October 9, 2007

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 "F" St., N.E.
Washington, D.C. 20549-1090

Re: Release No 33-8828, File No S7-18-07

Dear Ms. Morris and the Commission:

I am submitting comments on the U.S. Securities and Exchange Commission's (the "Commission") proposal for revisions to Regulation D and other rules involving private offerings found in Commission Release 33-8828. I am currently serving as the chair of the Securities Law Committee, Business Law Section of the State Bar of Texas. Both I and my colleagues joining me in this letter have served on the Securities Law Committee and have practiced in the securities and corporate law arena for ten years or more. As required by our State Bar Handbook, we must disclose the following:

THESE COMMENTS ARE BEING PRESENTED ONLY ON BEHALF OF THE INDIVIDUAL ATTORNEYS WHO ARE SIGNATORIES BELOW. THESE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE LAW FIRMS OF THE INDIVIDUAL SIGNATORIES, THE SECURITIES LAW COMMITTEE OR THE BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS, WHICH IS A VOLUNTARY SECTION OF STATE BAR MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THE SECURITIES LAW COMMITTEE OR THE BUSINESS LAW SECTION HAS BEEN OBTAINED AND THE COMMENTS IN THIS LETTER REPRESENT THE VIEWS OF THE INDIVIDUAL ATTORNEYS WHO PREPARED IT. NOR SHOULD THESE COMMENTS BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS.

Our group of colleagues is composed of issuers' counsel for private companies with respect to offerings from small to large, and from traditional private placements to angel, venture capital or private equity funded deals; counsel for publicly traded issuers engaging in private offerings; and counsel whose practices are primarily focused on broker or investment advisor regulation. Because our comments address fundamental issues, the synthesis of our thinking is intended to be a broad, conceptual response.

We begin with the assumption that investor protection is and should be the Commission's priority. We also begin with the knowledge that most issuers in many kinds of private equity financing deals are focused on "doing right" by the investor. They have to be. In order to get the financing necessary to grow their businesses, issuers are subject to marketplace forces that require them to be attuned to their investors' needs – in terms of what kind of characteristics their businesses must have to attract investors at all, how good the terms they give investors must be, the protections we as counsel put in the documentation of the deal, and how they run their companies to achieve success.

The circumstances in which this precept may break down are circumstances where each investor's contribution is a small part of a much larger equity financing – for instance, traditional private placements seeking $20,000 from each investor and perhaps investments in hedge or private equity funds. Offerings by publicly traded issuers—especially public offerings -- would often fit that description. Ironically, when public companies are seeking private money, they are often doing it for reasons critical to the survival of their businesses and those investors often have quite a bit of leverage.

For the vast majority of issuers seeking to raise private equity capital, the marketplace requires them to be concerned about investors' well being and the process of raising capital is difficult. At the same time, that premise does not necessarily lead to the conclusion that investors "should" be investing in these issuers. Certainly, if one uses the benchmarks that most investment advisers would use in terms of level of savings, liquidity of investments and asset allocation, no individual investor should invest in these issuers. Regulators could conceivably raise the thresholds of the definition of Accredited Investor and other variations of that definition to a level where investors could only invest in private equity offerings after they had amassed enough assets in the right categories to retire comfortably. There are some among our committee that would espouse that standard of investor protection. The great majority of we practitioners would not espouse or recommend that standard. However, that choice puts in stark relief the competing goals at hand.

As practitioners, we see several phenomena happening in the marketplace in 2007: 1) Individual investors seek to invest in private companies before they have amassed enough assets to retire; 2) Investments from individual investors who have not yet met retirement goals are an integral part of small business capital formation. Companies build on these investments to become eligible for larger investments; 3) The more professional individual investors become and the more institutional their investment activities become, the more they are interested in making larger, and later round investments in more established businesses. This means they cede the arena of earlier round or smaller investments to individuals who are not professional investors; 4) Venture capital has become a specialized and institutionalized niche. There are many companies worthy of private equity investment and which provide a good return for investors that do not serve billion dollar markets or provide a 25% annual return over 5 years. 5) There is a real difficulty for companies seeking investment to connect with willing private equity investors, especially for those companies that have not attained so called "middle market" status of between $25 and $50 million in annual revenues; and 6) There has been a significant increase in private equity funds whose targets are middle market and larger companies.

