



March 24, 2014

filed via e-mail to rule-comments@sec.gov

10401 North Meridian Street
Suite 202
Indianapolis, IN 46290
317.663.4180 main
317.815.0871 fax
866.353.8422 toll free

reisa.org

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File Number S7-11-13 In Response to Request for Comments to Proposed Rulemaking under Title IV of the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act")

Dear Ms. Murphy:

The Real Estate Investment Securities Association ("REISA")¹ submits this letter in response to the Securities and Exchange Commission's ("SEC") request for comments to the proposed rulemaking in connection with revisions to Regulation A, promulgated under Section 3(b) of the Securities Act of 1933, as amended (the "Securities Act"), as encapsulated in Title IV of the JOBS Act. REISA appreciates the opportunity to comment on the proposed rulemaking. Our comments will focus only on the following issues:

1. State Preemption. The JOBS Act allowed the SEC to establish a definition of "Qualified Purchaser" for offering made pursuant to Regulation A. The current proposed definition would allow for the preemption of state regulation, which REISA believes is instrumental to achieving the goals of the JOBS Act to "increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies."
2. Limitation on Types of Issuers. Currently, offerings made pursuant to Regulation A prohibit certain issuers, specifically investment companies, including business development companies ("BDCs"), blank check companies and issuers of fractional interests in oil and gas

¹ REISA is a national trade association that influences over 20,000 real estate professionals who offer and manage alternative investments. These alternative investments typically include, but are not limited to, non-traded REITs, real estate partnerships, real estate income and development funds, tenant-in-common interests, oil and gas interests, equipment leasing, business development companies and other securitized real estate investments. REISA has more than 800 active members, who are key decision makers that represent over 30,000 professionals throughout the nation, including sponsors and managers of real estate and related offerings, broker-dealers, securities licensed registered representatives, registered investment advisers (RIAs), investment adviser representatives (IARs), accountants, attorneys, mortgage brokers, institutional lenders, qualified intermediaries, real estate agents and real estate brokers. REISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, legislative and regulatory advocacy, and networking opportunities. REISA connects members directly to key industry experts providing timely trends and education and helping create a diversified portfolio for their clients.

or other mineral rights. The SEC has solicited comment as to whether those prohibitions should remain. REISA believes (a) that established issuers of fractional interests in oil or gas rights or other mineral rights should not be precluded from using Regulation A, especially in light of the elimination of Regulation B, and (b) that BDCs should be allowed to use Regulation A for capital raising purposes with modifications relating to the specific disclosures required for BDCs.

3. 10% Cap on Investments in Tier 2 Offerings. The SEC has asked for comment on whether a prospective investor's maximum investment in any individual Tier 2 offering should be capped at an amount equal to 10% of the greater of the investor's net worth, as calculated pursuant to Rule 501 for accredited investors, and annual income (the "10% Cap"). REISA believes that this proposed limitation strikes a fair balance between investor protection and capital formation. In addition, REISA believes that an issuer's ability to rely on an investor's representations with respect to the 10% limitation is an important balance between investor protection, practical realities and privacy concerns.
4. Application of Rule 15c2-11 of the Exchange Act and Rule 144 of the Securities Act. REISA agrees with the SEC proposal that the reports required of issuers in a Tier 2 offering should constitute adequate information for purposes of Rule 15c2-11 of the Exchange Act and that Rule 144 of the Securities Act should be amended to include reporting under Tier 2 in the categories of publicly available information for a non-Exchange Act reporting issuer that will allow such issuer's affiliates to rely on Rule 144(c) for resales.

These issues are discussed in more detail below.

REISA supports Congress' efforts to grow new businesses and jobs and ease capital formation, and believes that the SEC's current proposed rules strike a very balanced approach between investor protection and capital formation for smaller issuers. Tier 2 offerings pursuant to Regulation A will provide a much needed avenue for raising capital, with many smaller issuers not having requisite capital or asset base to justify a full registration. In addition, many smaller issuers are having a difficult time raising capital in private offerings, given increases in FINRA regulation of its members in sales of private securities, the reduction in independent broker-dealers available to sell such securities, the increase in E&O costs for such broker-dealers and public's reluctance to invest given some very notable problems with certain issuers of private securities. While REISA believes the SEC has presented a fair and balanced approach in its proposal regarding Regulation A, REISA has the following comments and concerns regarding the proposal:

1. State Preemption. State securities regulation has been one of the two largest obstacles to the usage of Regulation A for capital raising by smaller issuers. State preemption is a critical element of a workable Regulation A solution. In its study of Regulation A required under the JOBS Act, the Government Accountability Office ("GAO") found that state securities regulation was a significant factor contributing to

Regulation A's lack of usage.² As the SEC correctly points out in its proposal, Tier 2 limits the amount that an investor can invest in any given offering, thereby limiting the exposure such investor has to investment loss. This limitation is instead of a sophistication standard.

REISA does not believe that state preemption will hamper the states in their mission of protecting investors from fraud. In fact, states will have full access to the offering documents, as they will be publicly filed, and ongoing reporting of the issuers conducting Tier 2 offerings at their fingertips through the EDGAR system. State preemption will, however, eliminate the ability of merit review states to impose state specific requirements on an issuer or the offering, which creates significant delays in capital raising activities.

