CFA Institute

560 Ray C. Hunt Drive
Charlottesville, VA
22903-2981 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

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

Re: Exemptions to Facilitate Intrastate and Regional Securities Offerings (Release Nos. 33-9973; 34-76319; File No. S7-22-15)

Dear Mr. Fields:

CFA Institute[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC or Commission) proposed amendments to Rule 147 and Rule 504 of Regulation D under the Securities Act of 1933 (Securities Act). CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

Broad dissemination of offer. We support the proposed amendment that allows wide-spread dissemination of an *offer*, as long as all *sales* are made only to residents of the state or conducted in connection with a state exemption where the issuer is limited to selling no more than $5 million in a 12-month period and investors are subject to an investment limitation. The proposed use of a prominent legend on offering materials clarifying that sales will be made only to state residents should help mitigate any confusion.

[1] CFA Institute is a global, not-for-profit professional association of more than 134,000 investment analysts, advisers, portfolio managers, and other investment professionals in 145 countries, of more than 127,700 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 147 member societies in 73 countries and territories

Purchasers limited to in-state. We encourage the Commission to require issuers to obtain written representations from all purchasers as part of meeting the issuer's "reasonable belief standard" that all purchasers are residents of the applicable state.

Issuer residency. We agree with the proposed approach that would no longer require issuers to be residents of, or incorporated in, the states where they seek to sell securities. Instead, the pivotal factor would be the state in which an issuer has its principal place of business.

Limitations on resales. We recommend that the Commission retain the current requirement that written disclosure pertaining to resales be provided to both offerees and purchasers.

Doing business requirements. We believe the proposed threshold tests to meet "doing business" requirements are appropriate. We are concerned, however, that having to meet but one requirement may not establish the appropriate connection with the state, and suggest that the Commission review this in its follow-up study.

Background

Section 3(a) (11) of the Securities Act provides for an exemption from federal registration for intrastate securities offerings. Rule 147, also under the Securities Act, provides a safe harbor for complying with that exemption. In keeping with the original intent of section 3(a) (11) and in an effort to modernize its rules and expand the application of the current Rule 147 safe harbor, the Commission has proposed amendments to Rule 147 to "establish a new Securities Act exemption for intrastate offerings of securities by companies doing business in-state, including offerings relying upon newly adopted and proposed crowdfunding provisions under state securities laws."

The Commission has proposed amendments to Rule 147 that seek to modernize capital formation efforts in states (including crowdfunding activities), while preserving investor protections. To that end, it is proposing to ease some of the existing restrictions on how issuers can offer and sell securities in intrastate offerings, while still ensuring that the offerings remain appropriately connected with the local state economy. For example, proposed amendments would modernize the rules by allowing issuers to advertise broadly through the media and the Internet, as long as the actual *sale* of securities is only to residents of the state, replacing the current requirement that *offers and sales* may be made only to state residents. Proposed amendments also would lift some of the more restrictive issuer requirements, while retaining requirements related to the in-state focus of such offerings. In all events, offers and sales in reliance on amended Rule 147 would have to meet state securities laws requirements.

The Commission also has proposed amendments to Rule 504 (under Regulation D) that would increase the allowable amount of an offering to $5 million, from $1 million, and to provide for bad actor disqualifications.

Discussion

Under current rules, Section 3(a) (11) and Rule 147 permit intrastate offerings and sales of securities only to residents of the state in which the issuer resides and does business. Rule 147 includes threshold tests for "doing business" in-state that require issuers to satisfy three conditions:

- Deriving at least 80% of consolidated gross revenues in-state;
- Having at least 80% of consolidated assets in-state; and
- Intending to and actually using at least 80% of net proceeds from a Rule 147 offering in connection with the operation of business or real property within that state.

The Commission is proposing amendments to Rule 147 in recognition that certain current requirements overly restrict the capital formation activities of issuers, including their ability to engage in crowdfunding offerings. A company's principal place of business in these amendments would be defined as "the location from which the officers, partners, or managers of the issuer primarily direct, control and coordinate the activities of the issuer." In this context, we will refer to the state in which an issuer has its principal place of business as its "Home State."

