SPEECH

Remarks at SEC Open Meeting

Statement at an Open Meeting of the Commission to Consider a Proposal for Amendments to Regulation A to Implement Section 401 of the Jumpstart Our Business Startups Act

Commissioner Daniel M. Gallagher

Washington, D.C.

Dec. 18, 2013

Thank you, Chair White.

I am happy to support today's proposal, which implements an important provision of the JOBS Act: Congress's mandate, in Title IV, that we add a new exemption for small offerings pursuant to Section 3(b) of the Securities Act.[1] I salute Chair White for her leadership in making this proposal a Commission priority. I want also to add my appreciation for the staff's expert work in bringing us to this point. In particular, I want to thank Zach Fallon, Karen Wiedemann, Shehzad Niazi, and their team in the Division of Corporation Finance who, under Keith's leadership, have done a great job on this proposal.

This new, congressionally mandated, exemption from registration, generally referred to as "Reg A+," reflects Congress's awareness that Regulation A, which was meant to give companies a way to raise early-stage capital, simply hasn't been a useful capital formation tool. It is also a reminder to the Commission that we need to continually revisit our rules and exemptions to ensure that they are serving their intended purpose and furthering our tri-partite mission. We shouldn't need legislation to force our hand.

Time and again, particularly in my visits to entities located in America's acknowledged hotbeds of innovation, I have heard the plea to *fix* Reg A.

Today's release calls Reg A offerings "rare." Eight Reg A offerings were qualified last year, according to our Release. Compare that to 7,700 Reg D offerings at or below $5 million.[2] That's $34.5 million raised under Reg A against $7 *billion* under Reg D.[3] And just *one* Reg A offering was qualified in 2011.[4] I could go on — but the Release says it all. Issuers do not see Reg A as a viable way to raise capital relative to their many other options, ranging from bank loans to private and even registered offerings.

So what is the problem with Reg A — why isn't it used?

Title IV gives us at least two strong hints of what the massively bipartisan congressional majority — as well as the President — thought the problem might be: Issuers found Reg A's $5 million aggregate annual offering limit too low — so Section 401 set the offering limit at $50 million. And, issuers may have been avoiding Reg A because compliance with state "blue sky" regulations was too cumbersome and costly — so Section 402 required that the Comptroller General study that issue.

What GAO found is just what I've been hearing. The reasons why Reg. A is so rarely used vary, but factors include the cost and burden of qualifying Reg A offerings not only through the SEC, but also under as many as 50 states' "blue sky" laws.[5] The question is ultimately whether the states' review adds anything significant to what the Commission itself does in reviewing and qualifying the offering, a process which takes, on average, over seven months[6] — an

intolerable delay for most issuers. The amount they could raise through Reg A simply wasn't worth the trouble and delay, to say nothing of the cost. Reg A offerings are today low, slow, costly, and burdensome — a toxic stew of impediments.

This is particularly disturbing given the importance of Reg A vis-à-vis private offerings. Participation in most types of offerings we have exempted from registration is limited to the elite among investors, not the average investor, not the everyman. That is not true of Reg A offerings. *Reg A is an equal opportunity exemption*. Investors are protected in appropriate ways, but they are not shielded from investment opportunity by the all-knowing government. And that, *too*, is a form of investor protection — especially today, when so many depend on their investment savings for any prospect of a comfortable retirement, and when zero percent interest rates cause them to seek far and wide for investment opportunities.

Today's proposal puts us on the right track. It creates a new category of exempt Reg A offerings of up to $50 million per year. Offerings in the new category are subject to certain ongoing reporting and audit requirements, but in view of the increased offering amount, they are hopefully not unduly burdensome. And, while I am disappointed that Congress did not — and today we do not propose to — preempt state "blue sky" laws outright, I hope and expect that we will get detailed comment on whether we *should*. And it is no surprise that I am keenly interested in comments on the questions we ask about the use of "venture exchanges," as I believe that would be the most elegant solution to the preemption issue, as well as other capital formation problems for small issuers. I very much look forward to candid comments from issuers, investors and practictioners.

I have no questions.

[1] P.L. 112-106, 126 Stat. 307 (Apr. 5, 2012).

[2] Release at 11.

[3] *Id*.

[4] GAO Report to Congressional Committees, *Factors That May Affect Trends in Regulation A Offerings*, GAO-12-839 (July 2012), at 9 ("GAO Report").

[5] *See generally*, GAO Report at 15-20.

[6] GAO Report at 12. Based on data provided by the SEC for the period 2002-2011, the average time from filing until qualification of a Reg A offering statement was 228 days.

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