



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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December 12, 2013

The Honorable Mary Jo White
U.S. Securities & Exchange Commission
100 F. Street, NE
Washington, D.C. 20549

RE: Rulemaking Under Title IV of the JOBS Act (Regulation A+)

Dear Chair White,

Since the filing of our comment letter with the Commission on April 10, 2013, the members of the North American Securities Administrators Association, Inc. (NASAA) have made significant progress in the development of a multi-state review process for offerings conducted under Section 3(b)(2) of the Securities Act of 1933. As the Commission finalizes its proposal for what is commonly known as Regulation A+, we urge you to consider the work we are doing to create a state-level review process that is efficient and practical for issuers who intend to sell unrestricted shares to retail investors.

State regulators want offerings under the new Regulation A+ to be an attractive alternative to offerings conducted under Rule 506 of Regulation D. Toward that end, we did an honest self-assessment of existing state processes and examined the concerns expressed in the GAO's recent study of offerings conducted under current Regulation A.¹ While the GAO study did not isolate blue sky law as the sole or even the primary reason for disuse of Regulation A,² we recognize that Regulation A+ will involve larger and more broadly dispersed offerings that elevate the need for uniformity in the states' rules. For that reason, NASAA undertook a year-long effort to address and resolve each and every state-level issue raised in the GAO report.

Under our proposed protocol for Regulation A+ offerings, a copy of which is attached, the state-level filing and review process will be completely overhauled into a modern, streamlined system with functionality similar to the CRD/IARD licensing system. Filings will be made in one place and distributed electronically to all states, and "lead" examiners will be appointed as the primary point of contact for both the disclosure and merit review states. Each state in which registration is sought will then have ten business days to review an application for registration and submit comments or concerns to the lead examiners, but the lead examiners alone will interact with the issuer to resolve any deficiencies. Importantly, once a lead examiner clears the application, the decision is binding on all other states.

¹ United State Government Accountability Office Report to Congressional Committees, Securities Regulation: Factors That May Affect Trends in Regulation A Offerings, July 2012.

² According to the GAO Report, "Multiple factors appear to have influenced the use of Regulation A[, including] the type of investors businesses sought to attract, the process of filing the offering with SEC, state securities laws, and the cost-effectiveness of Regulation A relative to other SEC exemptions." *Id.*

In addition to streamlining the process, our proposal scales back some of NASAA's longstanding review guidelines to make this type of offering an attractive option for small businesses, even startups. For example, we are eliminating the requirement that promoters maintain a minimum level of equity in the business, and we are shortening the escrow period for promotional shares. NASAA worked closely with industry stakeholders in developing these changes and remains dedicated to implementing modifications that would improve the efficiency and quality of the new state system.

As required by NASAA's procedures, the proposed protocol for Regulation A+ offerings was submitted first to the members of NASAA for comment earlier this Fall. We also discussed the proposal at a face-to-face meeting of all members in October to make sure everyone understood the contours of the new system, especially the new binding nature of lead examiner review. I am pleased to report that the members expressed nothing but strong support for the proposal and, like me, are equally dedicated to taking whatever steps are necessary to enhance the state filing experience for Regulation A+ and all multi-state offerings.

Following the period for internal comment by NASAA members, the proposal was posted on NASAA's website and distributed for public comment on October 30, 2013. It was published as a 30 day comment period, but we anticipate receiving additional comments and welcome them. While commenters to date have made some constructive suggestions that NASAA is considering as part of the final release, they all seem to recognize that the proposal represents a monumental step forward for state regulation of multi-state offerings.

Now that public comments have been received, NASAA has considerable flexibility in the adoption of the coordinated review program. We could vote on the proposal at any time upon 21 days notice to our members, but we are awaiting the Commission's action to ensure that the state and federal rules are in sync. Once the proposal is adopted by the NASAA membership as an official NASAA statement of policy, we anticipate that most if not all U.S. NASAA members will be able to implement it simply by signing onto the new Coordinated Review Protocol Memorandum of Understanding ("MOU") without attendant statutory or regulatory changes.³ Once finalized, it will be my and the NASAA Board of Directors' first order of business to get the MOU signed by all 51 U.S. jurisdictions as quickly as possible.⁴

NASAA is aware of efforts by commenters and others to persuade the Commission to adopt a definition of "qualified purchaser" that would effectively preempt, either in part or entirely, state regulation of Regulation A+ offerings. Those efforts should not be heeded. "Qualified purchaser" is not a new term in federal securities law; neither is the term "accredited investor." Congress has used both terms to reflect its clear intent regarding registration requirements for

³ See, e.g., Section 608 of the Uniform Securities Act (2002) and Section 420 of the Uniform Securities Act of 1956.

⁴ NASAA has had great success in securing signatures like this in important initiatives, including all members' agreement to share resources in the area of investment adviser examinations, as reflected in an MOU that was created in anticipation of the switch of mid-sized advisers from federal to state registration pursuant to the Dodd-Frank Act.

offerings directed to these separate sets of investors. It would be wholly inappropriate for the Commission to redefine or misapply either of these terms in contravention of Congress' intent.

Moreover, with respect to the Regulation A+ provisions of the JOBS Act specifically, Congress carefully and extensively considered whether or not the new exemption should preempt state authority. After weighing the perceived merits of preempting state law and the risk to investors that could arise from such action, Congress affirmatively judged that states should not be preempted from review of offerings under the exemption, citing both the "high-risk" nature of these offerings and the "essential" function that state review plays in discouraging fraud.⁵

On November 2, 2011, the House of Representatives voted unanimously to remove preemptive provisions from its version of the legislation, and the Senate concurred.⁶ For the Commission to propose a rule that would, by regulation, undermine Congress' recent judgment and clear, longstanding intention in this regard would be ill-advised and subject to challenge.

We urge you – in the strongest terms – to resist calls to preempt the states through the definition of a qualified purchaser. State-level review will help the Commission root out fraud and abuse in this new marketplace and will give investors confidence that securities sold in these offerings are subject to an adequate level of scrutiny. Working together, the Commission and the states will be strongly positioned to protect our citizens and make Regulation A+ a success for small business filers.

We appreciate our long partnership with the Commission in matters of mutual interest, and we look forward to working with you in this area. If you have any questions, please contact me at (614) 644-7435 or NASAA President-Elect Bill Beatty at (360) 902-8723.

Sincerely,



Andrea Seidt
NASAA President
Ohio Securities Commissioner

⁵ The House Committee Report accompanying H.R. 1070, the Small Company Capital Formation Act of 2011, provides that "There was one contentious issue that arose during the markup that had nothing to do with the principle of an exemption limit increase, but instead with new language preempting state law. This language preempts state securities law for Regulation A securities offered or sold by a broker or dealer, creating a class of security not subject to state level review, but which will not receive adequate attention at the federal level. Regulation A securities are sometimes high-risk offerings that may be susceptible to fraud, making the protections provided by state review essential. To address these concerns, the Democrats offered an amendment to clarify that state securities would only be preempted if the Regulation A security is sold on an exchange or sold only to a qualified purchaser." See House Committee Report 112-206.

⁶ Congressional Record Volume 157, Number 166 (Wednesday, November 2, 2011), pp. H7229-H7232.

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cc: Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner
Keith F. Higgins, Director, Division of Corporation Finance

Attachments:

1. Notice of Request for Public Comment: Proposed Coordinated Review Program for Section 3(b)(2) Offerings
2. NASAA Comment Letter Dated April 10, 2013