CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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

Re: 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; File No. S7-11-13)

Dear Ms. Murphy:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC welcomes this opportunity to provide comment on the proposed rule ("Proposal") issued by the Securities and Exchange Commission ("Commission") on December 18, 2013 to implement Section 401 of the Jumpstart Our Business Startups Act ("JOBS Act"), which would modernize Regulation A and make it a viable tool of capital formation for American businesses.

In 2011, the Chamber released a study, *Sources of Capital and Economic Growth*, which demonstrates the variety of capital sources that are needed by firms of all sizes in a free enterprise economy. Companies small and large, particularly new businesses, need a mix of capital sources to meet both short-term and long-term growth needs. The modernization of Regulation A will help add to this mix, and the CCMC commends the Commission for carrying out its statutory obligations under the JOBS Act and putting forward a sensible proposal to bring Regulation A in line with the size and scope of today's American economy.

Background and the Need for Modernizing Regulation A

Both Congress and the Commission have long recognized that in many instances, an exemption to certain filing requirements under our securities laws can be an appropriate mechanism for businesses looking to raise capital. The ostensible purpose of Regulation A has been to provide such an exemption for businesses that want to seek public financing, but may not be prepared to bear the full costs of an initial public offering (IPO). Unfortunately, since 1992 the provisions of Regulation A have not been modernized to reflect the increasing size and scope of the American economy and as a result, Regulation A has become a less attractive tool of capital formation for many businesses.[1]

There are two major factors that have contributed to the declining use of Regulation A. The first is that the exemption threshold for filings to be eligible under Regulation A—currently set at $5 million—is extremely low relative to the size of our economy and therefore disqualifies many businesses from using it. The second is that users of Regulation A are required to navigate a maze of state securities laws—known as "blue sky" laws—in order to complete an offering, which adds a great deal of legal complexity and cost for businesses looking to raise capital.

It has therefore become evident that in order for Regulation A to become a viable option for businesses to use, the issues surrounding the exemption threshold and complexity regarding blue sky laws must be addressed. Accordingly, the SEC's Government-Business Forum on Small Business Capital Formation recommended in both 2010 and 2011 that the exemption threshold for Regulation A be raised.[2] Additionally, bipartisan legislation was introduced in Congress during the 112th Congress that would raise the threshold under Regulation A from $5 million to $50 million, and also require the Government Accountability Office (GAO) to study the impact that blue sky laws have on the usage of Regulation A.[3]

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[1] *See* Government Accountability Office (GAO) July 2012 Report "Factors That May Affect Trends in Regulation A Offerings" Highlights: *"Offerings filed since 1997 decreased 116 in 1997 to 19 in 2011. Similarly, the number of qualified offerings dropped from 57 in 1998 to 1 in 2011."*

[2] The 2010 Forum recommended the Regulation A threshold be lifted to $30 million; the 2011 Forum recommended it be raised to $50 million

[3] *See* H.R. 1070; S. 1544 of the 112th Congress; both raised the Regulation A threshold to $50 million, S. 1544 directed the GAO to study blue sky laws

These actions ultimately contributed to the inclusion of Title IV in the JOBS Act, which passed both the House and Senate with overwhelming bi-partisan support in 2012. Title IV directed the Commission to raise the exemption threshold under Regulation A from $5 million to $50 million and directed the GAO to produce a report that would, amongst other items, examine the current structure of blue sky laws and its impact on the ability of businesses to use Regulation A.

GAO Report and the Need to Address the Blue Sky Issue

The GAO report required by the JOBS Act—issued in July 2012—confirmed that the maze of blue sky laws is a major impediment for businesses looking to raise capital under Regulation A. The GAO noted that *"Identifying and addressing the securities registration requirements of individual states is both costly and time-consuming for small businesses"* and also cited the "merit review" requirements of some states as being particularly burdensome. Merit reviews provide a great deal of discretion to state securities regulators to decide whether to approve a Regulation A offering, and the uncertainty that this subjectivity creates is harmful to both investors and businesses that are looking to raise capital.

CCMC understands that a coalition of state securities administrators has recently voted to adopt a "coordinated review program" intended to establish a streamlined blue sky process for Regulation A issuers.[4] While this initiative is laudable, we are curious as to why such a program was not put in place years ago, and we are concerned that relying on an untested and unproven review program will only add delays and complexity to issuers that are looking to take advantage of the modernized Regulation A. As noted below, we believe the Commission should proceed with its proposed definition of a "qualified purchaser," which would effectively preempt blue sky laws and provide certainty for issuers and investors under Regulation A.

[4] *See* March 11, 2014 release from Northern American Securities Administrators Association "NASAA Members Approve Streamlined Multi-State Coordinated Review Program."

The Commission's Proposal and Comments on Questions Raised

The Proposal creates two "tiers" of offerings under Regulation A. Tier 1 would be for offerings up to $5 million (including no more than $1.5 million on behalf of selling security holders); and Tier 2 would be for offerings up to $50 million (including no more than $15 million on behalf of selling security holders). Importantly, the Proposal defines a "qualified purchaser" as any offeree or purchaser of a Tier 2 offering.

This would preempt blue sky laws and therefore reduce much of the uncertainty, cost, and complexity that currently surrounds Regulation A offerings. The Chamber supports the Proposal's definition of "qualified purchaser" as it would help make Regulation A a more attractive tool of capital formation.

The Proposal also seeks comment as to whether the Commission should limit the eligibility under Regulation A based on issuer size. Given that the JOBS Act has already provided a limit on the amount an issuer can offer under Regulation A ($50 million), we do not believe there is any reason to further restrict the use of Regulation A based on issuer size. Such a restriction would likely remove Regulation A as a viable option for a number of businesses that could otherwise benefit from such an exemption.

Additionally, the Proposal seeks comment as to whether Regulation A securities should be exempt from reporting requirements included under Section 12(g) of the Exchange Act. We believe that if an exemption were not granted to Regulation A issuers under Section 12(g), it is likely that Tier 2 offerings would become less attractive, and issuers would be incentivized to either restrict their Regulation A offerings to accredited investors, or pursue a private offering under Regulation D. Such an outcome would be contrary to the intent of the JOBS Act, and would inhibit capital formation in our economy.

We also support an exemption for Tier 2 issuers from compliance with the eXtensible Business Reporting Language (XBRL) requirements. XBRL was created to provide a more technologically compatible and user-friendly information portal for shareholders and investors. However, XBRL remains a work in process and has undergone a number of growing pains that make compliance with it costly,

particularly for small issuers. An exemption to XBRL compliance for Tier 2 issuers would allow these businesses to focus more of their resources on raising capital, expanding their operations, and creating jobs.

Importantly, the Proposal includes a number of investor protections, including the maintenance of antifraud measures, sufficient disclosure requirements, and a "bad actor" disqualification to prohibit issuers or related persons that have been accused of securities fraud from participating in a Regulation A offering. We believe these provisions provide an appropriate balance between investor protections and enhancing the appeal of Regulation A to issuers.

Conclusion

We commend the Commission for putting forward a sensible proposal to modernize Regulation A and give American businesses a viable option for capital formation that would help advance job creation and economic growth. We look forward to continuing to engage in this process as you move forward.

Sincerely,

Tom Quaadman