



March 22, 2014

U.S. Securities and Exchange Commission  
Attn: Elizabeth M. Murphy, Secretary  
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

Dear Chair White, Commissioners and Commission Staff:

As a growing technology company that hopes to utilize the JOBS Act's Regulation A+ offering in the future, Fallbrook Technologies is pleased to submit these comments for consideration.

We commend all those involved in studying, drafting and supporting the release of the Proposed Rule Amendments (hereafter Reg A+ Proposal) because we believe it represents a significant step forward to accomplishing Congress' JOBS Act goal of expanding access to capital for innovation-producing, job-creating growth companies like Fallbrook Technologies. With a few exceptions we highlight below, we believe the Reg A+ Proposal has achieved the "rulemaking goal" Chair White expressed during the release of the Reg A+ Proposal "to make Regulation A+ an effective, workable path to raising capital that—very importantly—also builds in the necessary investor protections."<sup>1</sup>

#### Summary

- Because the Reg A+ Proposal includes robust investor protections, federal preemption should be retained in the final release as a critical piece to making the Tier 2 proposal successful for growth companies.
- The proposed Investment Limitation should exempt certain individuals in a way that will not reduce investor protections yet still facilitate capital-raising interactions.
- A simplified method should be permitted to better facilitate Tier 2 issuers to register under the Exchange Act.

- With the two-year anniversary of the JOBS Act in April 2014, the Commission should seize the opportunity to raise the Tier 2 cap to \$75 million.
- The 12(g) thresholds could potentially unduly restrict investment opportunities for Tier 2 issuers which would frustrate the purpose of the Reg A+ Proposal.

### About Fallbrook Technologies

Fallbrook Technologies Inc. (Fallbrook) is an emerging manufacturing and technology development company dedicated to improving mechanical transmission-based products. Our mission is to deliver the best performing, most versatile and most reliable mechanical power transmissions in the world. We believe the next generation of transmissions, including our technology, will be less expensive, more effective and better for environmental sustainability.

The Company's core technology is its [NuVinci®](#) continuously variable planetary (CVP) transmission system. Fallbrook's *NuVinci* CVP technology is potentially applicable to improve the performance and efficiency of any product that uses a transmission. Our award-winning technology has been recognized as revolutionary, facilitating partnerships with other companies to commercialize our technology while also providing design, development and manufacturing support.

Instead of the traditional gear and clutch mechanisms found in conventional transmission, the *NuVinci* continuously variable transmission can change seamlessly through an infinite number of speed ratios between maximum and minimum values. The technology is applicable to products that use a transmission, including bicycles, electric vehicles, outdoor power equipment, agricultural equipment, automobiles and wind turbines.

Fallbrook is based in Cedar Park, Texas near Austin where we employ over 130 people (as of the date of this letter), including about 30 of the best engineers in the transmission sector. Fallbrook currently holds over 600 patents and pending applications worldwide. We have secured major partnerships with global players in the automotive sector to design and develop applications of our transmission technology. We have passed the commercial tests of physics and economics and have partnered with industry leaders.

Our revolutionary developments have led to exclusive licensing deals with industry leaders Allison Transmission and Dana Holding Corp. Allison's licensing agreement will utilize Fallbrook's CVP technology to develop and commercialize technology for Allison's end markets which could include commercial vehicles, military application and certain off-highway and large stationary equipment markets. Dana Corp's licensing agreement will utilize Fallbrook's CVP technology for use in light-vehicle and certain off-highway transmissions in the end markets Dana serves. To fully leverage Dana's investment in its strategic relationship with Fallbrook, Dana will soon be opening its 16<sup>th</sup> global technology center near Fallbrook's headquarters in

Cedar Park, Texas to accommodate more than 80 engineers and support staff and further facilitate collaboration.<sup>2</sup>

Fallbrook has grown from negligible revenue in 2009 to nearly \$45 million last year. And that is money that we are investing back into the business to grow. This is a good start, but we have an opportunity to grow and drive innovation faster. *The only thing preventing us from doing this is affordable capital.* Our ability to access capital is one of the MOST significant challenges we face. As CEO, I spend over 50 percent of my time on it.

With additional capital we could expand our manufacturing base in the U.S. and build out our engineering and development team which would create new high technology jobs to accelerate our product development and partnership opportunities. We also believe there would be a significant impact on new job opportunities within both our suppliers and end-user customers, such as automobile manufacturers. As the SEC acts to implement the JOBS Act, it should bear in mind that high-tech engineering and manufacturing jobs are the kinds of jobs America's economy needs because not only do they enhance U.S. competitiveness globally, but they pay above the average salary and wages compared to other sectors.

