ANDREESSEN HOROWITZ

COWEN AND COMPANY

February 26, 2014 -

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

Re: Release No. 33-9497, File No. S7-11-13 – Regulation A and Exemptions Under Section 3(b) of the Securities Act of 1933

Ladies and Gentlemen:

We are writing to you in our capacity as Managing Partner of Andreessen Horowitz ("Andreessen") and Chief Executive Officer of Cowen and Company, LLC ("Cowen"). Andreessen is a venture capital firm which provides venture capital to private technology companies with breakthrough ideas and assists entrepreneurs to build the resulting business. Cowen is a registered broker-dealer providing investment banking advice and capital raising services to Emerging Growth Companies as well as equity research and sales and trading services for institutional investors in the growth sectors of the U.S and world economy, such as health care, technology and energy. In our roles, Andreessen and Cowen are situated at the crossroads of companies in need of venture and growth capital and institutional investors looking to invest in those companies.

We commend the Commission for recognizing the importance of Regulation A as reflected by its proposed changes to Regulation A. In our view, Regulation A offerings are an attractive financing alternative for growth companies, many of which require substantial amounts of capital. Regulation A is a less expensive option than a traditional registered offering and is more favorable as compared to a private placement.

Andreessen and Cowen have been enthusiastic proponents of the JOBS Act. We believe the "IPO On-Ramp" has been a great success in kick-starting the IPO market. The Commission has an opportunity to do the same for other growth companies seeking to raise capital. Andreessen and Cowen strongly believe 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.

With the following suggested changes to the current proposal, we believe Regulation A will be a more useful and practical means for growth companies to raise capital, achieving the intended goals of Congress. Our comments are consistent with the views outlined in a November 2013 report presented to the United States Treasury by the Equity Capital Formation Task Force which we both co-chaired, "From the On-Ramp to the Freeway: Refueling Job Creation and Growth by Reconnecting Investors with Small-Cap Companies."

I. **Eligible Issuers and Offering Limitations**

We believe that the Regulation A proposing amendments should be expanded to include reporting companies with a non-affiliate float of less than $250 million, which we will refer to as "micro-cap companies". Based on our experience, many of these micro-cap companies have substantial capital needs in order to grow their businesses but are unable to raise a sufficient amount of capital in a traditional registered offering. Though reporting companies may have the ability to raise capital using a Form S-1 or S-3, some micro-cap companies are ineligible to use Form S-3 and using a Form S-1 may be cost prohibitive. For those micro-cap companies that are eligible to use Form S-3, many are significantly limited by the amount of proceeds that may be raised due to the limitation set forth in Instruction I.B.6, which limits the amount that an issuer can raise to one-third of its non-affiliate public float during a 12 calendar month period. In these cases, a capital raise representing one-third of the company's non-affiliate public float oftentimes does not provide the company with a sufficient amount of capital to execute on its business plan within a given timeframe. As a result, many of these companies attempt Rule 506 offerings as a way to raise a substantial amount of capital. However, these offerings are oftentimes unsuccessful or come with onerous terms.

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 Regulation A proposing amendment 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. Periodic reports under the Exchange Act requires more detailed disclosure than reports under Regulation A, thus permitting incorporation by reference will provide meaningful investor protection while minimizing unnecessary costs and overlapping or duplicative reporting requirements.

We further believe that the Regulation A proposing amendments should be expanded to include foreign private issuers. The U.S. capital markets are the most sophisticated and liquid markets in the world. However, over the past 10 years, a number of foreign companies chose to forego the U.S. capital markets for their IPOs and a number of foreign private issuers de-registered from the U.S. While there are a number of reasons for these trends, the most common reason we hear is the cost associated with a U.S. IPO and the on-going cost associated with being a U.S. public company. We believe it is in the best interests of the U.S. to encourage foreign companies to raise capital from U.S. investors in a regulated and cost-efficient manner, and we believe the Regulation A regime is an ideal way for foreign companies to access the U.S. capital markets.

The global capital markets continue to become increasingly competitive and internationalized. The onerous nature of Sarbanes-Oxley has made public offerings and listings in the U.S. less attractive to foreign private issuers. If foreign private issuers continue to choose not to seek capital formation activities in the U.S. market because of either the restrictive liquidity of privately placed securities or the onerous and costly nature of Exchange Act reporting, the U.S. market suffers in reputation and risks sheltering U.S. investors from opportunities that generate above market returns.

