



March 21, 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:

Silicon Valley Bank and SVB Financial Group (“SVB”) is pleased to submit these comments in response to the request of the Securities and Exchange Commission (the “SEC”) for comments relating to the Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act issued by the SEC as referenced above (the “Proposed Rule” or “Proposal”). Generally speaking, the Proposed Rule effectively implements the spirit of Congress in passing Section 401 of the JOBS Act, and we want to laud the SEC for the substantial effort and progress demonstrated in the Proposed Rule. If the Proposal was to be implemented without change, it would provide a real alternative to existing paths to funding for capital formation and job creation well beyond the current state of Regulation A offerings. SVB believes the Proposal is worthy of strong support, but we believe the Proposal should be strengthened to assure that Regulation A is really used and makes a meaningful difference to small companies and investors.

SVB is the bank of choice for many entrepreneurs, companies and funds in the technology, life sciences and venture capital industries. We are part of the nation’s vibrant innovation ecosystem and recognize the need for access to capital for America’s growing companies. In order to help job growth, innovation and the American economy, Regulation A must be used in a way that it has not been in recent decades.¹ To make a meaningful difference, a Regulation A offering must offer benefits to companies and investors that exceed its burdens, and it must be more attractive for many companies than other paths to raising capital. After reviewing the Proposal, we believe that it presents a substantial step forward but remain concerned that it may not go far enough in some areas to provide an alternative that is relied upon in significant numbers as companies look for the capital they need to hire and grow. We appreciate the opportunity to discuss a few changes we believe will improve the Proposal and to answer a few of the questions posed within the Proposal. Thank you for this opportunity.

¹ For a discussion on the historical use of Regulation A, see “*Factors that May Affect Trends in Regulation A Offerings*” U.S. Government Accountability Office (July 3, 2012) GAO-12-839.



BACKGROUND ON SVB FINANCIAL GROUP

SVB has a unique perspective to offer on the types of companies, entrepreneurs and investors who can be expected to consider relying upon a new Regulation A. SVB is the premier provider of financial services for companies in the technology, life science, venture capital and premium wine industries. Through Silicon Valley Bank and our other subsidiaries, we provide a comprehensive array of banking services – including lending, treasury management, trade finance, foreign exchange and other banking services – to our clients worldwide. SVB is a bank holding company and a financial holding company. Our principal subsidiary, Silicon Valley Bank, is a California chartered bank and a member of the Federal Reserve System. As of December 31, 2013, SVB had total assets of \$26.4 billion.

We began serving the technology and life science markets in 1983, at a time when these markets were not well understood by the financial services industry. Over SVB’s three decades, we have become the most respected bank serving the technology industry and have developed a comprehensive array of banking products and services specifically tailored to meet our clients’ needs at every stage of their growth.

Today, we serve more than 14,000 clients through 27 U.S. offices and through international offices located in China, India, Israel and the United Kingdom. We have deep expertise and extensive knowledge of the people and business issues driving the technology sector, which we believe allows us to measurably impact our clients’ success.

I. DISCUSSION

A. The Proposed Rule Properly Exempts Tier 2 Offerings from State Blue Sky Laws and That Exemption Should be Extended to Re-Sales

Perhaps the single most important thing the Proposed Rule provides is a qualified exemption from state blue sky laws.² Such an exemption from blue sky laws is essential to making Tier 2 offerings work. In the absence of an effective exemption, most companies will not raise capital through Tier 2 offerings, and the effort to revise Regulation A will likely be wasted. Simply identifying and registering with the various states imposes a burden and a cost that undermines the utility of Regulation A. It becomes not a viable alternative. We also note that the “testing the water” provisions of the Proposal are important, and they would be largely undercut in the absence of a blue sky exemption.

Adoption of a “qualified purchaser” definition for Tier 2 offerings is a simple and effective way to accomplish an appropriate blue sky exemption. There is no need or benefit to restricting further the definition of qualified purchaser for these purposes, and further restrictions would

² This section responds to Request for Comment numbers 114-121 in the Proposal.



impose a burden that would undercut efforts to make capital available to small companies through an expanded use of Regulation A.

We are aware that state regulators are hoping to develop a coordinated review system for Regulation A offerings. Since no system exists now, more than 80 years after Regulation A was adopted, and since the costs to any variation in state securities laws can be prohibitive, we do not believe Regulation A can be an effective alternative with even a coordinated review system by the states. A blue sky exemption is required. Therefore we support the proposed definition of “qualified purchaser” as a form of qualified exemption from state blue sky laws.

In addition to the “qualified purchaser” exemption, we believe that the blue sky exemption should extend to re-sales of Regulation A securities. This extension of the exemption will lead to deeper capital markets for Regulation A securities, and it will help support the structure of Regulation A securities which are intended to be freely tradeable. Strengthening the exemption will increase the likelihood that issuers and investors will use Regulation A and will bring along the benefits that attach to that use.

We also believe the Proposal should extend preemption to Tier 1 offerings and that it would be appropriate to include additional requirements for such Tier 1 offerings, including additional disclosure obligations.³ In the event that the final rule does not extend such a Tier 1 preemption, the Commission should take the opportunity to learn from the Tier 2 framework. If, as we expect, the Tier 2 preemption framework proves successful, the Commission should revisit the issue and extend preemption to Tier 1 offerings.

