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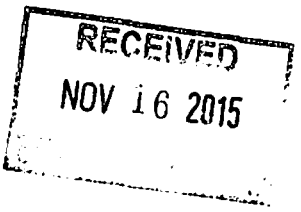

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November 5, 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-22-15 – Initial Comments

Dear Mr. Fields,

I would like to preface this letter by saying that, in my opinion, the Securities and Exchange Commission (SEC) has done an excellent job in drafting rational proposals to help modernize the outdated Rule 147 and Rule 504 in order to further the use of intrastate and regional securities offerings. The majority of the SEC's proposals, once finalized, will go a long way toward easing the regulatory burdens and hoop jumping that has traditionally plagued these types of offerings. In an effort to help the SEC improve and finalize its proposed amendments I fully intend to respond to several of the SEC's specific requests for comments, in detail, in the near future. That being said, there is one matter that I believe warrants immediate attention which is the reason for my writing to you today. That matter at issue is the SEC's proposal to make Rule 147 function as a separate exemption from registration under the Securities Act of 1933 (the "*Act*") rather than as a "safe harbor" under Section 3(a)(11) of the Act.

As stated, in one form or another, multiple times through the SEC's proposal, the "*proposed amendments to Rule 147 are intended, in part, to facilitate the use of state-based crowdfunding statutes.*"[1] However, if the SEC amends Rule 147 such that it will operate as a separate exemption rather than as a "safe harbor" under Section 3(a)(11), the proposed revisions will have little to no positive effect on the number of offerings conducted under existing (*and pending*) state-based crowdfunding statutes.[2] In reality, if Rule 147 and Section 3(a)(11) are treated separately, Issuers would not be able to avail themselves of the more permissive Rule 147 provisions the SEC is proposing and still be in compliance with the state-based crowdfunding

[1] File Number S7-22-15; Pg. 14, Footnote 32.
[2] In fact, it will most likely serve to decrease the number of offerings conducted under these state-based crowdfunding statutes as discussed below.

statutes;[3] at least not in their current form. As a result, by making Rule 147 a separate exemption the SEC would effectively make all of the other amendments to Rule 147 moot for Issuers in almost all of the states that permit state-based crowdfunding.

The problem, as the SEC correctly summarized in its proposal, is that almost all of the current and proposed state-based crowdfunding statutes specifically require compliance with Section 3(a)(11) of the Act[4] which is much more restrictive than the proposed amended Rule 147. As you know, Section 3(a)(11) specifically requires that both the offer and sale of securities sold in reliance of this section be made only to residents of the same state or territory in which the issuer is resident and doing business.[5] The "offer" portion of Section 3(a)(11) is the issue. Rule 147, as proposed to be amended, would allow an Issuer "*to engage in general solicitation and general advertising that could reach out-of-state residents.*"[6] As the SEC correctly noted, this proposed type of general solicitation "*would no longer fall within the statutory parameters of Section 3(a)(11).*"[7] As a result, assuming Rule 147 is amended to function as a separate exemption and not a "safe harbor," Issuers in states with state-based crowdfunding statutes that specifically require compliance with Section 3(a)(11) would not be able to take advantage of the more expansive general solicitation provisions the SEC is proposing and still stay in compliance with state law. Put another way, if an Issuer engages in the types of general solicitation the SEC is proposing, the Issuer would most likely be in violation of Section 3(a)(11) of the Act, and hence not be in compliance with the applicable state-based crowdfunding statute.

The SEC adeptly picked up on this issue in its proposal but dismissed it way too quickly by suggesting that existing state-based crowdfunding statutes would simply need to be amended. As noted stated:

> "*We recognize that none of the existing state crowdfunding provisions contemplate reliance upon the proposed amendments to Rule 147 and that states that have crowdfunding provisions based on compliance with Section 3(a)(11), or compliance with both Section 3(a)(11) and Rule 147, would need to amend these provisions in order for issuers to take full advantage of these amendments.*"[8]

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[3] Other than the state-based crowdfunding statutes of Maine and Mississippi which do not require compliance with Section 3(a)(11).