We believe that investor protection must be achieved in the context of these realities of the marketplace and how real private equity financing deals get done. If we are able to fashion regulations that work with, instead of against, these realities, we can better protect investors and promote small business capital formation at the same time.

Usefulness of the New Issuer Exemption as Proposed

New Rule 507 as proposed, allows issuers to attract "Large Accredited Investors" with a new tool, publication of a limited announcement of the offering, including a brief description of the business of the issuer in 25 or fewer words. This would suggest that the predominant use of Rule 507 will be to allow issuers to make short public announcements of the proposed offering in a manner calculated to attract such Large Accredited Investors.

Proposed new Rule 507 would define Large Accredited Investors as 1) legal entities with $10 million in assets or more; 2) individuals who have $2.5 million in investments owned or $400,000 in income in the past two years (or $600,000 in income per year with his or her spouse); 3) the remaining categories of institutional investors which qualify currently as Accredited Investors; and 4) Officers and

Directors. The "investments owned" standard would exclude assets such as a home which are not free for investment.

However, it is our belief that Rule 507 will be of limited use to issuers because investors that would meet the definition of "Large Accredited Investor" do not seek investments in this manner. Investors with this level of assets communicate informally among each other or via websites such as www.bigdough.com They seek leads on potential investments through personal relationships - their own networks of other individuals or entities with assets. They aren't looking in the Wall Street Journal for ads or watching TV ads. A 25-word description does not provide sufficient detail for such an investor to filter investments in any sophisticated manner and, therefore, an exemption allowing advertisement to these investors will fall into disuse. These types of investors don't "shop" for investments in this manner.

On the issuer side, a savvy issuer wants to engage this level of investor through the channels to which such investors lend credence. This means the issuer wants to get known in investors' networks. We can envision various centralized repositories of these ads relating to offerings (e.g., web sites, newsletters, etc.). but because they are likely to be posted by issuers and not filtered by anyone on the investor side, we do not believe the ads would result in much capital formation. Issuers successful in raising capital do not access capital from investors with this profile in this manner.

We do believe that the suggested definition of Large Accredited Investor, coinciding with the definition of Accredited Natural Person, is appropriate for allowing investment in a private pooled investment entity. Because of the large amounts of funds being raised in these entities, the tendency for issuers and their management to be less concerned about investors which represent a smaller percentage of the overall amount of funds raised and the fact that these entities are themselves investment vehicles rather than operating businesses, we feel it is appropriate to require individuals to have a larger minimum level of financial assets in order to invest.

Suggested Changes to Rule 507 Offerings

Although we don't think limited advertisements would be useful in reaching the investors envisioned by the "Large Accredited Investor" definition, we do believe that there are useful places for limited advertisements in small business capital formation: 1) offerings to investors meeting a lower but different threshold level which could form the basis for a new definition of Large Accredited Investor and 2) intrastate offerings to Accredited Investors only.

We believe that the definition of "Large Accredited Investor" should incorporate a lower threshold but should couple an "investments owned" criterion with net worth or income criteria. We take our cues from and agree with many of the NASAA comments in response to the Exposure Draft of the Advisory Committee on Small Public Companies and cited in the Commission's proposal release relating to Rule 507.

The Commission and NASAA are in agreement that '33 Act §28 would be the best basis for the proposed Rule 507. While it would be simpler to add this variation to Rule 506, the statutory basis of Rule 506 in §4(2) of the '33 Act is inconsistent with the usage of limited advertising.

In that same comment letter, NASAA spelled out other conditions, which if met, would garner its support of the creation of a new private placement exemption that does not prohibit general solicitation and advertising: 1) eligible purchasers meaningfully defined; 2) specific disclosure requirements; 3) the content of advertisements should be properly limited as in NASAA's Model Accredited Investor Exemption ("MAIE"); 4) the safe harbor should conform to that available in Reg D; 5) disqualification provisions should be present; 6) clear and functional restrictions on resale such as those in Reg D Rule 502(d) and Rule 144; and 7) a state regulatory filing should be required. We agree with NASAA's conditions set forth in 3) – 7) above and believe that Rule 507 as proposed complies with most, if not all, of those conditions.

