WR HAMBRECHT + CO

March 4, 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 WR Hambrecht + Co ("WRH") in response to the request of the Securities and Exchange Commission (the "SEC") for comments relating to the proposed rules that the SEC has put forward pursuant to its December 18, 2013 proposing release referenced above (the "Proposing Release").[1] WRH would like to commend the SEC on its progress to date. The proposed rules are a significant step forward in helping to realize the promise of Regulation A and, ultimately, in helping to create good businesses and good jobs that will contribute to making this the most recent American Century. Although an enthusiastic supporter of the proposed rules, WRH believes that there is still some room for improvement. The observations made in the following paragraphs are intended to set forth a few ways to make good proposed rules into even better final rules.

WRH+Co is an innovative broker-dealer focused on providing open and fair access to financial markets for all its clients. We provide underwriting and advisory services for technology and emerging growth companies, as well as a fully electronic retail brokerage platform for individual investors. The firm's impartial auctions have tried to change the traditional investment banking landscape by allowing the market to determine pricing and allocations.

Because of our expertise in bringing small, fast-growing companies public, policymakers repeatedly have asked for our views concerning how best to encourage public capital formation and job creation. Since 2010, we have been engaged in discussions focusing on the need to revise and revitalize Regulation A in order to promote public capital raising by smaller companies. We point out that these discussions preceded the JOBS Act by almost twenty-four months. With the enactment of the JOBS Act in April 2012, we were encouraged that Congress recognized public capital raising for smaller companies as a national priority.

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[1] 78 Fed. Reg. 3926 (Jan. 23, 2014).

We were pleased that the SEC has implemented the JOBS Act Title IV mandate by modernizing and amending current Regulation A. There had been broad bipartisan support for H.R. 1090, which would have preserved the basic Regulation A framework and raised the dollar threshold. We believe that by retaining this framework and creating two offering tiers within Regulation A, the exemption will become a streamlined capital-raising alternative for smaller, emerging companies. Even following enactment of the JOBS Act, and the resurgence of the IPO market, there have been relatively few small IPOs. Due to market structure changes, changes in the economics of underwriting, the costs associated with IPOs, and other factors, promising companies are still relegated to a variety of poor choices, such as reverse mergers or back-door quotations on the OTC QX. For companies in certain industries, the ability to raise up to $50 million in each 12-month period without incurring the costs associated with a traditional initial public offering and without subsequent full reporting will permit these companies to expand in ways that are not now available to them.

## Comments

### Eligible Issuers

As we noted in our pre-rulemaking comment letter, we believe the SEC should maintain the existing categories of Regulation A issuer eligibility requirements with only minor changes. The exemption should not be available to issuers that are SEC-reporting companies. The exemption should be limited to operating companies, and the SEC should not permit the exemption to be available to blank check or special purpose acquisition companies or shell companies. The exemption should be available only to companies organized in the United States or Canada. We believe that the exemption will be most useful if the markets and investors have a certain degree of confidence in the offerings executed in reliance on this exemption. The SEC should expressly permit use of the exemption by business development companies. BDCs provide an important source of capital for private companies. We can think of no public policy argument to exclude BDCs, particularly when one considers that they are in many instances providing funding to entities that are no longer considered by banks to be attractive borrowers.

### Offering Limitations and Secondary Sales

We support the elimination of the last sentence of Rule 251(b), which prohibits affiliate resales unless the issuer has had net income from continuing operations in at least one of its last two fiscal years. As we noted in our pre-rulemaking comment letter, this limitation may not be appropriate for technology, biotech or drug discovery companies, or other companies that devot substantially all of their resources to research and development efforts. It is worth noting that such companies provide great promise for rapid growth and job creation.

