March 4, 2014

The Honorable Mary Jo White, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Rulemaking for "Regulation A-Plus" under Title IV of the JOBS Act of 2012; Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act (Rel. No. 33-9497; 34-71120; 39-2493; File No. S7-11-13)

Dear Chair White:

As Secretaries of State with primary securities regulatory jurisdiction, we welcome this opportunity to comment on the SEC's Proposed Rule Amendments for Small and Additional Issues Exemptions under Section 3(b) of the Securities Act ("Regulation A+ proposal" or "Regulation A-Plus proposal") to implement Title IV of the Jumpstart Our Business Startups Act ("JOBS Act"), and to register our strong opposition to the proposed rules' preemption of the ability of the states to require registration of these offerings and to review them. This is a step that disregards Congress' clear intention that the states' role in the review of these offerings be preserved, and that, in our judgment, places retail investors unacceptably at risk.

It would be irresponsible for states to shirk our responsibilities at home by ceding state authority, knowing how many investors have already been harmed by other federal measures that block state review.

Given the size of Regulation A-Plus offerings, and their predominantly local and regional character, state review of these offerings will be critical to ensuring their effective oversight.

The Commission should not need to be reminded that federal securities regulation has repeatedly proven to be inadequate to police the financial markets and protect investors, particularly with respect to small sized offerings. Indeed, recent past experience shows that registration exemptions intended to serve small and early stage issuers entail significant investment risk and fraud, and that responsible and rigorous oversight at the state level is the best way to attenuate and manage such increased risk. A prime example is in the area of private offerings sold in reliance on Regulation D, Rule 506, which are exempt from state review pursuant to provisions set forth in the National Securities Markets Improvement Act of 1996. It is primarily the states, and not the SEC, who confront the fallout of this regulatory failure and its impact on the investing public.[1]

The Commission has no authority to preempt state authority over small corporate offerings as contemplated in the Commission's Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act ("Regulation A+ Proposal").

[1] As Massachusetts Secretary of the Commonwealth William F. Galvin noted in a letter filed with the Commission on December 18, 2013: "Rule 506 offerings, which are preempted 'covered securities,' and which are substantially deregulated in sales to accredited investors, are the number-one source of state enforcement complaints for fraud. The lower-tier over-the-counter trading markets for stocks, such as the Pink Sheets Market and the OTCBB, which list stocks of small public companies, are notorious for providing insufficient information to the public and for fraudulent and abusive practices." *See* Letter to the SEC from Massachusetts Secretary of the Commonwealth William F. Galvin. December 18, 2013.

Congress specifically preserved state authority under Title IV of the JOBS Act. In fact, when the Regulation A-Plus legislation was under consideration, Congress considered, but ultimately rejected, language that would preempt state review of those offerings, citing both the "high-risk" nature of these offerings and the "essential" function that state review plays in discouraging fraud.[2] Congress' decision in this regard was affirmed on November 2, 2011, when the House of Representatives voted almost unanimously to remove preemptive provisions from its version of the legislation.[3]

Given the importance of a strong federal-state partnership in regulating today's extensive and complex securities markets and Congress' explicit rejection of state preemption in this very context, we are surprised and even outraged that the Commission would consider reversing Congress' decision in order to preempt state law.

Further, the Commission's use of the "qualified purchaser" definition under Section 18 of the Securities Act of 1933 is an alarming precedent, directly at odds with Congress' intent that qualified purchasers be "sophisticated" investors capable of protecting themselves in the financial markets.[4] By proposing to base "qualification" on the type of transaction the issuer is conducting, rather than on factors such as investor sophistication, financial resources, or any other indicator of risk bearing ability, the Commission is effectively redefining a term for the sake of its own expedience, and notwithstanding the plain intentions of Congress.

While the Commission may view the use of "qualified purchaser" here as the only means to its desired end, it is an illogical construct, ultimately damaging to investors and the Commission's credibility.

The Commission need not sacrifice state investor protections for Regulation A-Plus to succeed as a new means for small and emerging businesses to access investment capital.