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A Suggested Definition for Large Accredited Investors

With respect to a meaningful definition of some type of accredited investor to whom limited advertising could be directed, we believe it is important to understand that the audience issuers will likely attract with limited advertising would be individual accredited investors and entities formed by them. We agree with NASAA that a qualification relevant to whether these investors have free funds to put at risk should be put in place. An "investments owned" test (owned free and clear and excluding residence) combined with a net worth test or income test would meet that goal. However, it seemed to us that NASAA's suggested threshold definition for Accredited Investor of $1,000,000 in investments owned and $2,000,000 in net worth is a standard which an investment advisor would advise as being ideal for an average citizen to amass for retirement. While that is a protective and conservative standard, we don't believe that is the appropriate standard. Individual investors willing to take more risk are an integral component of small business capital formation. Rather, we would propose a standard that takes the current definition of Accredited Investor and combines it with an investments owned test: either 1) $500,000 in investments owned free and clear and exclusive of residence and $1 million in net worth or 2) $200,000 in investments owned free and clear and exclusive of residence and $200,000 per year in annual income for the past two years. We believe such a requirement meets several goals espoused by the Commission and NASAA: 1) It requires that the investor has some funds free and clear to put at risk; 2) It retains NASAA's idea that investments owned should be at least half of an investor's net worth in situations where the investor may or may not be making an income ; 3) It allows an alternative by which individuals who have not yet been able to amass a large net worth to participate; 4) the addition of the investments owned requirement makes it more likely than judging by a simple standard of affluence that the investor has the ability to critically appraise the issuer and the investment opportunity.

Specific Disclosure

With respect to a specific disclosure document, we believe there should be specific disclosure – but not necessarily of a prospectus-like document. If we are able choose a definition of accredited investor that adequately serves as a proxy for financial sophistication and an ability to put funds at risk, the information that an investor is provided should be the raw data necessary to make an informed investment decision. In our minds, that would be akin to the documents and information typically seen in a due diligence CD: the documents that create the terms of the investment; material contracts signed; financial statements; projected financial results or budget with assumptions and notes; a capitalization table, before and after the investment; and any other documents or information that is relevant to the success of the business going forward.

The Limited Advertising Should Not Be Wed To A Particular Medium.

While it may have been true in the past that newspapers, particularly ones with a financial focus, were prime places to connect with the investing public, the current appropriate forums are changing all the time. Because these forums are changing and in order to be useful regulation, the limited advertisement must be able to be adapted to any medium. We believe that the Commission should think out what characteristics the limited advertisement should have not only in print, but on radio, on TV, via canned internet video; via live webcast or webinar; within an internet blog; via asynchronous message board or live chat room, in a restricted internet forum, whether restricted by password or other means such as subscription and purpose; and on a generally available website. As it does so, there may be additional limitations which might be warranted with different media. For instance, we could foresee limited ads on websites restricted to and creating a community of Individual Accredited or Large Accredited Investors as we propose to define them.

Specify the Commission's Ideas About How to Transition From the Limited Advertising to the Engagement of Potential Investors with More Detailed Information.

In the Commissions proposal release, the staff asked for comment on whether the Commission should provide guidance on what issuers must do to "reasonably believe" that potential Large Accredited

Investors indeed meet the requirements of the definition. We believe that wherever issuers are using limited advertising, there is a difficult transition between initial contact with the potential investor and follow on contact with information which would violate the limitations of the allowed initial advertisement. Given that the advertisement is put out by the issuer, the initial personal contact with the issuer will be initiated by the potential investor. At this juncture, it strikes us that the issuer must obtain some information from the potential investor to qualify him or her and go through some set of actions to satisfy itself that the potential investor is indeed accredited. It would be helpful for the Commission to state what the issuer can and should do to obtain that qualification information and make the determination. Once the determination of accredited status is made, coupons, admission tickets or electronic passcodes may be necessary to limit access to or allow sharing of detailed information with the potential investor. Once qualified, we believe issuers should be able to invite potential investors to any type of forum to share detailed information with them. However, with today's many modes of communication, we do not believe that the Commission should limit the type of forum which can be used.

The advantage of promulgating a private placement exemption that would hopefully meet NASAA parameters, take into account the likely audience for limited advertising, and also set a definition of accredited status based on the ability to risk funds rather than the ability to retire is that it would immediately be usable in the 30 states in which NASAA' s MAIE is currently available. We believe such an exemption would encourage offerings with a small group of investors but who reside in multiple states.

