

March 24, 2014

Elizabeth M. Murphy  
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**

Dear Ms. Murphy:

I am commenting on the proposed rulemaking to implement what is known popularly as Regulation A+. Authorized by Section 401 of the Jumpstart Our Business Startups Act (“JOBS Act or the Act”), the Commission’s goal is to create rules that unleash the potential of combining the creativity of entrepreneurs with the capital of the entire investing community.

The proposed rules do much to make Regulation A offerings a viable option for small business capital formation while ensuring that investors are protected from fraudulent schemes. Regulation A+, however, retains harmful vestiges that do not reflect the current state of capital markets and investor sophistication and will prevent many companies from using Regulation A to complete small offerings. While reforms such as preempting Blue Sky laws, expanding investment opportunities for non-accredited investors, and raising eligible offering amounts are necessary for full implementation of the JOBS Act, they are not sufficient. Placing obstructions to capital formation by restricting access for blank checks, Special Purpose Acquisition Companies (“SPACs”) and Real Estate Investment Trusts (“REITs”) will needlessly limit the power of Regulation A+ to concentrate small pools of capital to create jobs.

Simplified, Larger, and Broader Offerings: Proposed Rules That Make Sense

The importance of simplifying offerings and increasing the amount eligible to be raised in simplified offerings cannot be understated. It makes access to capital easier for businesses that need capital to expand by reducing transaction costs. Lest we forget, however, that the entire investing community also greatly benefits from the proposed rules with new access to investment opportunities that are currently available to only the richest few. These new rules are good for business, good for investors, and good for job creation.

### *Blue Sky Preemption*

Fifty different states, fifty different regulators, fifty different, duplicative, and destructive regimes; the biggest obstacle to small offerings are state Blue Sky laws. The legal burden to comply with fifty different regulators does not make sense for small offerings; the transaction costs overwhelm the transaction. While I do not doubt the overall sincerity of state securities regulators, it seems that some of their objections to preemption stem from fear of obsolescence than fear for the investors who live in their states. The Commission's proposed rules provide sufficient investor protection that should allay the fears of state securities regulators that Regulation A+ offerings will be a breeding ground for scams. The goal of JOBS Act is to simplify small offerings to increase their frequency and scope; Blue Sky preemption is necessary to achieve that goal.

### *Increased Offering Size*

Businesses need capital no matter their size or industry, and increasing the offering limit to \$50 million is a step in the right direction to ensure worthy yet capital-intensive ideas receive adequate capital for their realization without excessive transaction costs. While I think dividing the offerings into tiers with different rules needlessly complicates things, this should not drive up transaction costs to the point where Regulation A+ is a dead letter. But the proposed rules make Tier 2 offerings far more attractive because of the Blue Sky exemption and I think most offering companies will select Tier 2 because of the significant reduction in transaction costs the exemption provides. No matter how the Commission wants to distinguish the types of offerings, the new ability to \$50 million with limited transaction costs is welcomed.

### *Participation by All Investors*

The Commission is right to recognize that everyone should be able to participate in our bright economic future no matter the size of their bank account. The proposed rules help to end the accredited investor monopoly and expand opportunities for wealth creation to the middle-class. While it is foolish to say that ending the accredited investor monopoly will compress wealth stratification in any major degree, it ends the inherent unfairness of denying one class of investors a limited-liability investment opportunity because they are not wealthy enough.

While state securities regulators frame their opposition to universal participation around protecting small investors from risky investments, they are simply forcing their judgment as to what is a good investment on to the investors in their respective states. The required disclosures and reporting under Regulation A+ give all investors the information necessary to make judgments about the risks involved in these small offerings. Do the state securities regulators really believe that a person's ability to read and understand offering documents radically changes when you have \$1 million net worth? So long as there are adequate disclosure and reporting requirements and an active securities plaintiff bar all investors are adequately protected in these small offerings. The Commission should not presume that the idiot sons of wealthy families are smarter than the rest of the nation and should finalize rules that allow all investors to participate in these small offerings.