[4] Other than the state-based crowdfunding statutes of Maine and Mississippi which do not require compliance with Section 3(a)(11).

[5] Section 3(a)(11) of the Act provides an exemption from registration for "*Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.*"

[6] File Number S7-22-15; Pg. 16.

[7] File Number S7-22-15; Pg. 13.

[8] File Number S7-22-15; Pg. 53.

Certainly amending each of the twenty-seven (27) currently existing state-based crowdfunding statutes which specifically require compliance with Section 3(a)(11), [9] as well as each of the eight (8) currently proposed state-based crowdfunding statutes (each of which specifically require compliance with Section 3(a)(11)),[10] would alleviate the above issue. However, I am certain that the SEC would agree that such a task would be an extremely time consuming and arduous process, if it could even be accomplished at all.

As the author and initial proponent of the Illinois state-based crowdfunding statute I can tell you from personal experience that it has taken almost two (2) years of non-stop effort on the part of myself and multiple other supporters to get the initial Illinois' crowdfunding statutes approved and effective.[11] Further, from my discussions with those in similar positions in other states, it is my understanding is that process is just as onerous, if not worse, in other states. Hence any amendment to the existing or proposed state-based crowdfunding statutes will take a monumental amount of effort and time. Neither of which I believe is warranted or necessary given the fact that the SEC has the power to alleviate the need for any such amendments simply by keeping the proposed amended Rule 147 as a "safe harbor" under the Section 3(a)(11) and not making it a separate exemption.

Not only would keeping the proposed amended Rule 147 as a "safe harbor" under Section 3(a)(11) alleviate the need for state level amendments and be consistent with the stated purpose of the proposed amendments,[12] it would clearly be consistent with the existing opinions and guidance issued by legislators and the SEC to date. As touched on in the SEC's proposal, while the language of Section 3(a)(11) specifically limits offers and sales to in-state residents, legislative history and subsequent guidance has clearly taken a broader view as to permissible advertising of offerings. In particular, as noted in the SEC's proposal:

> *"When Congress enacted Section 3(a)(11) in 1934, the legislative history stated, among other things, that "a person who comes within the purpose of the exemption, but happens to use a newspaper for the circulation of his advertising literature, which newspaper is transmitted in interstate commerce, does not thereby lose the benefits of the exemption." Consistent with this statement, the Commission in 1937 released staff guidance on the nature of the Section 3(a)(11) exemption in the form of a letter from the Commission's General Counsel. In this letter, the General Counsel stated that, "the so-called 'intrastate exemption' is not in any way dependent upon absence of use of the mails or instruments of transportation or communication in interstate commerce in the distribution." Rather, the letter explained that, so long as all the statutory requirements of the*

[9] Being: AL, AZ, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MT, NJ, NE, OR, SC, TN, TX, VT, VA, WA and WI; *See* http://crowdfundinglegalhub.com/2015/01/16/state-of-the-states-compariative-summaries-of-current-active-and-proposed-intrastate-crowdfunding-exemptions/

[10] Being: AK, HI, MO, NV, NH, NM, NC and WV; *See* http://crowdfundinglegalhub.com/2015/01/16/state-of-the-states-compariative-summaries-of-current-active-and-proposed-intrastate-crowdfunding-exemptions/

[11] Illinois' state-based crowdfunding statute will be effective January 1, 2016.

[12] See Note 1 above.

