

**CORPORATIONS COMMITTEE
BUSINESS LAW SECTION
THE STATE BAR OF CALIFORNIA
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January 8, 2016

VIA E-MAIL: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-1090

**Re: SEC File No. S7-22-15
Release Nos. 33-9973, 34-76319**

Dear Mr. Fields:

We are writing to comment on the above referenced release (the “**Release**”) issued by the Securities and Exchange Commission (the “**Commission**”) in connection with proposed amendments to Rule 147 under the Securities Act of 1933 (the “**Act**”), which currently provides a safe harbor for compliance with the Section 3(a)(11) exemption from registration for intrastate securities offerings. These comments are provided on behalf of the Corporations Committee (the “**Committee**”) of the Business Law Section of the California State Bar. The Committee is composed of attorneys regularly advising California corporations and out-of-state corporations transacting business in California.

Summary of Proposed Amendment

The Release notes that the proposed amendments to Rule 147 would establish a new exemption under Section 28 of the Act for intrastate offerings of securities by companies doing business in-state, and that if adopted as proposed, current Rule 147 would no longer be available as a safe harbor for conducting a valid intrastate exempt offering under Section 3(a)(11). The Commission has solicited comment on whether to retain the existing safe harbor under Rule 147 while creating a new rule to reflect the proposed exemption from registration for intrastate securities offerings.

Statement of Position

The Committee believes that the Commission should leave existing Rule 147 in place and unchanged as a safe harbor for compliance with Section 3(a)(11), and that the proposed revisions to Rule 147 should be designated as a new rule. The Commission notes that the proposed amendments, if adopted, would not alter the fact that the Section 3(a)(11) statutory exemption continues to be a capital raising alternative for issuers with local operations seeking local financing. However, the Commission also stated in the Release that if the proposed amendments to Rule 147 are adopted, no safe harbor will be available for offerings effected under Section

3(a)(11), and that issuers would have to rely on existing judicial and administrative interpretive positions on Rule 147¹. The Committee believes that retaining Rule 147 will reduce uncertainty and that there is no need to eliminate the safe harbor under current Rule 147.

The Release states that the proposed amendments to Rule 147 are intended to facilitate intrastate crowdfunding and other, smaller capital formation activities of small businesses, early stage firms and start-ups that are close to the “idea” stage of the business venture. Current Rule 147 does not, however, conflict with the proposed new exemption. The Committee believes that Rule 147 can continue to provide certainty to issuers attempting to conduct intrastate offerings under Section 3(a)(11), including issuers relying on non-crowdfunding exemptions, more mature issuers, issuers who desire to raise more than \$5 million, and issuers conducting offerings that may not satisfy the newly created state imposed investor limitations contemplated by the proposed amendments to Rule 147. Accordingly, the Committee respectfully recommends that the Commission retain the existing Rule 147 safe harbor.

We hope the foregoing is useful to the Commission in considering appropriate modifications to the proposed amendment to Rule 147, prior to adoption of final Rules. Please do not hesitate to contact either of the undersigned if you have any questions on the matters raised herein.

DISCLAIMER

This position is only that of the Corporations Committee of the Business Law Section of the State Bar of California. This position has not been adopted by the State Bar’s Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Corporations Committee and the Business Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

Very truly yours,

/s/ Deborah L. Gunny
Deborah L. Gunny
Co-Chair

/s/ Cathryn S. Gawne
Cathryn S. Gawne
Co-Chair

¹ The Committee believes that if existing Rule 147 is not retained, there will be uncertainty as to whether compliance with existing Rule 147 can constitute a safe harbor under Section 3(a)(11) of the Act.