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Submitted electronically to rule-comments@sec.gov

March 21, 2014

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

Re: Release No. 33-9497; File No. S7-11-13 – Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act of 1933

Dear Ms. Murphy:

I am submitting this letter on behalf of B. Riley & Co., LLC ("B. Riley") in response to the Securities and Exchange Commission's (the "Commission") request for comments on its proposed implementation of Section 401 of the Jumpstart our Business Startups Act (the "JOBS Act").

B. Riley is a registered broker-dealer and full-service investment bank focused on serving the needs of middle-market companies and their investors. Our activities include equity research, institutional sales and trading, capital formation and mergers and acquisitions advisory. We are strong believers in the value of the JOBS Act and, in particular, Section 401 of the Act, which promises to reinvigorate the market for small initial and follow-on public offerings.

Our comments below were drafted with the view that for Tier 2 Regulation A offerings to become a legitimate capital raising tool the institutional investor community would need to take a lasting interest in the opportunity presented by these small issuers. While the proposed rule amendments adequately address the supply side of the capital formation equation, Regulation A risks engendering an underdeveloped class of thinly traded, orphaned micro-cap issuers unless a vibrant institutional investor ecosystem develops alongside this marketplace.

Comments

Offering Limitations and Secondary Sales

We ask that the Commission implement rules that would treat sales by non-affiliate selling securityholders as a separate category of exempt transactions so that these sales are not aggregated with issuer sales. Furthermore, this separate category of exempt transactions should not be subject to quantitative limitations. Placing rigid caps on selling securityholders liquidity may discourage viable candidates from pursuing Tier 2 Regulation A offerings, resulting in potential delays in capital investments and encouraging alternative modes of liquidity such as dividend recapitalizations and corporate sales—outcomes that are misaligned with the intentions of Title IV of the JOBS Act.

In seeking to retain caps on selling securityholder liquidity, the Commission aims to avoid the malicious offloading of securities in initial offerings by legacy parties in possession of superior information. However, similar to traditional IPOs, we believe that market forces will develop to inherently limit selling securityholders' ability to fully exit their positions in initial public offering. These forces will include new investors demanding ongoing participation from legacy parties as well as underwriters who will make certain representations as to the performance of the underlying businesses based on due diligence findings. Underwriters will also demand lock-up agreements from selling securityholders for deal marketing purposes. Selling securityholders in traditional IPOs typically obtain real liquidity only as a result of secondary offerings that take place months after completion of the initial offering, provided that the issuer's securities have performed to investor expectations. We expect Tier 2

Regulation A offerings to take similar shape, with selling securityholders "earning" material liquidity only as a result of satisfactory business and financial performance subsequent to initial offerings.

We also note the impracticality of the $15 million annual threshold. Recall that the Commission is currently opposed to establishing a limit on the market value of companies that will be allowed to take part in Tier 2 Regulation A deals. Consequently, for an issuer with a market capitalization in excess of $250 million, the $15 million ceiling could correspond to an ownership amount that is potentially immaterial relative to the aggregate value of the selling securityholder's stake and to the issuer's total market value.

We support the elimination of the condition, in the last sentence of current Rule 251(b), that limits resales based on issuers having positive net income from continuing operations. The condition is unduly restrictive in the context of early stage companies and companies with significant investments in R&D and/or marketing efforts.

Investment limitations

The rule amendments contemplated by the Commission collectively provide sufficient protective measures for the proposed 10% investment limit to serve a questionable purpose. To our knowledge, there is no precedent for the Commission enacting portfolio allocation directives in publicly traded securities. In seeking to limit investments in Tier 2 Regulation A securities, the Commission is taking too narrow a view of investor preferences and of the risk profile of issuers who will opt for Tier 2 Regulation A offerings.

There are highly risky non-exempt securities trading on national exchanges, yet the Commission does not seek to interfere with investors' allocation decisions related to those assets. Likewise, there are OTC securities with no current information available, yet the Commission does not stand in the way of allocation decisions in these securities. By the same token, the Commission should not implement maximum investment caps in Regulation A offerings on the basis of its *ex ante* expectations of risk for this class of issuers. The Commission's mandate is investor protection by way of market integrity and access to reliable information. We believe that this mandate is fulfilled by the proposed Regulation A reporting regime and other investor protection features of the Act. If some limitation on investment is ultimately retained by the Commission, we ask that the restriction be limited to natural persons who are not accredited investors.

Treatment under Section 12(g)

In our opinion, record holder thresholds are inaccurate gauges of investor interest in publicly traded securities. To a large extent, investors today hold securities in Street name, such that certificated shareholder lists reveal little information as to the dispersion of a company's securities. Certificated securityholder lists are static snapshots of ownership, changing little over time even as trading activity in a security increases. Given the limited value of record holder counts, we encourage the Commission to propose exempting Regulation A issuers from the requirements of Section 12(g), particularly given the adequacy of Regulation A reporting requirements. We encourage the Commission to leave it to issuers to independently determine the appropriate time to enlist for the requirements of Section 12(g).

Ongoing reporting

We believe that it is critical for the Commission to implement rules requiring Regulation A issuers to provide frequent disclosures to the market through EDGAR filings. Investors participating in Regulation A offerings will have an expectation for ongoing reports by issuers; a lack of reporting standards is likely to limit interest in Regulation A deals, particularly from institutional investors. While the proposed reporting regime strikes an acceptable balance between relevance and practicality for issuers, we believe that the semiannual interim reporting periods will prove to be inadequate. Regardless of Commission rules, we suspect that issuers will eventually opt to release quarterly earnings reports in order to meet the expectations of securityholders, who are accustomed to quarterly reporting routines. We believe that the benefits of quarterly interim reports outweigh the marginal cost of drafting two extra disclosure statements per year.

We recommend that the Commission adopt uniform reporting requirements for Tier 2 Regulation A issuers irrespective of offering size, market capitalization or other thresholds. For an analyst ecosystem to develop around Regulation A issuers, it is imperative for the investor community to have access to current and systematic information about issuers' financial condition.

Relationship with State Securities Law

We support the Commission's stance with respect to the preemption of state "Blue Sky" laws for Tier 2 Regulation A offerings. We agree with the Commission that the substantial investor protections embedded in the issuer eligibility conditions, "bad actor" disqualification provisions, disclosure requirements, qualification process and ongoing reporting requirements of Tier 2 Regulation A offerings collectively provide a strong framework for investor protection.

Sincerely,

Salomon Kamalodine
Director, Investment Banking