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24 March 2014

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule Amendments for Small and Additional Issues Exemption Under Section 3(b) of the Securities Act (File No. S7-11-13)

Dear Ms. Murphy:

CFA Institute[1] appreciates the opportunity to comment on proposed rule amendments by the Securities and Exchange Commission (Commission) to Regulation A to implement section 401 of the Jumpstart Our Business Startups Act (JOBS Act). These amendments would create a new exemption from registration for offerings up to $50 million.

CFA Institute represents the views of investment professionals 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

***Audited Financial Statements and Reporting Requirements*.** We support the proposed requirements that issuers in offerings of up to $50 million in a 12-month period ("Tier 2) file audited financial statements. We also support the requirement that issuers in Tier 2 offerings be subject to ongoing reporting requirements, to include the filing of annual, semi-annual and current reports on an ongoing basis. These requirements for such offerings that are not subject to public registration requirements are essential in providing investors with the information they need.

Investment Limitation. We support the approach taken in the proposal to impose investment limitations on purchasers in Tier 2 offerings. This serves as an important investor protection by limiting the amount that can be lost by investors. We encourage additional cautions to investors of the risks of investing in Tier 2 offerings.

[1] CFA Institute is a global, not-for-profit professional association of more than 120,800 investment analysts, advisers, portfolio managers, and other investment professionals in 145 countries, of whom nearly 113,500 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 142 member societies in 61 countries and territories.

State Securities Review and Oversight. We appreciate the attempt to remove impediments to the use of the Regulation A exemption but question the preemption of state securities regulatory oversight. We encourage reconsideration of this approach in light of the coordinated review process being developed by state securities regulators.

Discussion

Background

Current Regulation A allow issuers to make unregistered public offerings of up to $5 million in a 12-month period through an offering statement that is submitted to the SEC staff and is "qualified" on the 20th day after filing with the SEC, unless further delayed by staff. Currently, Regulation A also allows issuers to "test the waters" through solicitation materials before they file the offering statement with the SEC, as long as the solicitation materials are also provided to the SEC no later than the time of first use.

The financial statements that must be included in current Regulation A offering circulars do not have to be audited, and there are no ongoing reporting obligations under the Securities Exchange Act of 1934. Securities sold through this method are not restricted securities, but are subject to state registration and qualification requirements.

According to a recent study by the Government Accountability Office, the very limited use of Regulation A has stemmed in part from the costs of having to comply with applicable state securities requirements and the overall cost ineffectiveness of using the exemption.

In recognition of the infrequent use of Regulation A offerings and in addressing its mandate under the JOBS Act, the Commission is proposing to create two levels of securities offerings that would qualify for the Regulation A exemption (although subject to differing conditions)— so-called Tier 1 and Tier 2 offerings. Under the proposal, the general requirements that now apply to Regulation A offerings would apply to "Tier 1" offerings, which are offerings for up to $5 million in a 12-month period, including up to $1.5 million in securities offered by selling security holders.

The new class of offerings would be "Tier 2" offerings, which would allow for offerings of up to $50 million in a 12-month period, including up to $15 million in securities offered by selling security holders.

The proposal would modernize certain requirements applicable to both tiers, allowing companies to file offering materials electronically with the SEC, provide SEC staff with draft offerings statement for a nonpublic review before actual filing, and to "test the waters" through limited solicitation materials.

While Tier 1 offerings would generally follow the requirements now applicable for Regulation A offerings, Tier 2 offerings would be subject to a number of different requirements.

As with the creation of other new regulations stemming from the JOBS Act, changes to current Regulation A raises a number of investor protection concerns. In the release, the Commission notes its attention to trying to balance investor protection with filing and other requirements that are not so onerous on issuers as to defeat the intended purpose of the new exemption.

It is on the issues of investor protection that we specifically focus our comments below.

Investor Protections

Financial Statements and Reporting Requirements

Current Regulation A requires issuers to file a balance sheet only for the most recently completed fiscal year-end. Proposed amendments would change this to require issuers in *both* Tier 1 and Tier 2 offerings to file balance sheets as of the *two* most-recently completed fiscal years.