**1. Because the Reg A+ Proposal includes robust investor protections, federal preemption should be retained in the final release as a critical piece to making the Tier 2<sup>3</sup> proposal successful for growing companies like Fallbrook.**

A review of the Advance Comments that were filed ahead of the release of the Reg A+ Proposal shows strong support for the Commission's warranted step to preempt state securities law in the Reg A+ Proposal. We believe the data reveals that retaining Tier 2 federal preemption is the key factor to ensure that Reg A utilization increases in a way that makes Reg A+ a significant game-changer for growth companies on the cusp of economically-measurable expansion. Coupled with the broad investor protections in the Reg A+ Proposal, plus the clear delegation of authority by Congress to act,<sup>4</sup> the Commission should retain federal preemption in the final release.

For a growing tech company like Fallbrook that is well beyond the proof of concept stage but is not yet ready to go public, Reg A+ could become the perfect stepping stone to a future IPO or IPO On-Ramp process if preemption is retained. Without preemption the time, expense and potential uncertainty of merit-based review filing in multiple states could make Reg A+ extremely unattractive as a new capital-raising pathway. Undoubtedly, other growing companies would also be resistant to enter the process. Unfortunately, this means that new, well-paying jobs won't be created, new technologies across various industry sectors will sit dormant, and the public will miss out on new products that could change their lives or advance the common good.

In addition to the majority of the Advance Comments that reveal enthusiastic support for preemption not only in the capital markets professional community, but also from growing companies that will use Tier 2, other evidence demonstrates the solid foundation that supports the Commission in retaining Tier 2 preemption. To begin with, the congressionally mandated Government Accountability Office's July 2012 report to Congress on "Factors That May Affect Trends in Regulation A Offerings." The GAO report included input from various stakeholders, stating that "identifying and addressing individual state's securities registration requirements can be both costly and time-consuming for small businesses..."<sup>5</sup>

In addition to the GAO's research showing stakeholders support preemption, the Recommendations of the SEC's own Forum on Small Business Capital Formation in both 2011 and 2012 strongly supported preemption.<sup>6</sup> However, we contend that the most persuasive data on why preemption is necessary to make Reg A+ successful comes from a more recent SEC study.

In July 2013, the SEC Division of Economic and Risk Analysis released an updated report entitled, "Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012."<sup>7</sup> In the section where the report compares the dominating prevalence of Rule 506 utilization in contrast to Rule 505 and Rule 504 utilization, the report highlights a remarkable revelation that powerfully makes the case for preemption in Reg A+ Proposal,

Table 2 shows that Rule 506 is the dominant offering method even among those offerings eligible for Rules 504 and 505. Almost 50% of all Rule 506 offerings by non-funds since 2009 were for \$1 million or less and therefore may have qualified for the Rule 504 exemption based on offering size, but issuers elected to claim the Rule 506 exemption. An additional 20% of offerings were for between \$1 million and \$5 million and therefore could have claimed a Rule 505 exemption based on offering size. *This evidence suggests that the Blue Sky law preemption feature unique to Rule 506 offerings has greater value to issuers than the unique features of Rule 504 or Rule 505 offerings.*<sup>8</sup> (Emphasis added)

Thus, when similarly situated offering exemptions were presented to companies seeking to raise capital, overwhelmingly the companies chose the option which includes preemption. Consequently, if the Reg A+ final rule includes the preemption option Congress has allowed, it is more than reasonable to conclude that the attractiveness of Reg A+ will be dramatically increased.

We recognize the headwinds pushing against preemption and recognize the courage it will take for Commissioners to approve the preemption proposal as written, but we strongly encourage Commissioners to retain Tier 2 preemption as set out in the Reg A+ Proposal because it is the right policy solution while also being the most practical solution to democratize capital for Tier 2 innovation companies that are ready to scale like Fallbrook. In

addition to being right on policy and being practical, preemption still accomplishes the Commission's goal of protecting investors.

**2. The proposed Investment Limitation should exempt certain individuals in a way that will not reduce investor protections yet still facilitate capital-raising interactions.**

The Reg A+ Proposal significantly upgrades investor protections and the amount of information a potential investor will be able to review before making an investment decision. The Commission's effort to increase investor protections in such a robust way provides an appropriate balance to the increased Tier 2 cap. Despite the good work accomplished by the Commission with the new investor protections generally, we suggest some ways to make the investor limitations a bit more flexible to further facilitate access to capital without substantially reducing investor protections.