Intrastate Offerings

In 1994, California adopted its §25102(n) which allows tombstone ads in written form in an attempt to reach investors where the transaction involved issuance of one class of securities for $5 million or less and investors met certain alternative net worth and income or higher net worth requirements which are different than the requirements to qualify as an Accredited Investor under Reg D. In 1996, the Commission adopted Regulation CE / Rule 1001 pursuant to statutory authority available under the '33 Act §3(b) which would provide a federal exemption to be used with the one that California had fashioned. In 1997, NASAA adopted a Model Accredited Investor Exemption and Notice Filing Form which proposed to the state regulators to allow a limited general advertisement to Accredited Investors (as defined in Reg D) by any means and provision of more detailed information to potential investors through electronic databases so long as i) they were pre-qualified as accredited and ii) the additional information was not given to them until it was determined that they were accredited. Texas adopted its own exemption allowing limited advertising in offerings involving solely Accredited Investors in 1995 under its Rule 139.16 and then followed up by adopting Rule 139.19 in 1997 to provide a Texas state exemption to conform exactly with the NASAA Model Exemption.

In Texas, neither of the Limited Advertisement / Accredited Investor Rules have been used much. It is our belief that the reason for that circumstance is uncertainty with respect to the availability of an exemption on the federal level for these types of offerings. Consequently, the Commission could make these previous state regulatory efforts very useful by clarifying its position with respect to certain key issues in these offerings and completely revising Rule 147 to create a clearer, more "bright line" and up-to-date set of rules for determining when, in the language of '33 Act Section 3(a)(11), the issuer is "resident" or incorporated and "doing business " in the state.

In our minds, the Commission would need to address the following issues, hopefully in these ways:

1) Make it Clear That an Intrastate Private Offering Using Limited Advertising (as defined by rule) Could Satisfy the Requirements of §3(a)(11).

A number of the no action letters issued under '33 Act §3(a)(11) suggest indirectly that a state only public offering or a state private offering that would comply with '33 Act §4(2) would be the types of offerings at the state level that would allow an exemption under §3(a)(11) on the federal level. The invocation of §4(2) calls into question whether any general solicitation can occur in the state exempt

private offering. However, we know of no statutory requirement or legislative history that would suggest private offerings occurring entirely within a state must involve no general solicitation. And, if historically, the Commission was willing to allow intrastate public offerings under 3(a)(11), it follows that private offerings with limited advertisement and appropriate safeguards should be acceptable. As set forth above, several states have enacted exemptions which allow limited advertising. We believe that a private offering utilizing limited advertising that occurs entirely within a state should also be eligible for a federal exemption. A federal exemption created under the authority of '33 Act §28 with the features recommended above or specifically created for intrastate offerings could serve as that exemption and would be used particularly in states like New York, California, Texas and Florida. However, in addition, we believe the Commission should make clear that a state exempt private offering utilizing limited advertising meeting specific requirements would also qualify under §3(a)(11).

2) Create a More "Bright Line" and Up to Date Standard for Determining When an Issuer's Activity is Sufficiently Within the State under §3(a)(11) through a Revised Rule 147

When Rule 147 was enacted, all business was conducted in a much more local fashion than it is today. Probably the most recent review of that rule was done by the Commission's Task Force on Simplification of Disclosure in 1996. Many of that Task Force's suggestions would be helpful in making 3(a)(11) more useful with state exempt private offerings which use limited advertising such as Texas Rule 139.16 and state rules modeled after NASAA's Model Accredited Investor Exemption such as Texas Rule 139.19. To recapitulate, that Task Force recommended:

- Creation of a "substantial compliance" provisions analogous to that of Rule 508 of Regulation D
- A statement that offers to non-residents would not destroy the exemption because the Commission's more recent focus has been on purchasers rather than offerees.
- Provisions that dealt with purchasers who had more than one residence. Perhaps adopting domicile as the determining factor in deciding whether all purchasers were resident of one state.
- Residence qualifications for business purchasers should be expanded to deal allow business purchasers with substantial operations in a state but not a principal place of business or headquarters there.
- The appropriate criterion for an issuer's residence should be changed from state of incorporation or formation to principal place of business.
- Abolition of the "triple 80%" currently contained in Rule 147 in favor of a lower "doing business" threshold and elimination of a use of proceeds requirement
- The safe harbor of nine months during which resales should not occur should be shortened. Perhaps it would make sense to conform this safe harbor to that in Reg D.
- The Rule should not be available to blank check or blind pool offerings.

