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Via e-mail to rule-comments@sec.gov

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

Re: File No. S7-11-13
Release No. 33-9497
SEC Rule Proposal on Regulation A and Exemptions Under Section 3(b) of the Securities Act of 1933

Dear Ms. Murphy:

I commend the Commission for its excellent analysis of JOBS Act Title IV regarding Small Company Capital Formation and its proposed rules. I have been critical of the Commission's complex proposed rules relating to Title III of the JOBS Act that will effectively render that provision unusable if not dramatically revised before finalized. To the contrary, the Commission has struck a fine balance with Title IV between investor protection and an opportunity for small businesses to raise significant capital under "Regulation A+." I implore the Commission not to succumb to those who would prevent startup and emerging businesses from obtaining otherwise unavailable funding in the name of providing an overreaching system of government "protection" for everyday investors.

I will address two specific issues – Blue Sky preemption and the definition of "qualified purchaser" - that I believe the Commission has correctly analyzed, and ask that overzealous commentators not be allowed to persuade the Commission to alter these proposed rules. To do so would effectively render Regulation A+ virtually useless like its predecessor Regulation A has been for more than 20 years.

Regulation A has been rarely used due to (a) a limitation of raising only $5,000,000 and (b) the need for extremely expensive state-by-state Blue Sky law compliance. The cost and uncertainty of such extensive compliance greatly outweighs the benefit to cash-strapped new and emerging businesses to raise only $5,000,000. The JOBS Act and the Commission have corrected both problems by raising the funding limit to $50,000,000 and negating the requirement of Blue Sky compliance requirements for certain offerings.

For those concerned about investor protection, I note that the Commission's new reporting requirements in Tier 2 offerings give investors sufficient information on issuer developments while reducing some of the rigors of full registration and reporting.

Furthermore, the Commission's requirement of audited financial statements provides another layer of investor protection. The "Bad Actor" disqualifications give yet another level of protection to the general public. Finally, limiting Tier 2 investment to 10% of the investor's income or net worth ensures that the risk associated with the investment is limited. Given these protections and others, do we really need each of the states having their government and regulators being involved, creating new and expensive hurdles designed to generate state funds, under the guise of protecting their citizens from "risky" investments?

The Chief Securities Regulator for the state of Massachusetts has submitted a comment[1] chastising the Commission for removing the requirement of state Blue Sky Law compliance for Tier 2 offerings. This is the same state that in 1980 famously refused to allow its citizens to purchase stock in a risky company, Apple, when the computer behemoth went public in 1980.[2] By doing so, the Massachusetts state government "protected" its citizens from investing $22 a share in a "risky" business that is now considered one of the most successful companies in America and trades routinely at more than $500 a share.

While the state government of Massachusetts apparently feels that investing in new businesses is too risky for people to even contemplate, they seem to have no problem with citizens risking as much money as they would like when it comes to lottery tickets. In 2013, Massachusetts residents were sold $4.8 billion of lottery tickets[3] by the same government that does not want their residents investing in "risky" startup companies. While startup companies do have a high risk of failure, their chance of becoming profitable is far better than 1 in 13,983,816, the odds of winning the jackpot in one of Massachusetts most popular lottery games.

Massachusetts also recently approved casino gambling and expects to generate revenues of between $300 million and $400 million from the casinos.[4] Is gambling a good investment for the citizens of Massachusetts? According to a recent news article, Americans lost $119 billion gambling in 2013.[5] The government of Massachusetts does not seem to be bothered by the well-known fact that statistically every casino gambler will eventually lose money, unlike the investors in a "risky" startup or emerging business.

I point these facts out not to specifically criticize the government of Massachusetts. Massachusetts is one of the finest and most prosperous states in our union and I have confidence that their government officials do everything they can to protect their citizenry.

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[1] http://www.sec.gov/comments/s7-11-13/s71113-3.pdf

[2] Rustin and Lynch, *Apple Computer Set To Go Public Today; Massachusetts Bars Sale of Stock As Risky.* Wall Street Journal, Dec. 12, 1980.
http://online.wsj.com/public/resources/documents/AppleIPODec12_1980_WSJ.pdf

[3] http://www.masslottery.com/lib/downloads/about/June2013financialYTD.pdf

[4] http://www.nytimes.com/2012/02/26/us/new-law-in-massachusetts-allows-for-three-casinos.html?pagewanted=all&_r=0

[5] http://money.msn.com/now/americans-lost-dollar119-billion-gambling-last-year

Their desire to provide government oversight of investor protection is commendable. I bring these facts up to point out the absurdity of any federal, state or local government overzealously adding new compliance, laws or regulations to protect citizens from investing in startup and emerging companies because of perceived risk, when much larger risks to the pocketbooks of the populace are promoted by the same governments. The fact is, additional state regulation and oversight is not needed for Regulation A+. The Commission has done an excellent job creating safeguards for investors in Regulation A+ that still allow for companies to use the exemption, raise capital, create jobs, grow their business and revive the American economy.

