

SPEECH

Statement on Proposed Rules to Amend Regulation A

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U.S. Securities and Exchange Commission

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Today, the Commission is taking an important step towards completing its responsibilities under the Jumpstart Our Business Startups Act, commonly called the JOBS Act.

I also would like to thank the staff for all of your hard work in getting this Proposed Rule before us today so we may continue our progress towards implementing the JOBS Act. I would also like to thank my fellow Commissioners for working with me to put into this proposal a framework for what may be a better path forward than the text of the rule being proposed today. I am concerned that the rule we are proposing today will not work for issuers seeking to raise smaller amounts of capital, will unnecessarily preclude the states from performing an important oversight role, and will not ultimately achieve the goals of the drafters. Nevertheless, I will support this proposal so that we may hear from small businesses, investors, the states, and others on how we may best improve it.

In the aftermath of the Great Recession, far too many small businesses with great ideas, great people, great products, and customers, were unable to secure the capital that they needed to survive and grow. The JOBS Act was enacted to help solve that problem by revising some of the restrictions imposed by the federal securities laws. One portion of the JOBS Act, Section 401, added a new exemption from registration to Section (3)(b) of the Securities Act for offerings of up to \$50 million per year, subject to certain basic statutory protections. This new exemption is loosely being termed Reg A plus, as it is modeled after the existing exemption under Section 3(b), which was the basis for Regulation A. Our work today is to propose how the Commission may best implement these provisions.

Regulation A, which allows for an exemption for securities offerings of up to \$5 million, as mentioned by my fellow Commissioners, has been used very rarely, as acknowledged in the release. The Government Accountability Office and others have studied this issue and identified a number of reasons why issuers use this exemption infrequently, including the comparative ease with which issuers may raise capital through Rule 506 offerings, the small amount of capital that can be raised in reliance on the exemption, and the difficulty of navigating the various relevant state securities laws.

In seeking to construct a new exemption for smaller issuers, Congress sought to revive and improve Regulation A. It lifted the ceiling for offerings made under the new exemption to \$50 million. Commensurate with the increased size of the new exempted offerings, Congress inserted important, basic investor protections into the statute, such as requiring issuers to provide audited financial statements. Equally important, Congress did not explicitly preempt these smaller offerings from all state securities regulation. To the contrary, Congress deliberately revised the bill to ensure that state securities laws were not explicitly preempted before the bill's final passage.

I am concerned that the Proposed Rule before us today does not yet achieve the appropriate balance between promoting capital formation for issuers and protecting investors. I believe

that the states play an important role protecting investors. The Proposed Rule explicitly preempts the state securities laws for offerings relying upon this new exemption, notwithstanding Congress' decision not to do so. The Proposed Rule also fails to make any real attempt to make the old Regulation A, which is for offerings up to \$5 million, work. I think we could and should have included in the text of the rule a clear proposal as to how to make the old Regulation A exemption work.

The Proposed Rule does make great efforts to ensure that larger offerings relying on the new exemption are subject to critical investor protections, including audited financials and ongoing reporting obligations. Those are important. I urge commenters to explore these protections and offer thoughts regarding how we can improve them. I also specifically look forward to comments on what role states can and should play in the regulatory regime, and I encourage the states to continue their diligent work toward a coordinated review process.^[1] The states are often uniquely well-suited to oversee these kinds of offerings, with strong motivations to both protect investors and support the success of their local businesses seeking to raise money.

I also remain concerned with how this proposal fits within the overall framework of our federal regulatory regime. We just proposed a rule for Crowdfunding that includes greater investor protections than the Tier 1 proposal before us today, despite the fact that issuers can raise up to \$5 million from retail investors in a Tier 1 offering, and only \$1 million through Crowdfunding. As I said before, we should be taking this opportunity to improve the old Regulation A to make it both more useful to issuers and protective of investors.

I also worked with my fellow Commissioners to ensure that this proposal outlines alternative approaches, including the development of an intermediate tier. That tier could involve state-level oversight, while also streamlining the requirements to make the exemption more accessible for issuers seeking lesser amounts, such as \$10 million. I look forward to robust comment on this approach.

We all want to make sure the new and improved Regulation A exemption works for both issuers and investors. Unfortunately, I'm not yet convinced that today's proposal fulfills that objective, but I am confident that the Commission will benefit from the input of all stakeholders as we seek to finalize it.

Again, I thank the staff and my fellow Commissioners for their work on this proposal, and I look forward to learning with them how we can best improve and finalize it in the near future. Thank you.

[1] <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Letter-to-SEC-Regarding-Regulation-A+.pdf>

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