We believe these suggestions continue to be valid in today's market.

Accredited Investor Reform

We do believe that it is appropriate to address whether the thresholds in the Rule 501 definitions of Accredited Investor continue to approximate the ability of an investor to critically appraise the issuer and the investment opportunity. However, just as with the definition of Large Accredited Investor, practitioners and regulators must confront the question whether the goal is to require large enough amounts of income or assets to allow comfortable retirement before investing in private companies or whether the goal is to come up with some threshold levels that suggest ability to critically appraise the issuer and the investment opportunity.

As proposed, legal entities would have an alternative means to qualify as an accredited investor by having $5 million in "investments owned". Similarly, natural persons could be qualified by holding

$750,000 in "investments owned" The focus is on these two categories of Accredited Investor because they represent the primary ways in which natural persons invest as accredited investors.

We applaud the addition of an alternative "investments owned" test to the definition of a natural person accredited investor. We do believe that will aid issuers is qualifying both entity and natural person accredited investors who qualify solely by virtue of assets held. However, we would urge the Commission to make the determination as simple and straightforward as possible. We would also urge the Commission to harmonize and standardize the various definitions of "Accredited Investor", "Large Accredited Investor", "Accredited Natural Person", "Qualified Purchaser" and "Qualified Institutional Buyer". We believe there is justification for letting different levels of investors invest in different kinds of issuers such as hedge funds and private equity funds or in different kinds of deals such as those involving limited advertising. However, we think they all should build on one foundation, that of the regular Accredited Investor.

We understand the argument that ensuring that the same percentage of the population qualifies as an accredited investor (albeit gradually over a period of time) as originally qualified when Regulation D was enacted means we are ensuring the same proxy is in place for level of sophistication and ability to critically appraise the investment opportunity. However, we are not convinced the argument holds water. It is reasonable to assume that the increase in home prices has made the proxy less appropriate in recent years and has made some investors accredited when they should not have been. However, other factors can make the proxy inappropriate in the other direction. If our society has simply become more well off or if it is true that our society no longer has income levels distributed as evenly as in the past, holding to a specific percentage of the population does not mean we are keeping the same proxy either. The proposed benchmark also does not seem to jibe with the oft cited statistic that persons making an income of over $100,000 comprise the top 5% of taxpayers. We endorse the move to review the accredited investor standards every five years but want ensure reconciliation various statistics available and more consideration of what is the appropriate benchmark.

We believe an "investments owned" standard coupled with net worth or alternatively with income standards and excluding particularly the investor's home in the asset calculations creates a better proxy for sophistication and the ability to critically appraise the investment opportunity.

Other Proposals in the Release

Disqualification Requirements

Unfortunately, no issuer exemption provision will deter fraud. Fraud requires intent to fleece an investor. If that intent is there, no requirement in an exemption will prevent that intent. If the terms of an issuer exemption won't deter a fraudulent actor, will requirements designed to deter fraud ever protect an investor? Only if such requirements somehow require an investor to critically appraise the issuer and investment opportunity. Since the advent of Reg D, we as a community of regulators and practitioners have focused on characteristics of investors that should provide them with the ability to critically appraise the issuer and investment opportunity. Given these realities, we urge the Commission to balance the effectiveness of provisions designed to deter fraud against the burden they pose to legitimate issuers.

That said, we do support a requirement that issuers make an effort to establish no bad actors are involved in their offerings. Proposed Rule 502(e)(2)'s safe harbor for an offering by an issuer that establishes that it did not know and reasonably could not have known that a disqualification existed, if appropriately implemented, is a solid step in the right direction. For example, using questionnaires similar to the current practices for establishing the reasonable basis standard for determining accredited investor status of purchasers would seem to be appropriate.

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Reduction of the Time Frame for the Reg D Safe Harbor

We applaud the suggestion to reduce the safe harbor time period for any Reg D offering from six months to 90 days. We believe that this proposed safe harbor is more in line with the time frames we see as practitioners with issuers that are going through growth spurts and doing several rounds of equity investments.