While NASAA has proposed a coordinated review process for Regulation A, REISA does not believe that such a process will enhance the offerings in a manner that outweighs the delays caused by such reviews. In addition, NASAA cannot provide assurance as to the timeframe for adoption of such a coordinated review process by the states, or that a significant number of states will adopt such a process.

2. **Limitations on Types of Issuers Able to Use Regulation A.** Currently, offerings made pursuant to Regulation A prohibit certain issuers, specifically investment companies, including BDCs, blank check companies and issuers of fractional interests in oil and gas or other mineral rights. REISA believes (a) that issuers of fractional interests in oil or gas rights or other mineral rights should not be precluded from using Regulation A, especially in light of the elimination of Regulation B, and (b) that BDCs should be allowed to use Regulation A for capital raising purposes with modifications relating to the specific disclosures required for BDCs. REISA strongly opposes adopting any further restrictions on the type of issuer that may use Regulation A.

REISA believes that issuers of fractional interests in oil and gas or other mineral rights that have an established track record or minimum assets, or such other reasonable test as the SEC believes creates an appropriate balance for investor protection, should be able to avail themselves of the ease of capital raising provided by Regulation A. Mineral industries, such as oil and gas, are important to our economy and should not be excluded from accessing capital formation just because they are in a certain industry. REISA also believes that BDCs should be able to access capital markets through Regulation A. REISA believes that, with proper disclosures, issuers of securities related to oil and gas and other mineral rights, as well as BDCs, should be able to access the public markets through Regulation A.

² See also, Testimony of Robert R. Kaplan, Jr., before the Senate Subcommittee for Securities, Insurance and Investment Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs at http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.LiveStream&Hearing_id=c2fe9f9a-0e5e-4b44-a566-4a8cef26c06e.

3. **10% Cap on Investment in Tier 2 Offerings.** As proposed, a prospective investor's maximum investment in any individual Tier 2 offering would be capped at the 10% Cap. REISA agrees that this 10% Cap should be applicable to individual offerings, not as an aggregate for all Tier 2 offerings. REISA believes that the 10% Cap on investment in any individual offering strikes an appropriate balance between investor protection and capital formation.

Placing the 10% Cap as an aggregate cap on Tier 2 offerings is not a necessary or appropriate investor protection. While the 10% Cap on an individual offering basis helps protect investors from the downside risk associated with investing in smaller companies by providing for investment diversification, an aggregate cap could prevent overall investment diversification by prohibiting investors the ability to invest in other Tier 2 offerings. Regulation A, and especially Tier 2 offerings, offer smaller investors investment opportunities that were previously only available to certain accredited investors and therefore, REISA does not believe the SEC should limit those investment opportunities by extending the 10% Cap to all Regulation A offerings.

Another critical component of the 10% Cap is the ability of an issuer to rely on representations made by the prospective investor as to his or her income and net worth, unless the issuer knows that the prospective investor's representations are untrue. REISA believes that the current proposal strikes an important balance between investor protection, practical realities and privacy concerns of investors. . However, REISA also believes that the issuer should not have an ongoing obligation to monitor the 10% Cap for its investors other than a representation by the investor that he or she will notify the issuer if and when such 10% Cap is exceeded.

4. **Application of Rule 15c2-11 of the Exchange Act and Rule 144 of the Securities Act.** Under the proposed rules, the reporting requirements for the issuers in Tier 2 offerings could help open significant liquidity opportunities to those who remain current in their reports. Rule 15c2-11 promulgated under the Exchange Act sets forth the various types of information regarding an issuer a broker-dealer must have reviewed and retained before publishing quotations regarding that issuer's securities in the over-the-counter markets. REISA agrees with the SEC proposal that the reports required of issuers in a Tier 2 offering should qualify as adequate information under Rule 15c2-11. This proposal is critical to the development of a viable secondary market.

In addition, the SEC has solicited comment on whether Rule 144 promulgated under the Securities Act should be amended to include reporting under Tier 2 in the categories of publicly available information for a non-Exchange Act reporting issuer that will allow such issuer's affiliates to rely on Rule 144(c) for resales. REISA believes that the Tier 2 reporting obligations will contain substantially

all of the public information enumerated in Rule 144 for non-reporting issuers. REISA believes that this proposed inclusion represents an opportunity for issuers by providing potential liquidity for their affiliates without requiring full Exchange Act reporting. Such an issuer could engage in a Tier 2 Regulation A offering (of which up to \$15 million may be direct resales of the issuer's previously issued securities) and then by virtue of making all required filings, provide liquidity under Rule 144 to any securities holders not selling in the Tier 2 offering.

Conclusion

REISA believes in the importance of improving access to capital and spurring economic growth. However, it also recognizes the importance of balance between investor protection and capital formation. REISA strongly believes that the SEC has substantially achieved that balance, especially in connection with state preemption, the 10% Cap and Rule 15c2-11 and Rule 144.

REISA appreciates the opportunity to provide its perspective and comments on the proposed rulemaking for Regulation A. REISA looks forward to a continued dialogue with the SEC on these and other important issues for the protection of investors and the capital markets.

Respectfully submitted,



Mark Kosanke
President

Drafting committee:

Deborah Froling, Arent Fox LLP
John H. Grady, National Fund Advisors
Darryl Steinhaus, DLA Piper LLP
Thomas Voekler, Kaplan, Voekler, Cunningham & Frank PLC