We recommend that the SEC consider modifying the proposed limitation on sales of securities by selling security holders in Tier 2 offerings. Currently, Regulation A provides that no more than $1.5 million of the $5 million of securities that may be sold in any 12-month period in reliance on the exemption may be sold on behalf of selling security holders. However, the proposed legislation that would have amended Regulation A did not carry forward this proportionate 30% threshold for selling security holder shares. The legislation contemplated an increase in the offering threshold to $50 million. It did not limit the percentage that could be sold by selling security holders. The intent was that smaller companies should have available an exemption for securities to be offered and sold publicly and for such securities not to be considered restricted securities. In order for the exemption to be attractive to companies and to security holders, security holders must have liquidity. As we noted in our pre-rulemaking comment letter, potential investors will be more likely to invest in privately held emerging companies if they have a reasonable range of post-offering liquidity opportunities. In light of the Congressional purpose of job creation underlying the JOBS Act, we believe the exemption should be made available to affiliates, including venture capital and private equity investors. Venture capital and private equity investors will be more likely to invest in emerging companies if these investors believe that emerging companies will have a currently unavailable array of liquidity opportunities. Many venture and private equity investors understand that an IPO may not be possible for companies in certain industries. A Regulation A offering would offer another liquidity opportunity for these companies. Similarly, for venture and private equity investors that seek to monetize some portion of their holdings, the ability to resell pursuant to Regulation A is important. Therefore, it is important that selling security holders have the opportunity to resell their securities.

We also agree that the information that will be filed by Tier 2 issuers should be considered sufficient for purposes of the current information requirement under Rule 144 and for purposes of the reasonably current financial information requirement under Rule 15c2-11. Rule 15c2-11 should be amended to provide that an issuer that is current in its Tier 2 reporting obligations under Regulation A would be deemed to have "reasonably current" financial information, even if its most current balance sheet is as of a date up to nine months old and it had not provided other updated information.

**State Preemption**

We support the SEC's approach, defining "qualified purchaser" under the Securities Act of 1933, as amended (the "Securities Act") in a manner that effectively exempts Tier 2 offerings from state blue sky laws. Offerees and purchasers in Tier 2 offerings will have public information on which to base their investment decision. The various investor protection measures that are incorporated in the Proposing Release are sufficient to render regulation by state authorities unnecessary. As we noted in our pre-rulemaking comment letter, adopting a definition of "qualified purchaser" that is equivalent to an "accredited investor" would render the exemption of very limited use. A Regulation A offering was always intended to be sold publicly, and not limited to investors that were "accredited investors." If the blue sky exemption for an offering is premised on sales only to "accredited investors," it is difficult to justify the costs and burdens associated such an offering when contrasted with a Rule 506 offering with no disclosure requirements.

The proposed rules would incorporate a new investment limit for Tier 2 offerings. The proposed rule would limit the permissible amount to be invested by any individual to the greater of 10% of the individual's net worth or annual income. We assume that this is intended to apply to natural persons. The final rule should make this clear. The investment limit will have the effect, which may or may not have been intended, of limiting the participation of non-accredite investors in Regulation A offerings. An issuer that seeks to complete a Regulation A offering and remain below the holder of record threshold under the Securities Exchange Act of 1934 (the "Exchange Act") will not want its securities sold to non-accredited investors. We believe that this would be an unfortunate result. Regulation A has always been an exemption for smaller "public" offerings and the investment limitation will serve to limit the offerings. It is not clear that the investment limitation is consistent with Congressional intent. At the very least, we urge the SEC to consider reviewing the necessity of the investment limit within a specified period of time after the final rule's effective date.

**Disclosure Requirements**

As we noted in our pre-rulemaking comment letter, disclosures should be tailored or "scaled." Disclosures should focus on those matters that are of greatest interest to investors. We wholeheartedly support the recent statements made by SEC Chair White and Commissioner Gallagher regarding the need to review and update disclosure requirements. Disclosures have become overwhelming to investors and information that is material is too easily obscured. The SEC should take advantage of this opportunity to implement changes in its disclosure framework. Disclosure requirements for the Regulation A offering statement should reference Regulation S-K requirements, but these requirements should be modified depending upon the issuer's size and sophistication. The SEC should issue guidance or instructions regarding the disclosure requirements that direct the issuer and its counsel to limit risk factors to only the most important or significant factors that are likely to affect the issuer's business and results of operations. The SEC should consider imposing a limit on the number of risk factors. The guidance should note that disclosures should not be repeated throughout the offering statement, but rather should be stated clearly once. The premise underlying Regulation A is that a Regulation A offering should be a more accessible option for smaller issuers. If the disclosure requirements are not appropriately scaled, it is not clear how smaller issuers will benefit from the exemption. The ongoing reporting requirements also should be tailored or scaled.