The Most Significant Aid to Small Business Capital Formation Might Be Broker-Dealer Reform

In setting out earlier in this letter the realities we see in the marketplace, we mentioned the fact that companies that have not attained between $25 and $50 million in annual revenues have the hardest time connecting with interested investors. Currently, issuers in that category often are approached by or seek out intermediaries to help them raise capital. These intermediaries are often not registered as broker dealers – a fact that causes great problems for companies trying to raise capital. Potential issuers have no means to judge whether the intermediaries are legitimate or effective and often risk their own issuer exemptions from registration in hiring them. Over the last 30 years or so, registered broker dealers have increasingly found that their best opportunities for profit making lie in the public markets. With the combination of the NASD and certain functions of the NYSE into FINRA, we believe we will see an even greater focus by the registered broker dealer community, the current self regulatory bodies and the Commission's Division of Market Regulation on activities in the public markets. Such events are likely to make the plight of private issuers dealing with unregistered intermediaries more acute.

Leadership with an Interdisciplinary Team

In June 2005, the ABA Task Force on Private Placement Broker Dealers issued its report and recommendations. We understand there have been discussions between members of that Task Force and the Commission's Division of Market Regulation about the Task Force proposals, but no action has been taken. Because issuers must often raise capital from investors in a number of states if not globally, there is the real need for a solution on the federal level to go with solutions being crafted on the state level. We urge the Commission to take a leadership role and appoint an interdisciplinary team to some up with a federal solution to this problem. We believe it should be comprised of personnel from the Commission's Division of Corporation Finance and Market Regulation, representatives from NASAA and the private bar to be headed up by personnel from Corporation Finance. Since the pain is felt by issuers rather than brokers who may be focused on other parts of the capital markets, we believe it makes sense for Corporation Finance to lead the way. We would like such an interdisciplinary team to consider the following proposals:

Proposals to Address

As a first step, we propose that the Commission exempt from the definitions of broker or dealer under '33 Act §2(a)(12) and '34 Act §§3(a)(4) and (5) persons who meet the requirements of the Texas finder rule and who are registered as finders by states. In July 2006, the Texas State Securities Board adopted Rules 115.1(a)(9) and 115.11 crafted by the state regulator and this committee which requires dealer registration of these limited role intermediaries which we call "finders". The Texas finders' limited dealer registration is available only to individuals, not entities, who introduce an investor who is an Accredited Investor to an issuer and then step away. The finder may provide the investor with a short description of the issuer and its business in many ways similar to the information suggested to be allowed in limited advertising to Large Accredited Investors. Texas finders may not be involved in negotiating the sale, advising about the merits of the investment or performing due diligence. No exam is required and while the individual must register prior to entering into the transaction, he or she does not have to be affiliated with a registered broker dealer. A Texas finder must maintain certain records about the transactions with which he or she is involved and must keep those records separate from other records the finder may have. The Texas finder must also disclose to the investor who is paying the finder; the finder's potential conflicts of interest; and the fact that he or she cannot advise them with respect to the

transaction. We believe that the level of activity engaged in by the finder and the fact of state registration and background check obviates the need for regulation on the federal level.

As a second step, we would partially endorse the ABA Task Force's recommendations with respect to mergers and acquisitions activity. For many years, Texas has had a limited dealer registration category for business brokers engaged in sales of businesses and who advertise sales of assets. The Texas business broker limited registration applies to

> "officers and employees whose firms restrict their officers' and employees' securities activities to acting as brokers between and among principals for the sale of a majority of the stock or equity securities of a privately held business pursuant to a privately negotiated purchase agreement, where the managerial control of the business will devolve upon the purchaser(s) and where compensation received by the firm will be payable for the brokerage activities only;"

The Texas business broker limited registration provides for waiver of exams but otherwise requires the registrant to comply with all other requirements of Texas dealers. The ABA Task Force recommends that the Commission alternatively: 1) expand the International Business Exchange Corporation, SEC No action Letter (December 12, 1986) (the "IBEC Letter") to permit stock as well as asset transactions or 2) create a special subset of Private Placement Broker Dealers ("PPBD's") which it calls Mergers and Acquisition Broker Dealers "M&ABD's") which would have no net capital requirements, no exams and modified books and records requirements but also be subject to the IBEC limits on the types of activity in which they could engage. We would call for the Commission to both clarify and expand the IBEC Letter to allow for stock transactions and also create a subset of PPBDs with less onerous requirements. However, we feel that the nature of private company mergers and acquisition activity rather than limitations on activities required under IBEC provides the rationale for less onerous, more tailored regulation. M&ABD's for private companies will typically hold no funds of any party, will not be engaged in any transactions involving publicly traded securities and will be engaged in fewer transactions than a typical retail broker. We believe that such M&ABD's should be allowed to engage in negotiations on behalf of one of the parties, advise a party with respect to valuation, perform due diligence and receive transaction based compensation.