Broad Dissemination of an Offer

In recognition of the reach of the Internet, the Commission concluded that an issuer cannot guarantee that an offer to sell securities will be communicated *only* to residents of its Home State. To that end, the Commission has proposed amendments to Rule 147 that would allow wide-spread promotion of an offer as long as all sales are made only to residents of an issuer's Home State, and the offering is either (a) registered in the state where all the purchasers are resident or (b) is conducted in connection with an exemption offered by the issuer's Home State where the issuer is limited to selling no more than $5 million in related securities within a 12-month period and there is an investment limitation on investors.

While issuers no longer would have to ensure offerings are made only within the Home States, the proposal would require issuers to take other steps to prevent cross-border sales of their securities. Specifically, offering materials would have to include prominent disclosures making clear that only residents of an issuer's Home State can purchase the securities.

The use of the Internet clearly highlights the improbability of being able to effectively advertise an offering using current technology without residents of other states being able to access such information. We agree that difficulties in restricting Internet offerings from crossing state borders necessitates removal of restrictions on how *offers* are advertised, as long as *sales* are made only to Home State residents. We believe that this comports with the original intent of section 3(a) (11) and of intrastate securities offerings, while recognizing the realities of the technological world in which we live.

We also support the Commission's intent to modernize its rules and regulations in keeping with capital formation developments while maintaining and strengthening investor protections. We continue to believe that crowdfunding activities pose particular challenges in fostering capital formation activities without sacrificing important investor protections. Thus, while we agree that the broad use of technology to promote securities offerings of this type argues for changes that focus less on communication of the offer and more on the actual sale to Home State residents, we still welcome the proposed requirement for a prominent legend on offering materials clarifying that sales will be restricted only to residents of an issuer's Home State. We believe this will help ensure that those purchasing securities through crowdfunded offerings will be subject to that state's securities regulatory framework. In connection with this proposed amendment to Rule 147, we also believe that states will take care in drafting their crowdfunding regulations to ensure that offerings are being sold only to the residents of the Home State.

Issuer Requirements

Residency. The current requirement that issuers must be residents of an issuer's Home State if they are to benefit from an exemption from federal registration was designed to ensure the "local financing of companies by [local] investors." However, many companies incorporate in states whose corporate laws are most favorable to their businesses, even though those states may have no connection to the issuers' businesses.

In recognition of this, the Commission has proposed to no longer require issuers to be residents of/incorporated in states where they wish to offer securities. Instead, an issuer would have to restrict issuance of its securities only to people who live in the issuer's Home State. The Commission believes that the proposed amendments would "expand the universe of eligible issuers" while still requiring issuers to continue a "sufficient in-state presence determined by the location of the issuer's principal place of business."

We support this approach. We believe it continues the issuer-state connection through the actual business activities and employment aspects that accompany a principal place of business and recognizes the lack of connection between state of incorporation and actual business activities.

Doing business. Current requirements that issuers meet certain threshold tests for "doing business" in their states were designed to ensure that intrastate offerings would retain their local nature. Not only was an issuer's principal business office required to be located within its Home State, but most (80%) of the business had to be carried out there, as well, with an added requirement that most (80%) of the proceeds had to be used in that state, too.

As proposed, the requirements of having a principal office in the Home State and meeting the conditions of doing business in that state would be replaced. Instead, an issuer would be required to have a principal place of business, and have to register the offering in the state where all purchasers of the offering are resident or rely on an exemption that does not require registration; and where the issuer can sell no more than $5 million in a 12-month period and imposes an

investment limitation on investors. An issuer also would have to meet one of the following additional requirements:

- Derived at least 80% of its consolidated gross revenues from the operation of a business or of real property located in or from the rendering of services within its Home State;
- Had at the end of its most recent semi-annual fiscal period prior to the first offer of securities pursuant to the exemption, at least 80% of its consolidated assets located within that Home State;
- Intends to use and uses at least 80% of the net proceeds pursuant to the exemption in connection with the operation of a business or of real property, the purchase of real property located in, or the rendering of services in its Home State; or
- A majority of the issuer's employees are based in its Home State.