Tier 1 offering issuers would retain the current Regulation A requirement that financial statements do not have to be audited (unless there have been audits already conducted for other purposes). Under the proposal, however, Tier 2 issuers would be required to file audited financial statements that are audited in accordance with PCAOB standards. This latter requirement is intended to raise the overall quality of the financial statements that investors will receive.

Current Regulation A offerings are not subject to ongoing reporting requirements, which will continue to apply to Tier 1 offerings. For Tier 2 offerings, however, the Commission wants to “support a regular flow of information" for the benefit of investors. To that end, proposed regulations would require Tier 2 issuers to file annual, semi-annual and current reports (applicable to the occurrence of special events, including fundamental changes in the nature of business, bankruptcy, material modification to security holder rights, changes in control of the issuer).

We support these proposals for Tier 2 offerings. Providing audited financial statements for offerings up to $50 million that are not subject to public registration requirements is essential to ensure investors have the information they need to make informed investment decisions. Moreover, given that securities issued in Regulation A offerings are not restricted and thus are immediately tradable, we believe that the proposed ongoing reporting requirements are all the more important for the investor community.

Investment Limitation

Under the proposal, purchasers would be limited to investing no more than 10% of the greater of their annual income and net worth in Tier 2 offerings. We agree with the Commission that imposing limitations on the amount an individual can invest in Tier 2 offerings serves an important investor protection by limiting the amount that can be lost. This investment limitation

approach would be consistent to that taken in the crowdfunding proposal, which we supported.[2] We recommend that final regulations make clear that calculation of net worth should exclude the value of an individual's primary residence, also in keeping with crowdfunding regulations.

We also suggest that the issuer or intermediary be required to have a reasonable basis that the investor certification can be relied upon. In addition, we recommend additional warnings to investors of the risk of loss in investing in this type of offering.

Use of Solicitation Materials

Under current Regulation A, issuers can use solicitation materials to communicate with investors before filing the offering statement and submit them to the Commission by time of first use. But no solicitation materials can be used to "test the waters" after the initial filing of the offering statement.

Under the proposal, solicitation materials may be used before or after filing the offering statement. When used after the public filing of the offering statement, the solicitation materials must be preceded or accompanied by a preliminary circular or have a notice directing potential investors to the most current preliminary offering circular.

As noted in the release, staff review of the offering statement allows it to address potentially misleading or incomplete statements in solicitation materials. But we do have concern about the proposed deletion of the current legend currently used in Regulation A solicitation materials that states, among other things, that no money is being solicited or will be accepted, that no sales will be made until delivery of a completed offering circular, and that indications of interest are not binding. While we appreciate the Commission's intention to "more closely follow similar provisions in the context of registered offerings," and not to impose provisions that are more restrictive than currently in Regulation A, we believe they may be warranted—particularly given the structure proposed for new Tier 2 offerings that will operate under Regulation A. We suggest that the SEC reconsider either using a legend modified on the one currently used, or restrict use of testing the waters materials to certain types of investors (e.g., qualified institutional buyers or accredited investors).

State Securities Review and Oversight

Current Regulation A offerings are subject to state securities law registration and qualification requirements. Under the proposed amendments, however, while most Tier 1 offerings would still be subject to state securities law requirements, Tier 2 offerings would be exempt. This proposed preemption of state securities registration and oversight has been a source of significant controversy.

[2] See 3 February 2014 letter from Kurt. N. Schacht, CFA and Linda Rittenhouse to Elizabeth M. Murphy, Securities and Exchange Commission, re Crowdfunding (File. No. S7-09-13).

As proposed, offerings and sales to "qualified purchasers" and all Tier 2 offerings would be exempt from state "blue sky" requirements. The proposal reasons that states would still retain registration and oversight authority over smaller offerings; moreover, given the GAO finding that compliance with state securities requirements was deterring use of Regulation A, preemption of those requirements would encourage more frequent use of the exemption. State securities regulators protest that such an approach puts them in a position of having to fashion redress for investors when there is fraud or other problems stemming from regulation without giving them the authority at the outset to require compliance with state requirements.

We appreciate the Commission's intent to make Regulation A offerings more appealing by removing the costs of having to qualify Tier 2 offerings in various states. However, we question whether removing this important level of review by the states and the investor protection it provides is outweighed by the costs of compliance with state securities registrations. We also question whether the "qualified purchaser" definition has been made adequately clear for state securities regulators to be able to consistently apply it in determining whether to provide an exemption. We suggest that should the states agree upon and implement the coordinated review process that is being considered by the North American State Securities Administrators Association[3], that the SEC revisit their proposed approach.