First, we assert that the 10% annual income/net worth limit should, at a minimum, be raised substantially if not eliminated. As mentioned in the explanatory statement in the Reg A+ Proposal release (p. 52), the limit is similar to the "loss limitation" in the recently proposed crowdfunding regulations. However, we believe that more mature Tier 2 growth companies like Fallbrook should not be limited in the same way that crowdfunding startups would be limited.

Growth companies like Fallbrook have already proven their viability beyond proof of concept and market entrance, have already successfully raised capital in early rounds, and often times have a well-developed intellectual property portfolio driving technology development. Growth companies provide investors a track record that is far more extensive and able to be scrutinized as compared to crowdfunding startups that will likely have thin or no track records because of their nascent development stages they are struggling to traverse. Although the 10% limit for crowdfunding appears reasonable because of the greater risk an investor undertakes, that same 10% limit does not seem properly calibrated for more mature growth companies needing Tier 2 to boost them to the next plateau of growth, technology development and job creation. Thus, we contend that the Commission should consider at least doubling the limit if not eliminating it altogether.

Second, we believe Accredited Investors (AIs) should be totally exempted from the Investment Limitation because of their ability to analyze, assess, and weigh the risk and reward of a Tier 2 investment. Accredited Investors generally have the sophistication, experience, and collaborative networks to engage in Tier 2 investments in various amounts as they and their AI colleagues best determine. Thus, we contend that the Commission should completely exempt AIs from the Investment Limitation.

Finally, we believe that companies utilizing Tier 2 be allowed to rely on the investor's representation of compliance with any Investment Limitation as to not increase undue administrative obligations and liability on a growth company.

**3. A simplified method should be permitted to better facilitate Tier 2 issuers to register under the Exchange Act.**

We agree with other commenters that note the advantages in allowing a simplified pathway for a Tier 2 issuer to list on an exchange using a Form 8-A. Such a simplified method will reduce unnecessary expense and administrative burden on growing companies like Fallbrook since much of the material information will already be provided in the Tier 2 submission. This is the kind of smart government solution that protects investors and provides meaningful disclosure information all while being user-friendly to a growth company that can keep its resources focused on break-through innovation and job-creation.

**4. With the two-year anniversary of the JOBS Act in April 2014, the Commission should seize the opportunity to raise the Tier 2 cap to \$75 million.**

As the Commission is aware, Title IV of the JOBS Act requires the Commission to raise the Reg A+ cap every two years or else explain to Congress why it chose not to raise the cap. From reading the Advance Comments and current comments submitted thus far, it seems evident that the Commission's effort on the Reg A+ Proposal has been generally well received. We join with the many other commenters in expressing optimism that a swiftly enacted Final Rule that embodies much of what is proposed could be a game-changer for capital-raising. Since the Tier 2 apparatus is well constructed and will provide robust investor protections, we believe Tier 2 is able to bear a higher cap and believe \$75 million is a reasonable next step.

**5. The 12(g) thresholds could potentially unduly restrict investment opportunities for Tier 2 issuers which would frustrate the purpose of the Reg A+ Proposal.**

We agree with other commenters that the Reg A+ Proposal should exempt Tier 2 issuers from 12(g) thresholds as they have the potential to unduly limit investment without providing significantly new and material information to the public. We appreciate the concern expressed on p. 62 of the Proposal regarding the need for 12(g) thresholds to be a meaningful limit to eventually subject issuers to more expansive disclosure and compliance obligations. We cannot speak for other companies but presume that other companies in similar situations as Fallbrook

have no intention of utilizing Tier 2 as a permanent capital-raising destination. With the IPO On-Ramp and full IPO listing within reach after successful Tier 2 events, we guess that companies like Fallbrook would utilize one of those two options sometime thereafter. Additionally, since Tier 2 reporting and disclosure requirements will be in the realm of IPO requirements, and with the abundant information that can be found about companies online, it does not seem that the public would be deprived of new and material information regarding the progress and governance of a Tier 2 issuer. Thus, the 12(g) limit could serve to unduly restrict Tier 2 investment without accomplishing the goal of increased information and knowledge.

