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

Re: Revisions of Limited Offering Exemptions in Regulation D:
File Number S7-18-07
Release Nos. 33-8828; IC-27922

Dear Ms. Murphy:

We appreciate the opportunity to comment on the above-referenced release (the "Release")[1] on behalf of our state government client, which strongly supports the Commission's proposal to add governmental bodies to the definition of accredited investor and also supports a similar expansion of the list of qualified institutional buyers in Rule 144A to include governmental bodies. Since the Release was issued in August 2007, many commenters have spoken favorably of the proposals in the Release related to governmental bodies, and we urge the Commission to proceed with this Rulemaking.

The Commission Should Expand the Definition of Accredited Investor to Include Sophisticated Governmental Bodies Such as State Governmental Bodies

We strongly support the Commission's proposal to expand the types of entities that qualify as accredited investors under Regulation D, Section 501(a) and Rule 215.

As proposed, the definition of "accredited investor" in Rule 215(c) and Section 501(a)(3) of Regulation D would be amended to read, in pertinent part:

> "Any corporation **(including any non-profit corporation)**, Massachusetts or similar business trust, partnership, **limited liability company, Indian tribe, labor union, governmental body, or other legal entity with substantially similar legal attributes**, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000 **or investments in excess of $5,000,000**...."

[1] 72 Fed. Reg. 45,116 (Aug. 10, 2007).

(emphasis added to show changes to current definition).

The proposal would define "governmental body" for purposes of both Rule 215 and Regulation D in Section 501(g) of Regulation D to include any:

> "(1) Nation, state, county, town, village, district or other jurisdiction of any nature;
> (2) Federal, State, local, municipal, foreign or other government;
> (3) Governmental or quasigovernmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal);
> (4) Multi-national organization or body; or
> (5) Body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature."

This set of amendments is important for governmental bodies, including, for example, state governments, in the investment of their sovereign funds. Particularly in the contexts of investments in fixed-income investments and private equity investments, many governmental bodies participate as investors in private placements. Although state governmental bodies clearly qualify as sophisticated institutional investors that are permitted investors in private placements conducted under Section 4(2) of the 1933 Act, as well as under various state blue sky laws,[2] the current omission of governmental bodies from the list of "accredited investors" in Rule 215 and Regulation D (and from the definition of "qualified institutional buyer" in Rule 144A as discussed further below) raises issues that can interfere with governmental bodies investing in private placements conducted under those rules.[3] This omission of governmental bodies from the list of accredited investors in the rule can reduce the ability of a governmental body to gain access to appropriate investment opportunities and fully diversify its investment portfolio, potentially impacting risk and return characteristics of the portfolio in a adverse manner.

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[2] *See e.g.* the terms "financial or institutional investor" in Section 101(5)(iv) of the Uniform Securities Act (1985) and "institutional investor" in Section 102(11)(O) of the Uniform Securities Act (2002).

[3] Although Regulation D allows an issuer to accept up to 35 "non-accredited" investors in Regulation D private placements, this may not be enough slots to accommodate all governmental bodies and similarly sophisticated investors not specifically listed as "accredited investors" in the rule who wish to invest. In addition, there are additional disclosure requirements for offers and sales to non-accredited investors and some uncertainty among issuers as to whether the disclosure documents otherwise used in the offering are sufficient for non-accredited investors.

We note that foreign government bodies are not similarly limited from accessing unregistered U.S. investments, because they are permitted in invest in parallel Regulation S offerings and purchase non-U.S. secondary market resales of private securities. We do not believe it is good policy to allow foreign governments free access to our domestic investment opportunities that is denied to our domestic sovereign governments.

In addition, the inability of governmental bodies to invest in certain types of private offerings may tend to reduce capital otherwise available to issuers or available to provide liquidity in 144A markets. In the current economic environment, limiting the ability of issuers to access an entire category of highly solvent, sophisticated investors in the form of governmental bodies, may be detrimental to the sustained recovery of our economy.

We urge the Commission to move forward with this proposal as rapidly as possible. We note that the Commission's proposal to include governmental bodies in the definition of "accredited investor" has received favorable comment from the state securities commissioners.[4]

To the extent that other aspects of the rulemaking proposals contained in the August 2007 Release pose more difficult issues that the Commission is not prepared to act upon at this time, we respectfully request that the amendment of the definitions to include governmental bodies within the list of "accredited investors" be moved forward as a narrower amendment to Rule 215 and Regulation D without other provisions that may be more controversial.