As we observed in our pre-rulemaking comment letter, the SEC should require issuers to provide in the offering statement what investors care about most: valuation assessments and a discussion of management's expectations about the company's future performance. Projections should be required in the offering statement. Currently such projections are shared orally by management or research analysts with only the biggest investors, which can create inequity and confusion, as illustrated by Facebook's IPO.

The financial statement requirements for Tier 2 issuers should not make a Regulation A offering prohibitively expensive. The audit requirements should be limited to U.S. Generally Accepted Auditing Standards (U.S. G.A.A.S.) that would be applicable to audits of private companies.

**Communications Safe Harbors**

The SEC should consider formulating and adopting limited safe harbors for regular communications by issuers that are not Exchange Act reporting companies. A company that is contemplating a Regulation A offering or that has completed a Regulation A offering should be able to communicate with its customers, vendors, partners, and shareholders with certainty that communications that are regularly released and that do not reference an offering will not be treated as offering related communications. Similarly, the SEC should consider measures to encourage broker-dealers to publish research reports regarding companies that have completed Regulation A offerings. Having current information available about these issuers will be essential to the development of a vibrant secondary market for their securities.

**Treatment under Section 12(g)**

The proposed rule would not exempt securities sold pursuant to Regulation A from the Section 12(g) Exchange Act threshold. It is not clear why securities sold in a crowdfunded offering would be exempt from the Section 12(g) threshold, but not securities sold in a Regulation A offering. Congress intended for this exemption to be useful to smaller companies seeking to raise capital. The securities sold pursuant to the exemption are not considered "restricted securities" and may be transferred freely. As a result, an issuer would be required to retain a transfer agent and track the holders of its securities or impose contractual transfer restrictions. An issuer that seeks to rely on Regulation A and remain a non-reporting issuer under the Exchange Act would then be motivated to limit sales of its securities to accredited investors. This is inconsistent with the purpose of the exemption. It is unclear whether a broker-dealer would be the "holder of record" for Regulation A securities. If a broker-dealer were unprepared to be the holder of record for Regulation A securities and each actual holder was counted, then, an issuer that sold its securities to non-accredited investors in a Regulation A offering would rapidly breach the Exchange Act holder of record threshold.

**Regulation A as an IPO Alternative**

The Regulation A exemption should be flexible enough to facilitate a contemporaneous listing on a securities exchange for an issuer that elects to become a reporting company following completion of its offering. Facilitating an exchange listing would be consistent with the SEC's investor protection mission. The original recommendation to raise the offering threshold in current Regulation A was based on the notion that an issuer should have an opportunity to raise sufficient proceeds in an offering such that it would then be able to meet the listing qualifications of Nasdaq and the NYSE MKT.

The disclosure requirements proposed by the SEC are robust and if an issuer chooses to satisfy the disclosure requirements by using the Part I of Form S-1 format (assuming accommodations are made for smaller issuers), it should not be necessary for that issuer to prepare and file a registration statement on Form 10. Form 8-A should be amended in order to permit the form to be used by an issuer in connection with listing in conjunction with completing a Tier 2 Regulation A offering.

If the issue of amending Form 8-A can be addressed, it is realistic to contemplate a Regulation A initial offering alternative that would address with great efficacy the public capital raising needs of smaller companies, while assuring that such companies will provide robust information to the public; meet appropriate disclosure standards; participate in an iterative though expedited SEC review process; be encouraged to list their securities on a national securities exchange; and undertake, post-offering and listing, to comply with Sarbanes-Oxley and other corporate governance requirements (benefitting from the same phase-in applicable to emerging growth companies) and scaled continuous SEC reporting requirements.

**Conclusion**

In closing, it is worth noting that WRH is an enterprise that has been built on the idea that it is important to think small while thinking about how to turn small into big. WRH believe that in years to come the bipartisan support of the JOBS Act in Congress and the excellent work of the SEC in creating regulations that play a meaningful role in achieving the goals set out by Congress will be recognized as a key component of a quintessentially American activity—turning small into large and creating increased opportunity and prosperity for our society.

We appreciate the opportunity to submit these comments. We are available to meet and discuss these matters with the SEC and its Staff and to respond to questions.

Respectfully submitted,

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Chairman

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