### Conclusion

We again want to applaud and commend the effort by the Commission staff to develop the well-balanced Reg A+ Proposal. We are also grateful that Chair White has publicly stated that JOBS Act implementation continues to be a top priority for the Commission. We humbly cheer on the Chair, Commissioners and Commission staff in their endeavor to swiftly finalize a Rule Proposal that embodies the balanced approach presented and the related improvements that have been submitted.

As we pointed out in our previous submission, when President Obama signed the JOBS Act, he recognized the promise of the JOBS Act to America's innovators stating,

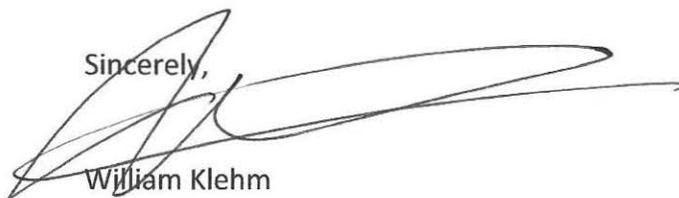
One of the great things about America is that we are a nation of doers -- not just talkers, but doers. We think big. We take risks. And we believe that anyone with a solid plan and a willingness to work hard can turn even the most improbable idea into a successful business. So ours is a legacy of Edisons and Graham Bells, Fords and Boeings, of Googles and of Twitters. This is a country that's always been on the cutting edge. And the reason is that America has always had the most daring entrepreneurs in the world.

Some of them are standing with me today. When their ideas take root, we get inventions that can change the way we live. And when their businesses take off, more people become employed because, overall, new businesses account for almost every new job that's created in America.

Fallbrook is a poster child for the ideals the President expressed and the promise of the JOBS Act. We are anxious to make those bipartisan promises a reality and move our country and globe to a more sustainable future.

We would be happy to further assist you in any way beyond these comments or to answer any questions you might have.

Sincerely,



William Klehm  
Chairman and CEO  
Fallbrook Technologies, Inc.

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<sup>1</sup> Statement of SEC Chair Mary Jo White at SEC Open Meeting to release the Proposed Rule Amendments for Regulation A under the JOBS Act, December 18, 2013,

<http://www.sec.gov/News/Speech/Detail/Speech/1370540516714#.UyTyJvldVWQ>

<sup>2</sup> To learn more about the Allison Transmissions and Dana Corp. licensing agreements, visit here:

[http://www.fallbrooktech.com/sites/default/files/videos/press-releases/ADF%20Press%20Release\\_09-13-12EN\\_0.pdf](http://www.fallbrooktech.com/sites/default/files/videos/press-releases/ADF%20Press%20Release_09-13-12EN_0.pdf)

<http://www.fallbrooktech.com/sites/default/files/videos/press-releases/Dana%20Holding%20Corporation%20News%20Release.pdf>

<sup>3</sup> To meet Fallbrook's development and expansion needs, an incremental \$5 million round is simply *not* sufficient to fund the type of development and growth that we are targeting, thus it should be presumed that unless otherwise qualified, any general reference to the Reg A+ Proposal in these comments refers to Tier 2 offerings in which we hope to participate to the max.

<sup>4</sup> Although some question has been raised regarding the SEC's authority on preemption, a clear reading of the JOBS Act, P.L. 112-106, at Title IV, Section 401 (b) shows that Congress explicitly invited the SEC to regulate as the Reg A+ Proposal does. Although Congress could have chosen to make preemption explicit, the fact that it did not, in no way diminishes the language giving the SEC the authority to act. The SEC has wisely and cautiously stepped into the authority granted by Congress as displayed by the deliberative process it has undertaken that includes input from Advance Comments, the current public comment process as well as the GAO report mandated by the JOBS Act in Section 402 titled "Study on the Impact of State Blue Sky Laws on Regulation A Offerings." P.L. 112-106

<http://www.gpo.gov/fdsys/pkg/PLAW-112publ106/pdf/PLAW-112publ106.pdf>

<sup>5</sup> GAO-12-839, Highlights p.2, <http://gao.gov/assets/600/592113.pdf>

<sup>6</sup> SEC Government Business Forum on Small Business Capital Formation Final Report 2012, pp. 25-26

<http://www.sec.gov/info/smallbus/gbfor31.pdf> and Final Report 2011, pp. 29-30

<http://www.sec.gov/info/smallbus/gbfor30.pdf> The 2013 Forum Report has not yet been published online.

<sup>7</sup> <http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf>

<sup>8</sup> Id at p. 7.