B. Disclosure Requirements Should be Scaled to Create an “On Ramp” as Companies Grow in Size and Complexity

Public disclosure requirements can be quite extensive and can impose burdens that effectively undermine the utility of Regulation A offerings. Regulation A offerings are intended to be realistically available to smaller issuers. The Commission should develop rules that ramp up the disclosure requirements as the issuer grows in size and complexity. For smaller companies, disclosures should be prioritized to focus on the items most sought by investors and that provide the most protective information to investors. For example, a small issuer would help no one by submitting a huge number of risk factors where a more targeted list would help both the issuer and the potential investor.

The Proposal notes that, “[t]he potential future use of an amended Regulation A depends largely on the perceived trade-off between the costs of qualification and ongoing disclosure requirements and the potential benefits to issuers”.⁴ We agree with this statement and stress that it applies even more strongly to smaller companies, where the same cost may be relatively larger.

³ This discussion responds to Request for Comment number 123 of the Proposal.

⁴ 79 Federal Register at 3980 (January 23, 2014).



The risk of discouraging offerings by requiring unduly burdensome disclosures is much higher with the kinds of small companies this Proposal seeks to help.

C. The 10% Investment Limitation Should be Eliminated or Revised to Apply to Accredited Investors

Tier 2 offerings are intended to provide a path for smaller, growing companies to access capital. The Proposal would limit investment to 10% of the greater of annual income or net worth. The 10% limitation appears to result from the desire to balance investor protection provisions against the wider availability of capital through Regulation A offerings. In this case the limitation will unduly restrict the availability of capital for no appreciable investor protection benefit.

We believe, in the first instance, that there are sufficient investor protections for Tier 2 offerings such that an investment limitation for investors is not necessary.⁵ Tier 2's enhanced disclosure obligations and existing securities laws provide sufficient investor protection such that this extra restriction is not necessary. In addition, the restriction will reduce the utility of Tier 2 offerings to both investors and issuers.

As an alternative, if the Commission believes a limitation on investment should remain in the final rule, then the limitation should exempt "accredited investors." The concept of accredited investors is well established under Regulation D, and it works well. The disclosure and other provisions of Regulation A offer more than sufficient protection for accredited investors as that term is defined for Regulation D purposes. To develop a plan for Regulation A offerings that restricted access to accredited investors would undercut the effectiveness of those offerings without providing any real investor protection or other public policy benefits.

D. Foreign Private Issuers Should be Allowed to Conduct Tier 2 Offerings

The Proposal should be revised to permit foreign private issuers to conduct Tier 2 offerings.⁶ The U.S. has long been the center of innovation and economic growth in the world. Access to public markets in the U.S. has been one factor in keeping the U.S. generally and Silicon Valley specifically as the world's economic leader. The U.S. capital markets have been the envy of the world, but global capital markets become more competitive every day. There is a strong perception among foreign issuers that the cost of becoming and remaining a public company in the U.S. is becoming prohibitive for all but the biggest companies.

The U.S. will benefit in many ways from permitting Tier 2 offerings for foreign private issuers, beyond Canadian private issuers. Foreign private issuers may well find that Regulation A provides for an efficient path to capital formation in the country with the deepest capital markets in the world. Strengthening this nexus with entrepreneurial companies will benefit the U.S. and will likely lead many of these foreign issuers to eventually list on a national securities exchange in the

⁵ This discussion responds to Request for Comment numbers 26-30 in the Proposal.

⁶ This discussion responds to Request for Comment numbers 4-6.



U.S. and to report under the Exchange Act. In this way, foreign issuers will likely disclose more information more transparently. This is particularly true of issuers who list on foreign exchanges are not subject to Exchange Act filing requirements.

The disclosure requirements and other investor protections contained within the Proposal's Tier 2 framework would apply to foreign private issuers as they do domestic issuers and would offer appropriate investor protections. The benefits of increased foreign private issuers in the U.S. would be substantial.

II. Conclusion

In summary, we believe the Proposed Rule does a good job implementing section 401 of the JOBS Act. If implemented as proposed, the rule is likely to increase the use of Regulation A over the *status quo* and would thereby increase the access to capital for small companies. This is particularly important to the innovation economy centered in our nation's innovation hubs, such as Silicon Valley. We remain concerned that the proposed revisions to Regulation A may not go far enough to increase the use of Regulation A so as to make a meaningful difference to the innovation ecosystem and our nation's economy.

In order to be a more effective tool for small companies and investors, we believe there are four areas of the Proposed Rule that require modification or clarification:

1. The Proposed Rule properly exempts Tier 2 offerings from state blue sky laws and that exemption should be extended to re-sales of Regulation A securities;
2. Disclosure requirements should be scaled to create an "on ramp" as companies grow in size and complexity;
3. The 10% investment limitation should be eliminated or revised to apply to Accredited Investors; and
4. Foreign private issuers should be allowed to conduct Tier 2 offerings.

We thank you for the opportunity to comment on the Proposed Rule. If you have any questions, please do not hesitate to contact me at any of the below points of contact.

Sincerely,

A handwritten signature in blue ink that reads "Michael Lempres".

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