## Entity Discrimination: Rules That Unfairly Discriminate

While the proposed rules do much to advance the ability of companies to raise capital and level the playing field for investors, there are restrictions in the proposed rules that pose a legitimate threat to effective implementation of the JOBS Act. The Commission should eliminate these proposed rules and instead adopt rules that maximize the opportunities for small offerings under the proposed rules. Restrictions on blank checks, SPAC's and REITs are ignorant of market realities, prevent investors from participating in worthy ventures, and restrict classes of businesses from the benefits of the proposed rules without merit.

### *Blank Check Companies*

Blank check companies are excluded from benefiting from the proposed rules for one reason, their checkered history. However, Rule 419 exists. The investor protections provided by Rule 419 are good enough for large offerings; there is no reason for prohibiting small unregistered offerings by blank check companies provided that the core investor protections of Rule 419 still apply. Forcing blank check companies to register their securities creates transaction costs so high that they effectively eliminate small blank check offerings and this will prevent many startups from raising funds using Regulation A. The new rules should make it easier for all companies to make small offerings and should not discriminate against blank checks based on pre-Rule 419 history. Furthermore, sub-dividing blank checks into operating companies and non-operating companies will just increase transaction costs while providing no substantive additional investor protection. The proposed rules should not needlessly restrict how promoters and investors concentrate capital. Blank checks are a valid way to raise capital, more opportunities to raise capital will create more jobs, and the Commission should not continue to ban blank checks from using Regulation A.

### *Special Acquisition Vehicle Companies*

Similarly, there is no reason that Special Acquisition Vehicle Companies ("SPACs") should be excluded as well. These entities are the securities industry's response to Rule 419 that the blank check offering was not dead. Quite simply, it provides the protections of Rule 419 and if an investor does not approve of management's acquisition, the investor gets a refund minus certain expenses. These are hardly thinly capitalized penny-stocks that are taking investors on a wild ride; SPACs are legitimate companies that wish to raise money to take advantage of investment opportunities without being so specific as to lose market advantage in their acquisition strategy. Additional disclosure burdens are simply unnecessary because of the protections built into the structure of SPACs, if investors do not like the deal they do not have to participate. Restricting SPACs from using Regulation A will prevent the formation of small SPACs and this undermines the JOBS Act's goal of creating more jobs. More acquisitions mean more jobs.

### *Real Estate Investment Trusts*

Commenters that propose restrictions on small offerings of Real Estate Investment Trusts (“REITs”) is very confusing. If anything, small exempt offerings would be a very good way to raise money for real estate deals and allow investors greater opportunities to invest in real estate. We cannot forget that the economic crisis that precipitated the JOBS Act was in part caused the contraction of capital available for real estate deals. Regulation A offerings for REITs under the proposed rules will facilitate capital formation to purchase real estate quickly and with limited transaction costs. This enables investors to participate in targeted real estate deals that can produce immediate return on investment. Additional disclosures or reporting requirements are simply unnecessary and only drive up transaction costs. REITs operate with a simple business plans and have real assets to back their securities; the rules should treat REITs as any other company under Regulation A. Opening up new opportunities for capital formation to purchase real estate is direct stimulus for our national real estate market and will create jobs.

### Conclusion

The new rules must create jobs, and the proposed rules are a substantial step to opening up a new world of capital for startups and small businesses to create those jobs. Freedom from onerous Blue Sky laws, greater offering amounts, and a larger pool of potential investors, these are the proposed rules that effectively implement the JOBS Act by making it easier to raise capital and should be adopted. However, the proposed rules that discriminate against certain offerings undermine the ability of businesses of all types to raise capital via small offerings and should not be adopted. The Commission must adopt rules that unleash the potential of combining the creativity of entrepreneurs with the capital of the entire investing community.

Thank you for the opportunity to comment,

/s/ Ryan C. Gilman

Ryan C. Gilman, Esq.