAA's Statements of Policy has been very helpful, and we have been able to comply with these policies despite the presence of certain conditions within our company which pertain to these policies. Communication with state examiners has been excellent, and direction on comment responses has been very clear. As a small issuer, we worry about bad actors destroying investor trust and appetite for offerings in this market. Combined state and federal registration along with the new Coordinated Review program presents a threshold that legitimate businesses can meet, while creating a disincentive for speculative and unscrupulous issuers. We believe investors will benefit from registration statements that undergo two levels of scrutiny, especially when, in practice, it is likely registration statements will complete state review before federal review. With the Coordinated Review program in place, there is no basis for preempting state registration given the practical effects of registering through the program.

GROUNDFLOOR

The Coordinated Review Experience:

- *State Qualification requirements are substantially similar to Form 1-A requirements and do not materially increase cost.*

We first prepared our registration statement to meet the requirements of Form 1-A Model B. When we examined individual state Registration by Qualification and Registration by Coordinated Review requirements, we found that we had met nearly all of those requirements in completing Form 1-A itself. State filing fees notwithstanding, it did not cost us materially more money to modify our registration statement to be compliant with the ten state jurisdictions we sought to register in.

State financial reporting and disclosure requirements are substantially similar to Regulation A requirements. As a seed stage company, we did not find audit and financial reporting requirements to be financially burdensome. We expect audits for conventional issuers with proper accounting and control policies to cost between $10,000 and $20,000.

- *The Coordinated Review process is communicative, user friendly, and easily manageable.*

Coordinated Review begins by filing a short form (Form CR-3b). On that form, the issuer may select the states it seeks to register in. The issuer may then pay for filing fees by sending payment directly to the individual states.

Once the registration statement is ready to file, the issuer may electronically file it with the Administrator state. Within three business days of filing, we received confirmation of receipt and a letter detailing the review process. The ten states in which we filed chose two lead examiners (a disclosure examiner and a merit examiner). Their contact information was provided. The Coordinated Review states worked with us to ensure the appropriate consent and service of process forms were filed in an efficient way. Our lead examiners were easy to reach and made themselves available. Preparing to file our offering for Coordinated Review was done alongside our Form 1-A filing with the Commission, and did not materially increase our legal spend.

- *Defined services standards provide certainty, save time, and save money.*

First round comments can be expected within 21 business days. We received our first comment letter within the defined time frame. Subsequent comments to issuer responses can be expected within 5 business days. Defined service standards are immensely valuable to issuers. Having a response which identifies substantive issues within 21 business days saves issuers time and provides issuers with certainty in business planning. It is our opinion that the most expensive part of an offering registration is the time it takes to receive comments and the uncertainty therewith.

The Coordinated Review service standards address this concern. We have been counseled that it will be difficult for the Commission to offer similar service standards given the competing pressures on the Division of Corporate Finance.

- *Coordinated Review states are able to provide more direction in addressing comments.*

After receiving our first comment letter, the lead examiners scheduled a conference call with us to address major points of their comment letter on a comment by comment basis. This single act saved us a substantial amount of time and money. Our examiners were always available for subsequent calls or emails if we required further information or clarification. This differs from current Commission policy in addressing and managing the comment / response process, which is more structured and formal.

- *NASAA's Statements of Policy were applied in a uniform manner, and were well explained.*

Our company has had affiliated transactions, limited operating history, and is not currently profitable, all of which are covered conditions under NASAA's Statements of Policy. Despite these conditions, merit review and the Statements of Policy were applied in a uniform way that was easy for us to understand. We do not feel merit review was "arbitrary." Contrary to that misbelief, NASAA's Statements of Policy are fairly well defined, and it was possible for us to plan parts of our registration statement ahead of time to account for those policies. In many cases, we were able to change our disclosures in order to better comply with applicable Statements of Policy. Given that certain provisions in the proposed Regulation A rulemaking are not wholly different than what is already addressed in many of the Statements of Policy, we do not feel these policies negatively impacted our offering.

Rulemaking Comments:

- *Both the current Regulation A and the proposed Regulation A+ are better suited for more sophisticated issuers.*

The issuers contemplating Regulation A and proposed Tier 2 Regulation A+ are very different than the "mom and pop" shops and small businesses that have been used as examples in preemption arguments. Those types of businesses have specific growth characteristics and capital needs. The proposed crowdfunding rules under Title III of the JOBS Act are better suited for these types of businesses, and the underlying statute for those rules already addresses the issue of state regulation. Instead, companies that can credibly raise between $5M and $50M in financing are more sophisticated operations, and as a matter of course, should have the corporate governance, accounting, and control procedures in place to easily meet heightened disclosure and reporting obligations. We are the first issuer to use Coordinated Review, and our offering is

unusually large and complex for a seed stage company, yet producing the necessary reports and disclosures was well within our capability. We do not believe the costs of producing our registration statement accurately reflect the actual costs most conventional issuers will bear. Instead, we believe a revenue generating business seeking to make a conventional debt or equity offering can produce, from scratch, a conforming registration statement for both state and federal review for roughly $50,000. The venture finance industry has done a great job of producing "crowd sourced" documents that have reduced the cost of transactions. Should such documents be created for conventional debt and equity offerings pursuant to both state Qualification and Form 1-A standards, greater cost savings can be realized in future Regulation A offerings.