We believe that these requirements appropriately reflect characteristics that are in keeping with establishing a local presence. By requiring issuers to meet at least one of these additional requirements, the Commission reasons that the local connection of the intrastate offering will be maintained, while also allowing issuers the flexibility to choose the method of that connection. We are concerned, however, that only having to meet one requirement may not establish that connection to the degree anticipated by section 3(a) (11). If the Commission determines to adopt the proposed approach, however, we encourage a close review in the study the Commission intends to undertake within three years of the adoption of the amendments.

Additional Requirements under Amended Rule 147

Determination that all purchasers are in-state. A fundamental prong of the exemption from federal registration of these offerings is that securities are sold only to residents of the state in which the issuer resides (now proposed to be where it has its Home State). Under current requirements, the issuer must obtain written representations from each purchaser as to residency status.

In terms of verifying that all purchasers are resident of the issuer's Home State, we support the Commission's proposal to hold issuers to a "reasonable belief standard" in determining purchasers' residency. Under today's regulations, an issuer could lose the benefit of the exemption if one of the purchasers happened to be a resident of another state, despite best efforts to ensure otherwise. In meeting the reasonable belief standard, issuers would have to either know by fact that a purchaser is a resident of another state or have a reasonable belief, based on all the facts and circumstances, of that fact. The issuer would no longer have to obtain written representations from purchasers under the proposed amendments.

We appreciate the concerns that under existing rules, the exemption for the entire offering could be lost if but one purchaser was not an in-state resident. However, we think obtaining written representations from the residents as to their residency should be included as part of the facts and circumstances determination that the issuer must make. While not the sole indication of

residency under a facts and circumstances exercise, this written representation should be a useful indication of residency. We encourage the Commission to explicitly retain this as a factor that can be used, supplemented by a reasonable belief standard.

Limitation on resales. Current Rule 147 (e) limits resale of the offering securities to Home State residents during the offering period and for nine months from the date of the last sale by the issuer. The Commission believes that compliance with this provision is often beyond the issuer's control and thus is unduly restrictive. Thus, proposed amendments to Rule 147 (e) would provide that purchasers should resell the securities only to Home State residents for nine months after sale by the issuer. It reasons that this period would be reflective of the original intent of the purchaser that securities were bought without a view to resale to non-residents. The Commission also proposes to amend Rule 147 so that an issuer's reliance upon it is not conditioned on the purchaser's compliance with amended Rule 147 (e).

We believe this provision is reasonable and would achieve the goal of preventing out-of-state buyers from participating in order to resell the shares across state lines.

Current rules also require issuers to disclose in writing the limitations on resales. The Commission has proposed to amend this requirement to eliminate the requirement that disclosure be in writing in *offers*, while clarifying the specific language that should constitute the disclosure.

We believe that this disclosure is important for investors to receive and support clarifying language as to the actual text that an issuer should use. However, we suggest that the Commission retain the original requirement that written disclosure be provided to both offerees and purchasers.

Amendments to Rule 504 of Regulation D

Rule 504 provides an exemption from registration to issuers for offers and sales of up to $1 million during a 12-month period, as long as it meets certain conditions. As proposed, amendments to this rule would increase the allowable amount of securities that could be offered and sold each year to $5 million from the current $1 million. As an additional investor protection, amended Rule 504 would provide that certain "bad actors" would be ineligible to participate in the offerings, modeled on the bad actor provisions that already exist in Rules 505 and 506 under Regulation D. Together, these changes are intended to increase capital formation, while also adding investor protections.

We agree that raising the limit from the current $1 million limit in Rule 504 that was established in 1988 is appropriate, and will help issuers in their capital raising goals. We also appreciate the Commission's express recognition that state authorities may want to establish additional requirements in accordance with their regulatory framework governing securities offerings and that the proposed changes should help states perform coordinated review programs.

We also support the express addition to Rule 504 of bad actor provisions. It not only clarifies the applicability to new Rule 504 offering limits, but also provides consistency across Regulation D.

Conclusion

We generally support the proposed amendments as appropriate changes aimed at bolstering capital formation while maintaining investor protections. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at [redacted], [redacted] or Linda Rittenhouse at [redacted], [redacted].

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards and Advocacy
CFA Institute

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets Policy
CFA Institute