



VIA EMAIL

January 8, 2016

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE.,
Washington, DC 20549-1090
rule-comments@sec.gov
File Number S7-22-15

Re: Proposed Exemptions to Facilitate Intrastate and Regional Securities Offerings; File Number S7-22-15

Dear Mr. Fields,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing 270 state and nationally chartered banks, savings and loan associations, and savings banks. WBA provides this letter to the Securities and Exchange Commission (SEC) in response to the SEC's proposed amendments to Rule 147 under the Securities Act of 1933 and its request for comments. WBA appreciates the opportunity to comment on SEC's proposal.

The majority of WBA's members are Wisconsin community banks. Community bank holding companies and their subsidiary banks have regular, and increasing, capital requirements under applicable banking laws. These entities, being community-focused in nature, tend to draw the majority of their capital from within their state of residence. Therefore, they are both regular issuers of securities *and* regularly rely on the §3(a)(11) intrastate exemption and Rule 147 safe harbor. Community banking organizations also have a strong interest in making sure other types of businesses are able to raise investment capital when needed, as these are important bank customers.

Generally, the WBA is very supportive of the changes to Rule 147 proposed by the SEC. Most of the changes accomplish a better balance between enhancing an effective and efficient flow of capital through the medium of the Internet (with the benefits of promoting the growth of business and jobs), and provide much-needed modernization for determining residency of purchasers and issuer eligibility, while continuing to protect investors. The WBA has concerns, however, about the proposed \$5,000,000 cap on the aggregate offering amount and requirement of individual investor limits, particularly with respect to accredited investors. It also has concerns about imposing these limits by requiring the state exemptions themselves to include these limits. Finally, it has concerns that the SEC will not be providing the benefits of amended Rule 147 to intrastate offerings which rely on state exemptions that do not contain the limits, and removing a safe harbor with respect to those other state exemptions.

Cap on Aggregate Offerings and Limit on Individual Investment

The current balance of allowing a state to establish and regulate offerings within its own borders, under the overarching protective umbrella of Federal and state securities antifraud rules, has successfully worked to allow local issuers, with local operations, to raise capital from local investors when needed without sacrificing investor safety. The WBA sees no need to adjust the balance, and encourages the SEC to remove the \$5,000,000 cap on intrastate offerings and the requirement of individual investment limits. In addition, by requiring those limits to be contained in the terms of the state exemptions, the SEC will make the benefits of amended Rule 147 unavailable to issuers using state exemptions which do not contain limits. The majority of exemptions currently available to Wisconsin issuers conducting Wisconsin offerings do not currently contain offering and investment limits. All intrastate offerings, not just those conducted through the Internet or other forms of general advertising, should be given the advantages provided by amended Rule 147. In addition, by removing a safe harbor for §3(a)(11) offerings, the SEC

will create uncertainty and risk for issuers intending to rely on §3(a)(11) (instead of amended Rule 147) because they use a state exemption which lacks the offering and investor limitations. This will make it harder for bank holding companies and other companies to raise funds when needed, and thus have a chilling effect on the ability of bank holding companies and their subsidiary banks (engines of their local economies) to grow and thrive.

Issuers in the US have historically undertaken intrastate offerings that have nothing to do with crowdfunding and the Internet. Wisconsin bank holding companies regularly rely on the intrastate exemption to conduct non-crowdfunded offerings which exceed \$5,000,000. They, and many other Wisconsin issuers, regularly rely on the intrastate exemption for offerings under state exemptions that do not impose individual investment limits. Wisconsin-only offerings regularly include non-accredited investors. Wisconsin has many different exemptions that Wisconsin bank holding companies and other issuers successfully use to raise investment capital. Despite most Wisconsin exemptions not containing offering and investment limits, securities offerings in Wisconsin have not triggered a deluge of securities lawsuits from Wisconsin investors. The WBA asserts that Wisconsin's regulation of securities offerings which occur solely within its borders have not created undue risk for investors necessitating the SEC to impose new investment and offering limitations from without.