Under Rule 12g3-2(b), the SEC already allows the securities of foreign private issuers that trade on foreign exchanges to trade in the U.S. market without becoming an Exchange Act filer. Purchasers of these securities are making their investment decisions based solely on the disclosure regimes of the foreign countries in which the foreign private issuer is primarily listed. We believe that, except for audited financial statements, foreign private issuers of a Regulation A offering should be required to disclose substantially similar information as a U.S. or Canadian issuer. For audited financial statements, we believe foreign private issuers should be permitted to use IFRS. This will likely increase the level of disclosure many foreign private issuers currently provide to U.S. investors, and will provide U.S. investors with adequate protection.

It is our opinion that by encouraging all issuers, including foreign private issuers, to seek capital formation activities in the United States under new Regulation A, we reinforce the message that investment from, not just a presence in, the U.S. market provides a staple for global growth. In addition, many foreign private issuers have significant U.S. operations that require capital formation activities that could be satisfied by new Regulation A.

We view that availing Regulation A to U.S., Canadian and all other foreign private issuers will serve to welcome and encourage all entrepreneurial companies, both foreign and domestic, to seek capital from U.S. investors at earlier stages. By allowing Regulation A to be utilized by foreign private issuers, not just those located in Canada, foreign private issuers can achieve broader U.S. capital formation activities in a way that provides a stepping stone to becoming listed on a national securities exchange and reporting under the Exchange Act. In addition, extending Regulation A in this way will also serve to diminish/eliminate the 'liquidity discount' that often accompanies private placements done under Regulation D and 144A, allowing for broader US investor participation.

For Regulation A offerings which include convertible, exercisable or exchangeable securities, we believe that the manner in which the size of the offering is determined should be amended to exclude the aggregate offering price of the underlying securities, until such time as those securities are convertible, exercisable or exchangeable. Footnote 112 of the Proposing Release states that:

> If the offering included securities that were convertible, exercisable or exchangeable for other securities, the offer and sale of the underlying securities would also be required to be qualified and the aggregate offering price would include the aggregate conversion,

exercise or exchange price of such securities, regardless of when they become convertible, exercisable or exchangeable.

In our experience, investors in small companies typically do not purchase straight equity securities, but will instead require warrants and/or convertible securities. For many of these offerings, the warrant is issued with an exercise price at a premium to the offering price and may be exercisable for a substantial number of shares relative to the offering size over a specified term, which is often five years. Similarly, a convertible security may be converted at a premium to the offering price and often has a five year maturity. For these types of offerings, if the aggregate offering price of the underlying securities is included in the $50 million offering size limitation, the actual proceeds to the company at the time of the Regulation A offering may be substantially less than the company requires to execute its business plan. Moreover, in the case of warrants, many times the company never receives any additional proceeds from the warrant because the warrant expires out-of-the-money, or, the company does not receive those proceeds until maturity of the warrant, much past the time in which the company needs the capital.

Summary Recommendations

Suggestion #1: **We propose that Tier 2 of Regulation A should apply to public micro-cap companies, thereby enabling these companies to raise a sufficient amount of capital needed to grow their businesses in a cost effective manner. We believe it may be appropriate to consider conditioning the availability of Tier 2 on a micro-cap company being current for the past two years in its reporting obligations under the Exchange Act.**

Suggestion #2: **We propose that micro-cap companies should be permitted to incorporate by reference their Exchange Act reports into their Offering Circular, thereby reducing the time and the cost of a Regulation A offering.**

Suggestion #3: **We propose that the ongoing reporting obligations under Regulation A for a micro-cap company be suspended for so long as the micro-cap company is current in its reporting obligations under the Exchange Act.**

Suggestion #4: **We propose that foreign-private issuers should be allowed to conduct Tier 2 Regulation A offerings.**

Suggestion #5: **We propose that the aggregate offering price of the underlying security should only be included in the $50 million limitation only during the 12-month period in which such security is first convertible, exercisable or exchangeable. This will allow the company to raise the capital it needs at the time it needs it.**

II. **Investment Limitation**

We believe that the 10% investment limitation should be removed or, in the alternative, not apply to "Accredited Investors," as that term is defined in Regulation D. Title IV of the JOBS Act was created as a means for smaller, growth companies, to access the public market in a less expensive, more streamlined manner. The statute does not mandate any limit on the amount an investor may purchase in a Regulation A offering. We believe that the disclosure obligations, and the liability that attaches thereto, is sufficient investor protection, and that limiting the amount an investor may purchase is unnecessarily restrictive.