Affirmative Review of Offerings Before Effectiveness

Currently, Regulation A offering statements are filed on paper with Commission staff; in the absence of a delaying notation, they are "qualified" on the 20th day after filing without any Commission action, and the offering statement becomes "effective." Proposed amendments to Regulation A would eliminate this automatic qualification by requiring an order by the Commission to qualify an offering statement.

We agree with this approach. Given the proposed amendments to allow electronic filing, the addition of Tier 2 offerings, and the preemption of state securities commission review of larger offerings, we believe it is important to ensure that SEC staff has reviewed the offering documents before they become effective. This amendment will add to investor protections by requiring this review, allowing staff to question aspects of the offering, and delaying effectiveness until deficiencies have been satisfactorily addressed.

Additional Protections

In addition to the current requirements, the Commission is proposing two additional requirements on issuers that seek to rely on Regulation A, regardless of the tier of their offering. First, issuers seeking to rely on the exemption must have filed the reports that are required by the proposed rules during the two years directly preceding the filing of an offering statement under

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[3] See http://www.nasaa.org/29699/nasaa-members-approve-streamlined-multi-state-coordinated-review-program/

Regulation A (or during the shorter period that the issuer had previously been required to file such reports). Currently, regulation A requires issuers to report sales every six months and information on final sales or termination; the proposal would require all issuers to file summary information and data after the termination or completion of the offering. (No new or additional ongoing reporting for issuers in Tier 1 offerings are proposed, while Tier 2 issuers would be subject to the new ongoing report filings discussed herein). The SEC reasons that conditioning the exemption on the filings of the reports would serve an important investor protection by providing investors with recently current information about the issuer that thus would help them in making informed investment decisions.

Second, issuers must not be, or have been during the five years before filing an offering statement, subject to an SEC order denying, suspending, or revoking a class of securities pursuant to section 12(j) of the Exchange Act, finding that the issuer had failed to comply with any of the rules, regulations or provisions of the Exchange Act. The SEC reasons that such issuers should not be able to avail themselves of the exemption.

We support both of these proposed requirements. We agree that they will add a layer of investor protection.

In addition, we support the proposed new requirements that issuer financial statements would include a section for management's discussion and analysis of the issuer's liquidity, capital resources, and results of operations. Additional disclosures would include those relating to beneficial ownership, material legal proceedings and related-party transactions for certain issuers. We believe the added cost of requiring issuers to provide these disclosures is justified by the meaningful information that they will provide investors.

While we recognize the attention this proposal directs to investor protections, we nonetheless suggest that additional safeguards may be warranted, in light of the unregistered nature of these securities, and particularly that they are unrestricted. Having recently commented on the Commission's crowdfunding proposal also involving exemptions from registration, we note that Regulation A offerings will not provide safeguards altogether consistent with the approach taken with respect to crowdfunding offerings.

For example, crowdfunding offerings that are limited to raising no more than $1million in a 12-month period restrict issuers from selling offering shares to investors, based on the investor's annual income or net worth. By contrast, Tier 1 offerings, which include public offerings up to $5 million, are not subject to any such restrictions. Only for Tier 2 offerings that may be up to $50,000,000 does an investor investment limit based on income or net worth come into play.

Moreover, crowdfunding offerings which are subject to resale restrictions (generally no resale for a year after the initial offering) require issuers to provide a range of information, including the names of those holding more than 20% of shares, and descriptions of the ownership and capital structure, including descriptions of how the exercise of rights by principal shareowners

could negatively affect the purchasers of shares being offered. Yet, neither these types of disclosure requirements nor the resale restrictions appear to be required for these similar, but larger offerings. We therefore suggest that the Commission consider revisions in its final rule that would bring consistency to the disclosure regime required of participants in all such exempt offerings.

Conclusion

CFA Institute shares concerns about any weakening of investor protections that this new exemption may allow. However, we believe the Commission has created a reasonable balance between ensuring investor protections while providing issuer flexibility in Regulation A offerings.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Linda L. Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

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