COMMONWEALTH OF PUERTO RICO
COMMISSIONER OF FINANCIAL INSTITUTIONS

March 05, 2014

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

Dear Ms. Murphy:

We, the Office of the Commissioner of Financial Institutions in Puerto Rico, as member of the North American Securities Administrators Association ("NASAA"), concur with NASAA's Leadership Letter dated February 19, 2014 ("NASAA Letter") in which NASAA expresses its objection to the SEC's attempt to preempt state authority over small corporate offerings through its Proposed Rule Amendments for Small and Additional Issues Exemptions under Section 3(b) of the Securities Act ("Regulation A+ Proposal").

As mentioned in Regulation A+ Proposal, the SEC intends to implement a statutory directive under the Jumpstart Our Business Startups Act (the "JOBS Act") to create a new exemption from registration under the Securities Act of 1933 (the "Securities Act") for small offerings. Section 401 of the JOBS Act amended Section 3(b) of the Securities Act by designating existing Section 3(b), the Commission's exemptive authority for offerings of up to $5 million, as Section 3(b)(1), and creating a new Section 3(b)(2). New Section 3(b)(2) directs the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to $50 million of securities within a twelve-month period.

We note that, among other things, in the overview of the Regulation A+ Proposal, the SEC remarks the following with respect to providing state preemption: "In light of the total package of investor protections proposed to be included in the implementing rules for Regulation A, [the Regulation A+ Proposal] provide for the preemption of state securities law registration and qualification requirements for securities offered or sold to "qualified purchasers," **defined to be all offerees of securities in a Regulation A offering and all purchasers in a Tier 2 offering**."[emphasis added]

What the SEC proposes is to change the traditional definition of qualified purchaser in order to provide for the preemption of state securities law. Traditionally, a qualified purchaser is, among others, a sophisticated investor. With the proposal, an unsophisticated investor buying securities offered relying on exemption provided by Section 3(b) of the Securities Act, will be considered a qualified purchaser.

Respectfully, we consider that, because of the separation of powers established by the three branches of governments, the preemption of state authority is a matter that must be explicitly provided by the legislative branch and it was not the case here. As mentioned in NASAA Letter, during extensive debate of the JOBS Act, Congress considered and rejected calls to preempt states from review of Regulation A offerings.

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Additionally, we summarize the points fully discussed by NASAA, which we totally agree, regarding the reasons why the Regulation A+ Proposal to preempt state authority is harmful to investors and small businesses[1]:

1. State regulators have particular strengths that uniquely qualify them to effectively oversee Regulation A offerings. Because we are geographically close and accessible to investors, states are in a better position than the SEC to communicate with both small business issuers and investors to ensure that this exemption is not abused. Moreover, the states will be most familiar with the local economic factors that affect small business and states have a strong interest in protecting investors in these types of offerings.

2. Given the risky nature of such investments, a collaborative and complementary system of policing small size offerings would contribute to the success of the public marketplace and provide what is best for investors.

3. The SEC's proposed reliance on the "qualified purchaser" definition as a means for achieving preemption is in direct conflict with Congress' intention that "qualified purchasers" be experienced and "sophisticated" investors who can protect themselves in the financial markets. During extensive debate of the JOBS Act, Congress considered and rejected calls to preempt states from review of Regulation A offerings.

4. The states have already developed a new coordinated review system that will ease regulatory burdens without sacrificing investor protection. NASAA has developed a streamlined multi-state review protocols for Regulation A+ offerings to ease regulatory compliance costs on small companies seeking to raise capital. With the new program, Regulation A+ filings will be made in one place and distributed electronically to all states. Lead examiners will be appointed as the primary point of contact for a filer, and each state will be given ten business days for review. The lead examiners alone will interact with the issuer to resolve any deficiencies, and once they determine an application should be cleared, the decision is binding on all participating states. On January 30, 2014, the NASAA Board of Directors submitted this new program to the members for a vote by electronic ballot with a March 7 deadline.

Our agency has already voted to approve the coordinated review program.

We urge the SEC to reconsider the Regulation A+ Proposal, maintaining the traditional definition of qualified purchaser and eliminating the possibility of state preemption over these important small offerings.

We look forward to work together in order to better protect investors.

Cordially,

Damaris Mendoza Román

Damaris Mendoza-Román
Assistant Commissioner
Securities Regulation Division

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[1] http://www.nasaa.org/wp-content/uploads/2014/02/NASAA-Letter-Regarding-Reg-A+_021914.pdf
http://www.nasaa.org/issues-and-advocacy/issue-brief-regulation-a/