All investors in Tier 2 offerings will have the means to make an informed investment decision and will have adequate protections against false and misleading statements. The proposed rules require that potential investors be provided an Offering Circular at least 48 hours in advance of confirming sales. Moreover, all versions of the Offering Circular will have been made public for at least three weeks prior to pricing the offering. This will provide investors with a substantial period of time to make an informed investment decision, and investors will have protection against false and misleading statements because of the Section 12(a)(2) liability that will attach to the offering materials. In addition, because the proposed rules do not put a limit on the amount of Regulation A securities investors may acquire in the after-market, the utility of the investment limitation is limited.

Alternatively, if the Commission decides that the 10% investment limitation is necessary, we believe that such limitation should not apply to "Accredited Investors." Under Regulation D, the SEC has bifurcated the investor universe into "accredited investors" and "non-accredited investors." Under Rule 506 of Regulation D, an unlimited number of accredited investors can each purchase an unlimited amount of privately placed securities. An "accredited investor," whether an individual or an institution, is assumed to have the financial wherewithal to make an investment decision, and to absorb any losses associated therewith, without the benefits of a disclosure document. We believe that accredited investors can make similar decisions and can bear similar risk with respect to Tier 2 offerings.

Limiting the amount investors can invest in a Tier 2 offering may significantly limit the amount of capital that an issuer can raise in a Tier 2 offering and may require a longer and more expensive marketing process for the offering. Circumstances may arise where a small handful of investors (most likely accredited investors) would be willing to invest a substantial amount of capital, but because of the 10% limitation, these investors may not be able to invest the amount they wish to invest, and may force the issuer to prolong the offering.

Summary Recommendation

Suggestion #1: **We propose that the 10% investment limitation be removed, or as an alternative, the limitation should be removed for "accredited investors."**

III. Section 12(a)(2) Liability and Research

We believe that the Commission should create a safe-harbor from Section 12(a)(2) liability for research reports prepared by broker-dealers on Regulation A issuers. Broker-dealers that participate in Regulation A offerings may choose to provide research coverage on those companies as a service to their investor clients. Broker-dealers may be reluctant to provide research coverage without a safe-harbor from Section 12(a)(2) liability similar to that in Section 2(3) of the Securities Act for emerging growth companies.

One of the primary goals of the JOBS Act was to encourage broker-dealers to provide research coverage for emerging growth companies. The JOBS Act accomplished this goal in part by amending Section 2(3) of the Securities Act to expressly state that "[t]he publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering…shall be deemed for purposes of paragraph (10) of this subsection and Section 5(c) not to constitute an offer for sale or offer to sell a security…". By deeming a research report not to constitute an offer for sale or an offer to sell, broker-dealers cannot be held liable under Section 12(a)(2) for the contents in a research report. In addition, Rule 139 contains a similar safe-harbor for broker-dealer research reports for companies that are not emerging growth companies.

It would be an inappropriate result for broker-dealers to have Section 12(a)(2) liability on research reports covering Regulation A issuers while a similar liability is not applicable for emerging growth companies or for companies that meet the requirements of Rule 139.

Summary Recommendation

Suggestion #1: We request that the Commission adopt a rule whereby a research report on a Regulation A issuer would not be deemed an offer for sale or offer to sell a security for purposes of Section 12(a)(2).

IV. **Federal Preemption of Re-Sales**

The proposing release defines "qualified purchaser" to encompass all offerees and purchasers of Regulation A offering as a simple means to preempt state blue-sky laws. We believe Regulation A should go further and preempt re-sales of Regulation A securities as well.

One of the greatest benefits of a Regulation A offering versus a 4(a)(2)/Regulation D offering is that the securities sold in the Regulation A offering will be freely tradeable immediately upon closing of the offering. Many institutional investors are restricted by their governing documents from investing in restricted securities. Under the current SEC proposals, we believe that these institutional investors will be allowed to invest in Regulation A securities because those securities will be freely tradeable. This is expected to result in improved investor demand for these offerings as well as improved terms and additional capital for issuers than may be available in a 4(a)(2)/Regulation D offering. However, without clear federal preemption of blue-sky laws governing the re-sale of Regulation A securities, investors, both retail and institutional, may be concerned about their ability to re-sell their securities which will reduce their willingness to purchase the securities in the offering.

Summary Recommendation

Suggestion #1: **We request that the Commission adopt a rule preempting state blue-sky laws from the re-sale of Regulation A securities.**

In conclusion, we are very pleased with the Proposed Rules and we hope you will take these comments - under advisement. Please do not hesitate to contact us with any questions or comments. -

Sincerely, -

Scott Kupor
Managing Partner, Andreessen Horowitz

Jeffrey M. Solomon
Chief Executive Officer, Cowen and Company