Finally, as a third step, we would hope that such an interdisciplinary team would consider the ABA Task Force's recommendations relating to PPBDs engaging in traditional securities offerings for private issuers. We believe that PPBDs (along with M&ABDs) that have the freedom to negotiate, advise and perform due diligence for transaction based compensation present the most difficult solution to craft – but also the most useful solution for privately held issuers. These are the primary issues tackled by the ABA Task Force and we generally approve of and would like to see adoption of a limited registration broker dealer category meeting the qualifications of the Task Force Recommendations:

- No participation in public offerings, but the ability to receive referral fees for introducing public offerings to full service broker-dealers
- No statutory disqualifications of the firm or principals allowed
- PPBD's may only make offerings to Accredited Investors and M&ABDs may only be involved in transactions where the investors are Accredited Investors.
- The firm may not handle or take possession of funds or securities
- All funds from offerings will be placed in escrow in unaffiliated institutions in accordance with Rule 15c2-4
- The PPBD or M&ABD firm must not engage in any secondary market or trading activity, including maintenance of "desk drawer" markets
- Principals and representatives shall have successfully completed exams appropriate to the scope of their activities.

Additional Experience and Ideas From the Work of the Texas Committee

During our work on these issues at the state level, we have confronted but not reached consensus on the appropriate solution for intermediaries that engage in a wide range of activities. However, here are

some suggestions that have come up in our discussions that we believe would be useful to consider as the Commission tries to deal with these issues:

1) One of the key problems discussed by our committee was how to engender a truly different regulatory scheme through the NASD, the same regulatory body which has responsibility to regulate full service broker dealers. Some of the suggestions to our committee included harkening back to the SEC Only (or "SECO") registration that was available years ago for brokers that did not feel the need to become NASD members. With the recent merger of some of the NYSE's regulatory responsibilities with the NASD into FINRA, the NASD's focus will understandably move to larger brokers and investment banks. This may mean it is time for a special division within FINRA that is focused solely on intermediaries in private market transactions. We believe this is a critical component of successful implementation of PPBD and M&ABD categories of registration in addition to appropriate scaling back and tailoring of rules which are mentioned in the ABA Task Force Report.

2) During our work on the Texas Finder's Rule and beyond, many on the committee were searching for a way in which the limited registration process could follow how private equity financing deals evolve and how the need or desire to pay intermediaries develops. We would like to embrace intermediaries who may be adding value through negotiation or valuation but who don't consider themselves "in the business" of being an intermediary and allow them to register and receive transaction based compensation as the deal develops. Our state regulators have been adamant that registration (and the associated background check) be completed before the deal closes and compensation is paid. However, this brings up the need to streamline registration and background check processes as much as possible. It also brings up the need to set registration fees at rates that do not contemplate firms that are in the business but rather are reasonable for "one off" registrants. Periodic registration schemes need to take into account "one off" registrants. Similarly, ongoing regulation of these brokers should take into account both the firm "in the business" and the consultant who happened to have useful contacts and knowledge with respect to a particular deal or industry.

3) The ABA Task Force calls for an Annual Statement of Activity to be filed with the regulatory authority which summarizes the transactions in which it has participated during the past calendar year and provides sufficient statistical information to analyze the effectiveness of the PPBD program. While it is important for regulators to analyze the effectiveness of the program and to calibrate the level of regulation accordingly, such information could be of great value to issuers. If registrants were required to list the size and basic characteristics of deals in which they had participated as well as the NAICS codes of issuers involved in the deals and if that information was available online and searchable, issuers could begin to judge the effectiveness of different intermediaries in the kind of deal they are contemplating or within their industries. All information submitted by registrants would be presumably made under oath and truthful, In other words, it would be presumed that all deals stated as closed did indeed close and did indeed raise $X amount of capital for the issuer. Also presumably, regulators could call registrants to account if information supplied was not truthful. We believe this type of information would help identify and weed out ineffective intermediaries. That turn of events would be welcome to practitioners, help issuers be more effective in raising capital, and help regulators target investigations more precisely.

We hope these comments are helpful to the Commission and provide worthy ideas for consideration as you revamp the private offering process.

Sincerely,

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