- *The Commission should not preempt states because it is not equipped to handle fraud in an active Regulation A market.*

We are concerned bad actors will be particularly attracted to Regulation A+ because it may allow unscrupulous issuers to offload bad assets to retail investors (i.e., unaccredited investors) at favorable prices. The smaller the individual purchaser, the less bargaining power they have. Unlike private placements, where parties can exercise considerable bargaining power in price negotiations, Regulation A+ offerings will need to rely on appropriate disclosures to ensure retail investors are properly apprised of the risks. Should the Commission preempt states, we fear its only response to the inevitable fraud will be to shut down the Regulation A market. The Commission's budget has not increased with its mandate, and we believe this will make primary enforcement of an active Regulation A market difficult. If states are allowed a seat at the table, enough stakeholders will be present to ensure the Regulation A market can withstand fraud, and that Regulation A will remain viable and robust. While it is true that states maintain their anti-fraud authority even if preempted, we believe requiring issuers to file through the Coordinated Review program will provide a measurable investor-protection benefit by subjecting the issuer to appropriate scrutiny during the offering and comment process. We believe Coordinated Review is a threshold that legitimate issuers will easily meet and tolerate, while presenting a bar that will deter many bad actors.

- *The Commission should not preempt states because the Coordinated Review process has not been given a chance to work.*

The Coordinated Review process was implemented earlier this year to deal with the inefficiencies of registering an offering in multiple states, while removing many of the burdens. We believe our experience with the program has shown it is capable of addressing these concerns. Registration statements benefit from review, and we believe our documents and disclosures are more accurate and thorough as a result of the Coordinated Review comment process. We believe other issuers will find the same. We recommend the Commission not preempt state registration, but should the issue remain unresolved we recommend allowing a 12 month period through which state registration remains in effect, after which the Commission may revisit the issue, having a body of evidence now upon which it can base a decision.

If the Coordinated Review program has proven to be beneficial to the development of a robust Regulation A market, the Commission should even consider relying solely on state registration through the Coordinated Review program, granting consent upon successful state registration. This may be a more efficient way to allocate resources at both a state and federal level.

- *The Commission should not preempt states because it was not Congress' intent.*

An intent to preempt cannot be inferred from the relevant statutory language of Title IV of the JOBS Act. Congress explicitly preempted state registration of "crowdfunded" securities in Title III of the JOBS Act by amending sections of 15 U.S.C. § 77r(b)(4). Were it intended to preempt state registration for securities issued pursuant to Regulation A, making such securities "Covered Securities" under the same subsection (4) would make the most sense. On its face, limiting covered status to Qualified Purchasers under subsection (3) indicates an intent to preserve the ability of institutions to participate in Regulation A offerings even if they are not domiciled in states that have registered the offering. It does not indicate an intent to modify the definition of a Qualified Purchaser to back into covered security status. Taken as is, the Qualified Purchaser carve out in the statutory language of Title IV would help increase liquidity of the Regulation A market while not diminishing retail investor protections, which appears consistent with the broader aims of Title IV.

- *Should the Commission proceed with the proposed rule, but decide not to preempt state registration, it should remove the proposed 10% income / net worth investment cap for Tier 2 offerings.*

If issuers must also register with the states, it does not make sense for Tier 2 of the proposed rule to be implemented with an income or net worth cap. States will retain and will use their authority to implement suitability standards on offerings if they deem it is necessary. Suitability standards in conjunction with federally mandated income or net worth caps will unnecessarily complicate offerings and will not add meaningful investor protection. It makes more sense to defer to state suitability standards because they are easier to implement than offering / net worth caps and allow investors to exercise greater discretion in allocating their investments.

Conclusion:

We believe the Coordinated Review program can be a successful and value added feature of future Regulation A offerings. The participating states have developed a process that is easy to use, with filing requirements that are not materially different than what is already required in Form 1-A. Defined service standards saved us time and money, providing us with quick answers to substantive legal issues. Examiners were responsive and helpful, ensuring we clearly understood issues as we proceeded through the comment process. We urge the Commission to

GROUNDFLOOR

take a measured approach when addressing the issue of state preemption in light of the practical considerations with removing states from the registration process. Investor protection is a serious concern and we believe that unchecked fraud will destroy investor appetite and credibility in the Regulation A market. Making states stakeholders in these offerings will help ensure future viability. In light of the resources the Commission has at its disposal, it makes sense to include state registration where the Coordinated Review program is able to deliver on its promises, increasing efficiency, while reducing costs. Therefore, we strongly disagree with any proposal to preempt state registration of Regulation A filings without first considering changes that are already in effect and examining improvements that can be made thereupon. We have found value in participating in the Coordinated Review program, and believe that other issuers will find the same.

Thank you for your time and consideration. We welcome to the opportunity to provide further comment if the Commission finds it helpful.

Sincerely,

Nick Bhargava

Nick Bhargava, JD
Executive Vice President
Groundfloor Finance Inc.