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May 14, 2014

Mr. Kevin M. O'Neill
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-11-13

Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act; Release Nos. 33-9497; 34-71120; 39-2493

Dear Mr. O'Neill:

This letter is submitted on behalf of the Crowdfund Intermediary Regulatory Advocates (CFIRA) in response to the request of the Securities and Exchange Commission (the SEC) for comments relating to the proposed rule amendments for small and additional issues exemptions under Section 3(b) of the Securities Act of 1933 (the Securities Act) on December 18, 2013. CFIRA commends the SEC on its progress to date on moving the provisions of Jumpstart Our Business Startups Act of 2012 (JOBS Act) forward. In our view, Regulation A offerings are an attractive financing alternative for growth companies, many of which require substantial amounts of capital.

The proposed rules are a significant step forward in helping to realize a healthier economy through Regulation A and, ultimately, in helping to create more businesses and spawn job growth that will contribute to innovation and economic balance in the 21st Century. While supporting the current proposal, CFIRA believes that there is still some room for improvement.

CFIRA is a crowdfunding trade organization that lobbies and advocates for regulations that will support the crowdfunding industry in connection with Title II, Title III and Title IV of the JOBS Act. CFIRA's role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members comprise intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in or who intend to engage in business under Titles II, III and IV.

In order for Regulation A to promote capital formation for smaller companies, certain rules will need to be revised. We were pleased that the SEC has implemented the JOBS Act Title IV mandate by modernizing and amending current Regulation A. There had been broad bipartisan

support for H.R. 1090, which would have preserved the basic Regulation A framework and raised the dollar threshold. We believe that by retaining this framework and creating two offering tiers within Regulation A, the exemption will become a streamlined capital-raising alternative for smaller, emerging companies.

For companies seeking to raise up to $50 million in each 12-month period without incurring the cost associated with a traditional initial public offering and subsequent full reporting, Regulation A will allow these businesses to accelerate in ways that are necessary to foster long term growth.

The Commission has an opportunity to do the same for other growth companies seeking to raise capital. CFIRA strongly believes that a new Regulation A will be another important step towards helping growth companies acquire the capital needed to grow their businesses, while providing investors with adequate protections against fraud and malfeasance AND achieving the intended goals of Congress.

Recommendations

Eligible Issuers

We believe the SEC should maintain the existing categories of Regulation A issuer eligibility requirements with only minor changes. The exemption should not be available to issuers that are SEC-reporting companies. The SEC should permit use of the exemption by business development companies since they generally supplement the capital raise gap for private companies by providing investment dollars to small emerging companies. Excluding BDCs from Regulation A could hinder the market further particularly when one considers that they are in many instances providing funding to entities that are no longer considered by banks to be attractive borrowers. The exemption should be limited to operating companies, and the SEC should not permit the exemption to be available to blank check or special purpose acquisition companies or shell companies.

If the Regulation A proposing amendments were to be expanded to include micro-cap companies, we believe it would be appropriate to condition the availability of the Regulation A exemption on such companies' being current with their reporting requirements under the Securities Exchange Act of 1934 (the Exchange Act). This is consistent with Regulation A before the 1992 amendments, and similar to both the proposal to make the exemption unavailable to issuers that have not filed the ongoing reports required by the proposed rules during the two years prior to the filing of a new offering statement, as well as the proposed rules for crowdfunding transactions.

We further believe it would be appropriate to allow micro-cap companies to meet the disclosure requirements of Regulation A through incorporation by reference to their reports under the Exchange Act, and to suspend ongoing reporting obligations under Regulation A provided that, and only for so long as, the company continues to meet its periodic reporting requirements under the Exchange Act. We believe this approach is consistent with the goal of promoting capital formation and providing meaningful investor protection while minimizing unnecessary costs and overlapping or duplicative reporting requirements.

Offering Limitations and Secondary Sales

We support the elimination of the last sentence of Rule 251(b), which prohibits affiliate resales

unless the issuer has had net income from continuing operations in at least one of its last two fiscal years. Companies that spend significant resources and time on research and development like technology, biotech or drug discovery companies, or other companies provide great promise for rapid growth and job creation.