Investors should not be excluded from the definition of "accredited investor" simply because the rules do not contemplate the form of association selected by the investor. If a state governmental entity were organized as a trust, partnership or corporation, or if the state were acting on behalf of a pension plan for its own employees, it would fall squarely within the definition of "accredited investor." However, because many state governmental bodies are not separate trusts, corporations or partnerships, but instead are a part of sovereign governmental entities investing for themselves as principals, they do not fit neatly within the definition. Issuers conducting private placements to other governmental bodies face the same problem and have, in various instances, relied upon Commission Staff no-action letters. Given the nature of no-action letters and the variety of fact patterns that may differ from the letters, we believe the better approach is for the rules to be amended as proposed by the Commission specifically to address the status of these governmental bodies and include them within the list of "accredited investors."

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[4] Letter to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, from Karen Tyler, President, North American Securities Administrators Association, Inc. and Director, North Dakota Securities Department. (October 26, 2007) at pp 14-15 (NASAA Comment Letter submitted in rulemaking docket for this proposal).

Adding governmental bodies to the definition of accredited investor would allow greater flexibility to governmental bodies to participate in certain investments without raising investor protection concerns. Rather, as stated earlier by NASAA in its favorable 2007 comment on this proposal, the amendment would remove an arbitrary distinction resting on the entity's form of association, where there is no apparent relationship between the entity form and the need for the regulation.

We note that the rationale underlying the inclusion of certain categories of persons and entities within the list of "accredited investors" is essentially to make a judgment on whether that category of persons or entities needs the protections associated with a registered public offering or, instead, are likely to be sophisticated investors able to understand and bear the risks associated with the investment. The anomaly of the current definition is that an individual with no assets whatsoever and no particular knowledge of or experience with finance or investments, but an annual income over $200,000, is an "accredited investor," while a state government with an investment portfolio worth billions of dollars, a large, full time staff of investment professionals, and a stable of prominent investment advisory firms reviewing and providing portfolio investment advisory services to it, is not an "accredited investor."

Moreover, as Regulation D is currently written, a state is deemed to be an "accredited investor" that is deemed sophisticated and able to fend for itself when investing in unregistered securities on behalf of its employees' pension plans, but not when it is investing on its own behalf as principal. Surely this is a drafting oversight, not a considered policy judgment, and should be corrected.

The Commission Should Similarly Expand the List of Qualified Institutional Buyers in Rule 144A to Include Governmental Bodies

The Release requested comments on whether the list of qualified institutional buyers (QIBs) in Rule 144A(1)(i)(H) should be expanded to include governmental bodies in a similar manner to the proposed Rule 501(a)(3) expansion of the list of institutional accredited investors. We support this expansion for governmental bodies. We believe that governmental bodies that meet the $100 million investment size threshold under Rule 144A should qualify as QIBs for the reasons articulated above.[5]

We respectfully propose that Rule 144A(1)(i)(H) be amended as shown in the paragraph below (added language in bold for emphasis):

[5] We note that NASAA commented favorably on this addition to the definition of "qualified institutional buyer" in their 2007 comment letter submitted in the rulemaking docket on this proposal. *See* footnote 4 *supra*.

> Any organization described in section 501(c) (3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, **governmental body as defined in section 501(g) of Regulation D under the Act,** or Massachusetts or similar business trust; and

Allowing governmental bodies that meet the investment size threshold to qualify as QIBs would increase such entities' flexibility in their investments without posing an increased risk to the markets or investors. Furthermore, this approach is consistent with the Commission's proposal to expand the definition of accredited investor. On behalf of our client, we strongly support this proposal and the similar expansion of the list of entities that may qualify as QIBs. As is the case with the definition of "accredited investor" in Regulation D, the current omission of "governmental bodies" in the definition of "qualified institutional buyer" in Rule 144A, reduces the ability of a governmental body to gain access to appropriate investments (particularly fixed income investments that are issued and can be resold under Rule 144A rather than only statutory 4(2) restricted resale offerings), impairs the ability of state governments to resell fixed income investments and to fully diversify their investment portfolios, and may also reduce liquidity otherwise available to 144A markets.

We appreciate the opportunity to comment on the Release and thank you for your consideration of these comments. If you have any questions or wish to discuss them further, please do not hesitate to contact me at (202) 942-5745.

Sincerely,

David F. Freeman, Jr.