During the SEC's Open Meeting to consider the proposed rules on December 18, 2013, you observed that one of several factors identified by the Government Accountability Office ("GAO") as contributing to the decline in the use of the existing Regulation A exemption was state securities law compliance. Although a number of other factors were also identified as bases for the decline in reliance on Regulation A – perhaps above all, the $5 million offering cap and the cost-effectiveness of Regulation A relative to other exemptions – states are nevertheless acutely sensitive to that perception, and have made a concerted effort in recent years to ameliorate those concerns by streamlining our processes and addressing unnecessary inefficiencies wherever they may exist.

States wholeheartedly share the Commission's desire to see Regulation A-Plus realize its fullest potential as a tool for small businesses to access investment capital, and recognize that doing so will require a careful balancing of the interests of both issuers and investors.[5] To that end, over the past year, states have undertaken an unprecedented effort to establish a straightforward and consolidated coordinated review system for Regulation A-Plus offerings.[6] Under the new state coordinated review system, which is presently being developed within the framework of the North American Securities Administrators Association ("NASAA"), issuers will be able to avail themselves of a "one-stop" filing process. Issuers will receive just one state comment letter (rather than several),

[2] See House Committee Report 112-206.
[3] Congressional Record Volume 157, Number 166 (Wednesday, November 2, 2011), pp. H7229-H7232.
[4] A House Report discussing 18(b)(3), noted the Congressional intent behind qualified purchasers. Specifically, the Report states: "...The Committee intends that the Commission's definition be rooted in the belief that "qualified" purchasers are sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary." H. Rep. No. I 04-622, 31-32 (1996)
[5] On the one hand, any exemption which fails to provide adequate protections will fall short of the goal because it will not be trusted by investors; on the other hand, an exemption that is perceived by issuers as having regulatory requirements that are unreasonable or overly costly will fall short because it will not be utilized by small businesses.
[6] For a detailed overview of the multi-state review protocols, see Testimony of Rick Fleming, Deputy General Counsel, North American Securities Administrators Association, Inc., Before the Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Securities, Insurance, and Investment, at a hearing entitled "*The JOBS Act at a Year and a Half: Assessing Progress and Unmet Opportunities*." October 30, 2013.

and will work to resolve the comments with two lead examiners who will be issuing comments on behalf of the states as a group.[7]

In light of this demonstrably serious commitment to improving state processes for reviewing Regulation A offerings, and the year-long effort by state securities regulators working within NASAA to address and resolve each and every state-level issue raised in the GAO report, the Commission's contention that Regulation A-Plus cannot succeed except by sweeping preemption of state Blue Sky law is simply not supportable.

In summary, we believe that in proposing rules to implement Title IV of the JOBS Act, the Commission has grossly exceeded its authority. Indeed, the SEC has no authority to preempt State Blue Sky laws except in the case of "qualified purchasers," and Congress was very clear that it intended qualified purchasers to be only "sophisticated" investors who can protect themselves in the financial markets. Moreover, the proposed rules, which make scarcely any mention of investor protection in discussing the question of preemption,[8] will significantly and unacceptably increase the risks facing investors who participate in this new segment of the securities markets.

We urge the Commission to remove state preemption from the proposed rules in order to protect investors and the integrity of the markets.

Sincerely,

Hon. Jesse White
Illinois Secretary of State

Hon. Connie Lawson
Indiana Secretary of State

Hon. William F. Galvin
Massachusetts Secretary of the Commonwealth

Hon. C. Delbert Hosemann, Jr.
Mississippi Secretary of State

Hon. Ross Miller
Nevada Secretary of State

Hon. William Gardner
New Hampshire Secretary of State

Hon. Elaine Marshall
North Carolina Secretary of State

Hon. Max Maxfield
Wyoming Secretary of State

cc: Commissioner Luis A. Aguilar
Commissioner Daniel M. Gallagher
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar

[7] In addition to streamlining the process, to make the exemption an attractive option for small businesses, and even startups, the proposal scales back some of NASAA's longstanding review guidelines, including, for example, the elimination of a requirement that promoters maintain minimum levels of equity in the business, and by shortening the escrow period for promotional shares.

[8] Within Section H of the proposed rules, which the SEC published on January 23, 2014 in the Federal Register, the term "investor protection" appears only three times. By contrast, the term is used nine times in the cost-benefit analysis alone.