

Tavakoli Structured Finance, Inc.
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February 24, 2014

The Honorable Mary Jo White, Chairman
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File Number S7-11-13 Comments on Proposed Rule Amendments to Regulation A aka
“Regulation A-Plus” and Exemptions under Section 3(b) of the Securities Act of 1933**

Dear Chairman White and Ms. Murphy,

I am writing in my capacity as president of Tavakoli Structured Finance, Inc. in response to the Security and Exchange Commission’s (SEC) request for comment on proposed rulemaking to amend Regulation A-Plus as a step to implementing Section 401 of the Jumpstart Our Business Startups Act (JOBS Act). These comments are in the context of the repeal of prohibitions on general solicitation of offerings subject to Rule 506 of Regulation D.

I noticed many areas ripe for comment, but I was struck by three issues which seem to require immediate remedy.

Three Issues Requiring Immediate Remedy: Two Heedless Shortcuts and Disregard of Apparent Intent of Congress

The proposal takes two heedless shortcuts that are in conflict with the ultimate goal of capital formation, and there also seems to be a departure from protocol that puts the SEC in the awkward position of daring Congress to reform the SEC.

These issues are so extraordinary that they merit immediate attention. Specifically, I would like to draw the SEC’s attention to the proposed definition of “qualified purchaser,” the proposed exemption from review by the states, and the perceived disregard for the intent of Congress.

Capital formation thrives in an investor-friendly atmosphere. These issues, which fly in the face of both market experience and reason, are the opposite of what is required to achieve the goal of strengthening the economy through capital formation that results in growth.

Issue One: Post Factum Definition for Qualified Purchaser: Any Offeree or Purchaser of an Offering

I was struck by the proposed definition of “qualified purchaser.” It has some of the resonance but none of the meaning of “qualified purchaser” or “qualified investor” applied to those eligible to invest in hedge funds. In the context of hedge funds, qualified investors are required to meet certain economic thresholds, and many are advocating for these thresholds to be raised. I mention this not to get sidetracked with a different commentary, but to highlight the difference in character of these two definitions.

The SEC’s proposed definition for “qualified purchaser” is any purchaser in a Regulation A-Plus offering. Any offeree is therefore a “qualified purchaser,” and can potentially accumulate a portfolio totally comprised of these offerings.

This makes me question the caliber of the people assigned to this project and whether there was any internal review at the SEC.

Issue Two: Preemption of the States’ Coordinated Review for Regulation A-Plus Offerings

Under the proposed rule amendments, emerging growth companies may keep initial offering statements confidential, obtain an SEC review, *and* preempt state blue sky review.

This is all the more extraordinary, since the states are working through the North American Securities Administrators Association (NASAA) to streamline a system of review, so that each offering would receive a single comment letter for the states as a group.

The shortcut of doing an end-run around the states is made to seem even more unwise by the SEC’s inability to form a reasonable definition of “qualified purchaser.”

If the goal of these new rules is to promote capital formation, investors will flock to offerings where the risk of fraud is minimized, and the risks borne by investors are those of normal business risks. Having the state blue sky review supports a more investor-friendly atmosphere required to achieve the ultimate goal of increased capital formation.

Issue Three: The SEC Appears to Be Daring Congress to Reform the SEC as a Regulator

Congress trusted the SEC with latitude in this process. There is a difference between being given rope to scale a surmountable task and using that rope to metaphorically hang oneself. The SEC begs to be reformed by breaking trust with Congress.

Allow me to draw the SEC's attention to H.R. REP. No. 104-622, 31-32 (1996). It clearly shows the intent of Congress that qualified investors be defined as sophisticated investors capable of protecting themselves, making regulation by states unnecessary. The SEC's definition of "qualified investor" for Regulation A-Plus purposes appears to defy the intent of Congress.

Congress affirmed this stance even more recently as evidenced by [Congressional Record Volume 157, Number 166](#), (November 2, 2011) and [House Committee Report 112-206](#), (September 14, 2011). Congress weighed the issue of preempting state law and specifically considered risks to investors that may arise as a result of any such preemption. Congress affirmed both the high risk character of these investments and the necessary role of the states in stemming potential fraud.

It is hard to fathom how the SEC took Congressional findings—and the SEC's experience before and after the 2008 financial crisis—and came up with these proposed rule amendments without realizing it risks being branded as a rogue regulator that requires reining in by Congress.

Sincerely,



Date: February 24, 2014

Janet M. Tavakoli
President
Tavakoli Structured Finance, Inc.