The intent of the JOBS Act was to strengthen the capital markets through capital formation and job creation. Therefore, the exemption should be made available to affiliates, including venture capital and private equity investors. Venture capital and private equity investors will be more likely to invest in growth companies if these investors believe that those companies will have access to an array of liquidity opportunities that are currently unavailable. Some venture and private equity investors understand that an IPO may not be possible for companies in certain industries; however, Regulation A offerings could offer another liquidity opportunity for those investors. Similarly, for venture and private equity investors that seek to monetize some portion of their holdings, the ability to resell pursuant to Regulation A is important. Therefore, it is important that security holders have the opportunity to resell their securities.

Currently, Regulation A provides that no more than $1.5 million of the $5 million offering limit may be sold on behalf of selling security holders. We recommend that the SEC consider modifying the proposed limitation on sales of securities by selling security holders in Tier 2 offerings. The legislation contemplated an increase in the offering threshold to $50 million. It did not limit the percentage that could be sold by selling security holders. The intent was that smaller companies should have available an exemption for securities to be offered and sold publicly and for such securities not to be considered restricted securities. In order for the exemption to be attractive to companies and to security holders, security holders must have liquidity. Potential investors will be more likely to invest in privately held companies if they have a reasonable range of post-offering liquidity opportunities.

We also agree that the information that will be filed by Tier 2 issuers should be considered sufficient for purposes of the current information requirement under Rule 144 and for purposes of the reasonably current financial information requirement under Rule 15c2-11. Rule 15c2-11 should be amended to provide that an issuer that is current in its Tier 2 reporting obligations under Regulation A would be deemed to have "reasonably current" financial information, even if its most current balance sheet is as of a date up to nine months old and it had not provided other updated information.

State Preemption

We support the SEC's approach, defining "qualified purchaser" under the Securities Act in a manner that effectively exempts Tier 2 offerings from state blue-sky laws. Purchasers in Tier 2 offerings will have publicly available information on which to base their investment decision. The various investor protection measures that are incorporated in the Proposing Release are sufficient to render regulation by state authorities unnecessary. Adopting a definition of "qualified purchaser" that is equivalent to an "accredited investor" could have negative unintended consequences, making the exemption of very limited use. Regulation A offerings were intended to be sold publicly, and not limited to investors that were "accredited investors." If the blue-sky exemption for an offering were premised on sales only to "accredited investors," it would be difficult to justify the costs and burdens associated with such an offering when contrasted with a Rule 506 offering with no disclosure requirements. Therefore, we recommend that Tier 2 investments also include "non-accredited investors" under the blue-sky exemption.

Limitations on Investment

Regulation A is an exemption for smaller "public" offerings and the investment limitation will serve to limit these offerings. It is not clear that the investment limitation is consistent with Congressional intent. At the very least, we urge the SEC to consider reviewing the necessity of the investment limit within a specified period of time after the final rule's effective date.

The proposed rules would incorporate a new investment limit for Tier 2 offerings. The proposed rule would limit the permissible amount to be invested by any investor to the greater of 10% of the investor's net worth or annual income. We assume that this is intended to apply to natural persons. The final rule should make this clear. The investment limit will have the effect, which may or may not be intentional, of limiting the participation of non-accredited investors in Regulation A offerings. An issuer that seeks to complete a Regulation A offering and remain below the holder of record threshold under the Exchange Act may not want its securities sold to non-accredited investors since it may prove more difficult for subsequent financing rounds. We believe that this would be an unfortunate result.

Disclosure Requirements

We wholeheartedly support the recent statements made by SEC Chair White and Commissioner Gallagher regarding the need to review and update disclosure requirements. Disclosures should focus on those matters that are of greatest interest to investors. Disclosures have become overwhelming to investors and information that is deemed most important is too easily obscured. The SEC should take advantage of this opportunity to implement changes in its disclosure framework.

Disclosure requirements for the Regulation A offering statement should reference Regulation S-K requirements, but these requirements should be scaled depending upon the issuer's size.. The SEC should issue guidance or instructions regarding the disclosure requirements that direct the issuer and its counsel to limit risk factors to only the most important or significant factors that are likely to affect the issuer's business and results of operations. The premise underlying Regulation A is that a Regulation A offering should be a more accessible option for smaller issuers. If the disclosure requirements are not appropriately scaled, it is not clear how smaller issuers will benefit from the exemption.

