

## Public Statement

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# Letter of Commissioners Piwowar and Peirce on Regulation A Offering Amount Limitation

Commissioner Michael S. Piwowar

Commissioner Hester M. Peirce

**April 11, 2018**

Today, Commissioner Michael S. Piwowar and Commissioner Hester M. Peirce delivered the below letter to Chairman Michael Crapo of the Senate Committee on Banking, Housing, and Urban Affairs and Chairman Jeb Hensarling of the House Financial Services Committee. Identical letters were also sent to the Ranking Members of each committee. An example of the letter is below.

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The Honorable Michael Crapo  
Chairman  
Committee on Banking, Housing, and Urban Affairs  
United States Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Crapo:

We write to inform you of our respectful dissent from the staff letter delivered to your office today by our colleagues at the Securities and Exchange Commission (the “Commission”).

As you are aware, Section 401 of the Jumpstart Our Business Startups Act added a new Section 3(b)(5) to the Securities Act of 1933, requiring the Commission to review biannually the total offering amount limitation set forth under Regulation A (the so-called “Tier 2” limit). That offering limit currently stands at \$50 million, where it has remained since the Commission’s adoption of the relevant rules on March 25, 2015. The statute’s default is that the Commission will raise the offering limit but directs the Commission, “if [it] determines not to increase the amount,” to inform your Committees.

Today, our colleagues have informed you that they have “determined not to propose to increase the \$50 million offering limit set forth in Section 3(b)(2) at this time.” In our view, this decision of the majority of the Commission misses an opportunity. Sufficient time has passed to warrant serious consideration of the dearth of Tier 2 activity since our adoption of the relevant rules. Is the “relatively modest use” of Tier 2—as the October 2017 report of the Department of the Treasury puts it<sup>[1]</sup>—perhaps related to an overly restrictive \$50 million cap, which artificially depresses interest in the exemption? Our colleagues are unwilling even to entertain an exploration of this question through a notice and comment proposal, at least, that is, until the next review cycle.<sup>[2]</sup>

We share the views that animated the Treasury Report’s recommendation that the Tier 2 offering limit be increased to \$75 million. Indeed, we also share this perspective with the bipartisan group of 246 members of the House of Representatives that recently passed the Regulation A+ Improvement Act of 2017 (H.R. 4263), which similarly called for an increase of the limit to \$75 million. The history of Regulation A—a history of disuse<sup>[3]</sup>—offers an unpleasant warning about the potential future of Regulation A+: an improperly crafted exemption is worth little to small businesses, whose ability to gain access to capital in turn enables the economy to grow. Wiser because of this history, we should welcome the opportunity the statute affords us to take another look at Regulation A+ to ensure that it can become a valuable tool for American companies seeking to innovate and grow.

As Commissioners of an independent regulatory agency, calibrating an appropriate Tier 2 limit is a matter for rigorous analysis via the standard notice and comment rulemaking process, conducted in full compliance with the Administrative Procedure Act. That said, the undersigned are persuaded that the time to commence that careful study is now, not when the kicked can comes to rest a couple of years down the road.

Thank you very much for your kind consideration. Should you have any questions or concerns, please do not hesitate to contact us at your convenience.

Respectfully submitted,

Hester M. Peirce  
Commissioner

Michael S. Piwowar  
Commissioner

[1] Department of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets* 40 (Oct. 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf> (the “Treasury Report”).

[2] The next statutorily mandated review is due in 2020, although the Chairman of the Commission has requested that the staff begin the review in 2019.

[3] See, e.g., David Burton, *Securities Disclosure Reform*, The Heritage Foundation (Feb. 13, 2017), <https://www.heritage.org/government-regulation/report/securities-disclosure-reform> ; Rutheford B. Campbell, Jr., *Regulation A: Small Businesses’ Search for a Moderate Capital*, 31 Del. J. Corp. L. 77 (2006); Thaya Brook Knight, *A Walk Through the JOBS Act: Deregulation in the Wake of Financial Crisis*, The Cato Institute (May 3, 2016), <https://www.cato.org/publications/policy-analysis/walk-through-jobs-act-2012-deregulation-wake-financial-crisis> .