Following is an example of a typical offering by a Wisconsin bank holding company under the current intrastate exemption regime. The company historically draws the bulk of its capital from its local community and its current shareholder base (the vast majority of which are Wisconsin residents). The company intends to merge, or has another need for significant capital, and determines that it needs to conduct an offering to raise \$6,000,000 with some speed. It concludes that Wisconsin's exemption from registration for an offering to all current shareholders, plus 25 non-accredited investors, plus unlimited accredited investors (which we will call the "Current Shareholders Plus Exemption"), best fits its capital needs and anticipated investor base. By limiting the offering to Wisconsin residents, the company will be able to rely on the intrastate exemption while still targeting the potential investor base most likely to make an investment in the company. §3(a)(11) and current Rule 147, coupled with the Current Shareholders Plus Exemption offering (which requires 10 day prior notice to the state), allow the company to raise the capital quickly, efficiently, and economically. The Current Shareholders Plus Exemption does not limit the size of the offering or impose limits on individual investments. Therefore, under the SEC's proposed changes to Rule 147, a bank holding company wanting to use the Current Shareholders Plus Exemption gets none of the residency, issuer eligibility, resale, or other advantages of the amended Rule 147 modernizations. Worse, without a Rule 147 safe harbor, the bank holding company will have a disincentive to rely on the intrastate exemption because of the significant risks of using §3(a)(11) without clear guidelines for how to comply. The company could register the offering in the state to gain the benefits and certainty of amended Rule 147, but registration can take months and may be untenable for a company requiring financing quickly.

If the SEC removes the requirement for offering and investment limitations, then all current Wisconsin exemptions will remain available to issuers using the intrastate exemption. Although amended Rule 147 allows for the option of general advertising under Federal law (thus, and appropriately, facilitating state crowdfunding exemptions), this does not prevent the states from continuing to restrict general advertising in its own exemptions for the protection of its own residents. Current state exemptions may (and generally do) have limitations on general advertising either through a direct prohibition on such advertising or by limiting the number and type of offerees. Wisconsin is aware of the special risks that may be posed by offerings through the Internet, and has created a state crowdfunding statute which contains limitations on the offering amount and the amount that can be raised from non-accredited investors to address those risks. The WBA strongly asserts that states should continue to be allowed to determine what limits are appropriate for purely local offerings, which they currently do successfully. Even offerings undertaken through the Internet under amended Rule 147 will be purely local in character because of the limitations on issuer eligibility and purchaser residence.

Even if the SEC decides to establish an offering limit, amended Rule 147 should not require the state exemptions *by their terms* to contain the limit because it will make Rule 147 unavailable under most state exemptions (which do not have an offering limit). Having the offering limit be a direct requirement of

amended Rule 147 will allow issuers to choose between all current state exemptions for offerings up to the amount of the cap. In addition, the WBA strongly encourages the SEC to raise the offering limit significantly to allow Wisconsin issuers who need more capital, and can raise it solely from Wisconsin investors, to gain the benefits of amended Rule 147.

As for the requirement for a limit on individual investment, the WBA strongly encourages the SEC to remove this requirement from the proposed Rule changes for the reasons discussed above. However, if the SEC decides to require limits on individual investment, the WBA asks the SEC to limit this requirement solely to non-accredited investors. Both state and Federal law reflect the conclusion that accredited investors are sophisticated and able to make independent decisions about their own investments. For example, Regulation D, Rule 506 does not impose a limit on accredited investor investments. Wisconsin has a similar "private placement" exemption which does not impose limits on accredited or institutional investors. Under Wisconsin's new crowdfunding law, accredited investors are not subject to an investment limit. The fact that investments by accredited investors are almost never subject to a limit by statute or rule reflects the recognition that accredited investors are capable of protecting themselves. Accredited investors have the means to bear the risk of loss, to hire outside advisors to evaluate investment opportunities and balance investment portfolios, and to bring legal claims in the event they have been misled. The WBA believes it is not necessary for investor protection to require an investment limitation applicable to accredited investors in order to utilize amended Rule 147, and the WBA is strenuously opposed to the SEC mandating any such limit. With respect to limitations on investments by non-accredited investors, although the WBA strongly believes the states are very qualified to set their own limits, it asks the SEC to establish the limits as direct requirements of amended Rule 147 – again, to avoid making state exemptions that do not contain limitations unavailable for amended Rule 147. However, to preserve state autonomy in this area, the SEC should craft the Rule to provide that in any amended Rule 147 offering, each non-accredited investor is limited to a specific investment amount (e.g. \$5,000) *unless the state exemption imposes an alternate investment limitation*.