I will now address the specific questions posed by the Commission that I feel require input. I will collectively respond to the following requests for comment:

> 114. Should we preempt state securities law registration and qualification requirements for certain Regulation A offerings by adopting a definition of "qualified purchaser," as proposed? Why or why not? Please explain. In responding to this question and the questions below, please address both the practical implications of preemption for capital formation and the impact on investor protection.
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> 115. Is there any potential alternative approach by which we might address the concern raised by commenters and the GAO that state securities regulation poses a significant impediment to the use of Regulation A? In particular, could NASAA's proposed coordinated review program be effectively implemented in the near term? If NASAA implements a coordinated review program, should we consider changes to the proposed "qualified purchaser" definition or other provisions of the proposed rules? Are there other methods to streamline state review, such as a process based on review or qualification in a single state?
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> 116. Does proposed Tier 2 of Regulation A include sufficient investor protections to justify the preemption of state securities law registration and qualification requirements for offerings sold to "qualified purchasers," defined as proposed or otherwise? If not, are there additional investor protections that would justify such preemption? What are they?
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> 117. As proposed, should we adopt a "qualified purchaser" definition for purposes of Regulation A to include all offerees and all purchasers in a Tier 2 offering? Is it appropriate, as proposed, to treat all offerees as qualified purchasers? Is it appropriate to treat all purchasers in a Tier 2 offering as qualified purchasers, or should we impose additional limitations (based on, for example, an income threshold, a net worth threshold and/or an investment assets threshold)? Should we base the definition of "qualified purchasers" on the Investment Company Act definition of that term, or on the

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definition of "qualified client" under the Investment Advisers Act? Alternatively, should we define all accredited investors as qualified purchasers, as has been previously proposed? Why or why not?

118. Are there other approaches we should consider to defining "qualified purchaser" for Regulation A offerings? For example, should we define "qualified purchaser" as any offeree or purchaser in a Regulation A offering by an issuer that meets certain criteria—for example, specified financial criteria or operating or other criteria indicative of reduced risk? Or should we define it based on attributes of the offering that may reduce risk to investors (e.g., firm commitment underwritten offerings or offerings through a registered broker-dealer)? Alternatively, should we consider a "qualified purchaser" definition that reflects some attributes of the purchaser, issuer and offering?

119. Should we consider defining "qualified purchaser" unconditionally, as all offerees and all purchasers in any Regulation A offering? Would such a definition better address potential burdens to capital formation under Regulation A? If so, how? Would such a definition provide sufficient investor protections to support the preemption of state securities law

120. In addition to providing blue sky preemption for Tier 2 offerings, should we also consider providing preemption for some or all resales of Regulation A securities? Would the need to comply with blue sky laws prevent the development of a liquid secondary market for Regulation A securities?

121. Would the preemption of state securities law registration and qualification requirements provided by Section 18(b)(1) of the Securities Act for securities that are listed or authorized for listing on a national securities exchange be a viable option for many Regulation A issuers? Why or why not?

To answer these questions collectively, I submit that the Commission enact Section 230.231 and Section 230.256 exactly as proposed. Without preemption of state law and the ability to sell securities to the general public, Regulation A+ will be too expensive and too great of a regulatory morass for a startup or emerging company to consider. If Regulation A+ offerings are limited to "accredited investors" or others with high income or net worth, there will be no incentive to use Regulation A+ when Regulation D allows the same amount to be raised from only accredited investors without the additional expense, filing and reporting requirements of a public offering. If the Commission limited Regulation A+ offerings to accredited investors, it would be destroying the legislative intent behind the law, and will render the law virtually useless. If the general public is not allowed to invest in Regulation A+ offerings, this potentially game-changing law will sit on the shelf collecting dust along with its predecessor Regulation A.

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In the proposed rules, the Commission has created significant investor protection along with the broad definition of "qualified purchaser" and the preemption of state law. For example, the Commission's proposed rules limit Tier 2 investment to 10% of the greater of an investor's income or net worth, and thus, limit each investor's exposure to loss. This is similar to the investment limits proposed under the crowdfunding provisions of Title III, and is a well-reasoned method of limiting investor risk. While minimizing investor risk, it also provides an issuer the opportunity to conduct an affordable public offering. Furthermore, unlike Regulation D offerings, Regulation A+ Tier 2 offerings have additional investor safeguards in place in that substantial disclosure documents will be reviewed by the Commission staff. The requirement of audited financial statements provides a third level of protection to investors. Finally, the proposed "bad actor" checks that will weed out those issuers with histories of criminal activity and problematic backgrounds involving securities in general.

There is always risk to any investment. The Commission's statement as to how these risks are minimized is directly on point:

> We also believe that Regulation A, as we propose to amend it, would provide substantial protections to purchasers. Under the proposed amendments, a Regulation A offering statement would continue to provide substantive narrative and financial disclosures about the issuer, including an MD&A discussion. The proposed electronic filing requirement, including the structured data in Part I of the offering circular, would provide ready access to key information about the issuer and the offering, and would facilitate analysis of the offering in relation to comparable opportunities. We expect that Regulation A offering statements would continue to receive the same level of Commission staff review as registration statements. Additional investor protections would be afforded by Regulation A's limitations on eligible issuers and "bad actor" disqualification provisions, which we are proposing to expand.
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> The requirements for Tier 2 offerings would provide further protection, because the financial statements contained in the offering circular would be required to be audited, the issuer would have an obligation to provide ongoing reporting to purchasers, and such purchasers would be limited in the percentage of income or net worth that could be invested in a single offering. Ongoing reporting would assure a continuing flow of information to investors and could support the development of secondary markets for Regulation A securities, offering the prospect of reduced investor risk through liquidity.

Regulation A+ can provide a much-needed method of raising capital to start or grow a business. New businesses mean new jobs for the unemployed and more dollars stimulating the economy. Without funding mechanisms like Title III and Regulation A+, many of these

small businesses will never exist or have the opportunity to grow, create jobs and become large businesses.

I truly appreciate the opportunity to comment and I hope that the Commission will consider my comments as they prepare the final rules for Regulation A+.

Very truly yours,

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