The financial statement requirements for Tier 2 issuers should not make a Regulation A offering prohibitively expensive.

The audit requirements should be limited to U.S. Generally Accepted Auditing Standards (U.S. G.A.A.S.) that would be applicable to audits of private companies.

Safe Harbors for Communications

CFIRA recommends the SEC to consider formulating and adopting limited safe harbors for regular communications by issuers that are not Exchange Act reporting companies. A company that is contemplating a Regulation A offering or that has completed a Regulation A offering should be able to communicate with its customers, vendors, partners, and shareholders with

certainty that communications that are regularly released and that do not reference an offering will not be treated as offering related communications. Similarly, the SEC should consider measures to encourage third party service providers to publish research reports regarding companies that have completed Regulation A offerings. Having current information available about these issuers will be essential to the development of a vibrant secondary market for these securities.

Treatment under Section 12(g)

The proposed rule would not exempt securities sold pursuant to Regulation A from the Section 12(g) Exchange Act threshold. Securities sold under Regulation Crowdfunding would be exempt from the Section 12(g) threshold, but not securities sold in Regulation A offerings. CFIRA recommends the same treatment for Regulation A offerings under Section 12(g) since this exemption is intended to be useful to smaller companies seeking to raise capital.

The securities sold pursuant to the exemption are not considered "restricted securities" and may be transferred freely. As a result, an issuer would be required to retain a transfer agent and track the status of the holders of its securities or impose contractual transfer restrictions. An issuer that seeks to rely on Regulation A and remain a non-reporting issuer under the Exchange Act would then be motivated to limit sales of its securities to accredited investors. This is inconsistent with the purpose of the exemption. If no broker-dealer were prepared to hold Regulation A securities in street name and each actual holder was counted as a holder of record, then an issuer that sold its securities to non-accredited investors in a Regulation A offering could rapidly trigger the Exchange Act registration requirement.

Regulation A as an IPO Alternative

The Regulation A exemption should be flexible enough to facilitate a contemporaneous listing on a securities exchange for an issuer that elects to become a fully-reporting company under the Exchange Act following completion of its offering. Facilitating an exchange listing would be consistent with the SEC's investor protection mission. The original recommendation to raise the offering threshold in current Regulation A was based on the notion that an issuer should have an opportunity to raise sufficient proceeds in an offering such that it would then be able to meet the listing qualifications of exchanges such as Nasdaq and the NYSE MKT.

The disclosure requirements proposed by the SEC are robust and if an issuer chooses to satisfy the disclosure requirements by using the Part I of Form S-1 format (assuming accommodations are made for smaller issuers), it should not be necessary for that issuer to prepare and file an additional registration statement on Form 10. Form 8-A should be amended in order to permit the form to be used by an issuer in connection with listing in conjunction with completing a Tier 2 Regulation A offering.

If the issue of amending Form 8-A can be addressed, it is realistic to contemplate a Regulation A initial offering alternative that would address with great efficacy the public capital raising needs of smaller companies, while ensuring that such companies will provide robust information to the public; meet appropriate disclosure standards; participate in an iterative though expedited SEC review process; be encouraged to list their securities on a national securities exchange; and undertake, post-offering and listing, to comply with Sarbanes-Oxley and other corporate governance requirements (benefitting from the same phase-in applicable to emerging growth

companies) and continuous SEC reporting requirements.

Conclusion

CFIRA was established on the idea that it is important to foster innovation, capital formation and job creation while building a foundation that encourages market confidence. The members of CFIRA remain available for further discussions relating to Regulation A and Regulation Crowdfunding offerings. We look forward to continuing our work with the Staff and to making investing a success for both investors and entrepreneurs.

Respectfully Submitted,

Kim Wales
Wales Capital, CEO
CFIRA, Executive Board Member

Submitted On behalf of the CFIRA Board of Directors and Members

CROWDFUNDING INTERMEDIARY REGULATORY ADVOCATES