Via Email: rule-comments@sec.gov

September 24, 2019

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Attention: Ms. Vanessa Countryman, Secretary

Re: Concept Release on Harmonization of Securities Offering Exemptions
File Number S7-08-19

Dear Ms. Countryman:

This letter is submitted on behalf of the Forum for U.S. Securities Lawyers in London (the "Forum") with respect to the Concept Release on Harmonization of Securities Offering Exemptions (the "Release") issued on June 18, 2019 by the Securities and Exchange Commission (the "Commission").

The Forum is a trade association representing U.S.-qualified lawyers and market participants in the London capital markets. It has more than 1,500 members, including U.S.-qualified lawyers from over 45 law firms and 30 financial institutions in the London capital markets, as well as market participants such as securities exchanges, settlement systems and registrars. Founded in 2006, the Forum is an independent, self-funded organization dedicated to addressing issues relating to the application of and compliance with U.S. securities laws in the London and other international capital markets.

The Forum thanks the Commission for this opportunity to comment on the Release issued by the Commission. We believe that our comments reflect the aims of the Commission to maintain investor protections while easing the burdens on issuers and other offering participants. We hope that the comments herein will serve as helpful suggestions for the Commission in its efforts to further harmonize the framework of the U.S. Securities Act of 1933 (the "Securities Act"). The comments in this letter reflect the views expressed by our members via written comments and discussions on the Release with respect to the London capital markets.

Comments

1. The Forum believes that federal preemption should be extended to additional offers and sales of securities involving accredited investors.

The Release contemplates an extension of federal preemption to additional offers and sales of securities. From the perspective of the London capital markets, and in the experience of the members of the Forum, we believe that an extension of federal preemption would expand investment opportunities without compromising investor protections, consistent with the intent of the Release.

As the Commission has noted in the Release, "[i]n addition to having an exemption from federal registration requirements, an investor seeking to resell securities must also consider whether state securities registration or other requirements apply" unless the federal securities laws "preempt state

securities law registration and qualification requirements".[1]

Section 18 of the Securities Act exempts from state registration most securities of U.S. issuers qualified for trading in the national market system and listed on a national securities exchange. However, relatively few foreign issuers are listed on a national securities exchange, and the majority of sizable foreign equity and debt issuances that include a U.S. private placement (a so-called Rule 144A tranche) are conducted by issuers that are not so listed. While most states exempt offers and sales to sophisticated institutional investors, there remains residual uncertainty, particularly in light of the range of foreign offering structures that may not always align to the scope of state exemptions. Moreover, state laws may change, so as to capture these offerings, potentially inadvertently, where state legislators and regulators lack the familiarity and understanding of international securities regulatory regimes and markets possessed by their counterparts at the Commission.

There is limited benefit from extending the protection of state securities laws to investors in foreign offerings, so long as a valid exemption from registration under the Securities Act is available. Most of the investors in these transactions are sophisticated investors who are actively interested in investing in foreign securities. Moreover, various corporate transactions that do not constitute offers or sales under local law, but nevertheless are transactions of the type described in Rule 145(a). While Rule 506 may be an option some for foreign issuers, most foreign issuers conducting limited U.S. placements are unwilling to file a Form D. In addition. many offerings, including those in reliance on Rule 506, Section 4(a)(6) and Section 4(a)(7) under the Securities Act, are already exempted from state regulation, but nevertheless permit placements to a broader range of U.S. investors, including unlimited numbers of accredited investors and even non-accredited investors.

While it could be argued that, in practice, most of these offerings will already be exempt under existing state law, there remains residual uncertainty. Moreover, this residual uncertainty can result in issuers being advised to undertake the time and expense of a so-called "Blue Sky" analysis. In some cases, such considerations may result in issuers determining to exclude U.S. investors (or at least non-qualified institutional buyers, e.g., accredited investors) from a transaction, even where an exemption from registration under the Securities Act is available. As the issuers in offerings by foreign issuers remain subject to the anti-fraud provisions of the federal securities laws, including Section 10(b) under the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, as well as state anti-fraud laws, investors would retain sufficient protections should the federal preemption be extended to a broader ranges of offers and sales conducted under federal exemptions.

Accordingly, in order to expand investment opportunities for sufficiently sophisticated U.S. investors, and to remove the uncertainty of application of blue sky laws for foreign issuers, we suggest expanding the definition of a "covered security" to include private placement offerings by foreign issuers to accredited investors or institutional accredited investors, without regard to the specific exemption.

2. The Forum believes that the definition of accredited investors should not be amended.

While we appreciate the arguments that have been presented by various other organizations, the Forum does not believe that the definition of accredited investors should be expanded. As the Commission noted in the Release "[s]ome offerings are exempt if they restrict sales to certain sophisticated or "accredited" investors that are presumed to possess sufficient financial sophistication and ability to sustain the risk of loss of their investment…" While there is a general theme to suggest expansion by way of some form of qualitative or educational attributes, rather than a strict quantitative or economic attribute, we believe that the issue is not whether the potential accredited investor is sufficiently sophisticated to participate in a

[1] 15 U.S.C. § 77r(b)(preempting state registration authority over a "covered security").

private offering, but that he or she is prevented from sustaining potentially life altering economic losses. Additionally, the general consensus amongst our issuer clients is that their fundraising needs are adequately met by the current accredited investor market through the exempt offering channels.

3. The Forum believes that retail investors should not be enabled to invest in pooled or other private investment strategies without additional disclosure and information requirements.

Retail investors are able to invest in U.S. public companies because of the disclosure and other requirements that are in place. These requirements are structured such that retail investors are thought to be able to understand the investment opportunity and process, and such investors will be able to exit the investment as and when needed. The fact that pooled investment opportunities are "pooled" does not address these issues. Unless the "pooled investment" includes advice and management by a registered investment advisor, encouraging retail participation in pooled investments into private fundraisings would seem to be at odds with the broader regulatory approach and the current regulatory and legal risk profile for market participants in these fundraisings. Furthermore, even with the participation of a registered investment adviser, the Forum believes that that the level of information, risk or liquidity of certain private investment opportunities might not be appropriate for retail investors. In order to adequately protect such retail investors, additional disclosure or information requirements should be put in place.

4. The Forum believes that simplifying the initial public offering process would encourage more public offerings.

The disconnect between the capital markets from retail investors is evidenced by the increase in private fundraisings and the relative decline in public offerings and public companies, which is problematic from both an economic and social perspective. Encouraging private companies to go public would encourage capital growth generally and increase access to growth opportunities for investors, retail and otherwise. Simplifying the initial public offering process and the regulatory requirements and restrictions on public companies is more rational, and more in line with the Commission's mission than encouraging private capital formation at the expense of public offerings. In order to facilitate more public offerings and encourage the creation of more public companies, the Forum believes that the Commission should consider simplifying the initial public offering process and the public company reporting requirements, such as removing or reducing the internal controls and procedures requirements under Sarbanes Oxley and the expansion of the "testing the waters" proposal to include more issuers.

Conclusion

We would be pleased to respond to any enquiries regarding this letter or our views on the Release generally. Please contact Daniel Winterfeldt at Reed Smith LLP (Tel: [redacted] or email: [redacted]) or Edward Bibko at Jefferies (Tel: [redacted] or email: [redacted]) if you have any enquiries in relation to this letter.

Respectfully submitted,

The Forum for U.S. Securities Lawyers in London