"Reasonable belief" Safe Harbor

On the question of whether the SEC should provide safe harbors for establishing a "reasonable belief" that an investor is a state resident for purposes of amended Rule 147, the WBA believes that it should. The SEC should make it clear that any one of a list of specified objective criteria is sufficient to establish "reasonable belief." The criteria must be of a type that is easy to provide through the Internet in order support the goals of crowdfunding. The SEC in its commentary lists objective criteria that would achieve the goals of confirming residency while not impeding a robust flow of investment through the Internet, such as a copy of state-issued documentation (e.g. driver's license), recent utility bill, recent pay stub, information contained in state or Federal tax returns, or written evidence where a person is registered to vote. Particularly as the law is evolving to facilitate the flow of capital from the "crowd" through the Internet, the WBA believes it is important to provide certainty on this question for issuers and crowdfunding portals/intermediaries. The benefits of crowdfunding will be significantly impaired if there is an argument, for example, that an issuer or portal must have a pre-existing relationship with an investor in order to have a reasonable belief of that investor's residency. This would be contradictory of the very premise of crowdfunding, which is designed to allow issuers to seek investment from large numbers of persons with whom they have no current relationships. Providing certainty to issuers and portals on what constitutes "reasonable belief", and making sure that what constitutes "reasonable belief" is consistent with raising money from the "crowd," are critical to facilitating crowdfunding. Uncertainty in the law, or criteria that are difficult to fulfill through the Internet, will make the process unduly expensive and cumbersome, create unnecessary legal risk for issuers and portals, and impede the benefits of crowdfunding envisioned by state legislatures and the US Congress in enacting the crowdfunding statutes.

Use of an Intermediary

On the question of the use of an intermediary for state crowdfunding purposes, the WBA is not adverse to Wisconsin's requirement of an intermediary. However, because of the multitude of interstate offerings that are currently conducted in reliance on *non-crowdfunding* state exemptions, it does not believe that use of

an intermediary should be a condition to amended Rule 147 exemption. There is no reason to believe these other traditional, more targeted non-Internet based offerings will cease simply because crowdfunding has entered the field. As discussed above, amended Rule 147 should be extended to clearly cover these other state exemptions, and the requirement of an intermediary is inapplicable to most exemptions (and would in fact prevent their use). The flexibility offered under state securities laws should be preserved for the benefit of US businesses, which come in diverse varieties with varying needs. Similarly, because the Trust Indenture Act of 1939 exempts from its requirements any securities exempted from the Securities Act of 1933 by §3(a)(11) thereof, the SEC through its authority under the Trust Indenture Act should exempt any security issued under amended Rule 147, as both §3(a)(11) and the amended Rule are intended to create an exemption for purely intrastate offerings.

State Crowdfunding Portal

To facilitate state-focused crowdfunding, the SEC needs to make it clear that a state crowdfunding portal which solely hosts offerings that qualify for amended Rule 147 qualifies for the intrastate broker-dealer exemption under §15(a)(1) of the Exchange Act. Although amended Rule 147 does not technically satisfy the language of §3(a)(11) because of the outdated nature of the statute, amended Rule 147 is clearly intended to establish a more modern understanding of what it means to be an "intrastate offering." If offerings conducted in accordance with amended Rule 147 are intrastate in nature, then state crowdfunding portals which exclusively host such offerings should be deemed to conduct "exclusively intrastate" business under §15(a)(1). These provisions must be unambiguously harmonized for the law to be fair and consistent, and to avoid eliminating or creating unnecessary ambiguity (and risk) for state crowdfunding through state portals.

Conclusion

The WBA supports the SEC's goal of modernizing amended Rule 147, and believes it will provide important benefits to state issuers, including Wisconsin bank holding companies and their subsidiary banks. The WBA believes that the offering and investor limits are not necessary to protect investors, as the states successfully establish, limit and regulate offerings within their borders. The use of the Internet for state crowdfunding does not change the local nature of these offerings, because the investors and the issuers remain local under the requirements of amended Rule 147. If the SEC decides to impose offering or investor limitations, the WBA requests that the SEC take the steps described above to allow issuers who are using state exemptions lacking the required limitations (most of which would not be available for use over the Internet by their terms) to gain the benefits of amended Rule 147. If the SEC designs amended Rule 147 such that it is not generally available for all state exemptions, at minimum the SEC should preserve a separate safe harbor for §3(a)(11) so issuers do not have to take on the significant risk of the §3(a)(11) ambiguities without the benefit of a safe harbor. However, as the SEC has pointed out, §3(a)(11) is in need of modernization, so the WBA hopes that the SEC modifies amended Rule 147 to fully embrace that goal.

Once again, the WBA appreciates the opportunity to comment on SEC's proposal.

Sincerely,



Rose Oswald-Poels
President/CEO