> *exemption are satisfied, such securities may be offered and sold through the mails and may even be delivered in interstate commerce to purchasers, if such purchasers, though resident, are temporarily out of the state. In this context, the letter further noted that securities exempt from registration pursuant to Section 3(a)(11) "may be made the subject of general newspaper advertisement (provided the advertisement is appropriately limited to indicate that offers to purchase are solicited only from, and sales will be made only to, residents of the particular state involved).*"[13]

It is clear from the above that the legislators and the SEC intended to broaden the interpretation of Section 3(a)(11) to allow for the use of general advertising materials, which could potentially reach out-of-state residents, so long as the proper restrictive legends were included in the advertising materials.[14] If you replace the use of "*general newspaper advertisement*" in the above with the use of social media (or similar outlets) to account for the realities of today's internet based society, it sounds an awful lot like what the SEC is currently proposing with the amended Rule 147.[15] This view is further supported by the recent Compliance and Disclosure Interpretations ("***C&DIs***") released by the SEC which significantly expanded the permitted use of the internet to advertise offerings under the existing Rule 147.[16] Given the SEC's increasingly permissive view toward the use of general advertising/solicitation in promoting offerings under the existing Rule 147, simply expanding Rule 147 (as proposed) as a "safe harbor" rather than as a separate exception would be entirely consistent with the SEC's current treatment of Section 3(a)(11).

At the heart of the SEC's proposed amendments appears to be a desire to significantly expand the viability and use of intrastate and regional securities offerings. While I fully support this endeavor, the SEC's proposal to make Rule 147 function as a separate exemption rather than a "safe harbor" under Section 3(a)(11) of the Act would have the absolute opposite effect. Creating what, for most state based Issuers, would essentially be an illusory permitted use of expanded general solicitation methods[17] would only lead to further confusion regarding the use

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[13] File Number S7-22-15; Pg. 15-16.

[14] i.e. restrictive legends making providing that the offering is limited only to residents of the relevant state under applicable law.

[15] See Note 5 above.

[16] See C&DIs 141.03, 141.04 and 141.05.

[17] The proposed expanded general solicitation provisions of Rule 147 would be illusory for 2 reasons. First, as stated, Issuers acting under most existing and proposed state-based crowdfunding statutes would need to satisfy Section 3(a)(11) of the Act which, without further amendment or safe harbor, would not permit the types of general solicitation proposed under amended Rule 147. Hence, Issuers would not be able to avail themselves of the benefits of the amended Rule 147. Second, the proposal specifically (*in pertinent part*) "*limit[s] the availability of Rule 147, as proposed to be amended, to issuers that ... conduct the offering pursuant to an exemption from state law registration in such state that limits the amount of securities an issuer may sell pursuant to such exemption to no more than $5 million in a twelve-month period and that limits the amount of securities an investor can purchase in any such offering.*" The only provisions that currently meet the forgoing criteria are the existing and proposed state-based crowdfunding statutes. Accordingly, use of the amended Rule 147 rules would be limited to Issuers conducting an offering under a state-based crowdfunding statute. Incorporating this issue with point one and you get a problem loop where the only Issuers who would currently be able to avail themselves of the proposed amended Rule 147 rules would be Issuers in Maine and Mississippi (i.e. as the only two (2) states currently not requiring compliance with Section 3(a)(11)).

of, and the increased reluctance by Issuers to use, state-based crowdfunding statutes; the exact opposite result that the SEC's proposed amendments are intending to achieve.

For the above reasons, and on behalf of small and emerging businesses through the United States as well as all of the people who have worked tirelessly to get the enacted and proposed state-based crowdfunding statutes to the point where they are today, I implore the SEC to amend its proposal to specifically expand Rule 147 as a "safe harbor" under Section 3(a)(11) of the Act and not as a separate exception. The awareness and use of state-based crowdfunding exemptions has been slow enough to catch on as it is.[18] Any required amendment of enacted or proposed state-based crowdfunding statutes would only serve to slow, if not completely eliminate, the progress made to date in the use of these statutes. A result the SEC clearly does not want to see happen. This adverse result can be easily avoided however by not making the amended Rule 147 as a separate exception so again I strongly urge the SEC to revise its stated position on this issue.

Should you require additional information or wish to discuss this matter in further detail please feel free to contact me at [redacted].

Very truly yours,

Anthony J. Zeoli
[redacted]

AJZ

[18] *See* File Number S7-22-15; Pg. 152: 106 state crowdfunding offerings to date, with 91 offerings approved or cleared as of June 2015.