

Congress of the United States
Washington, DC 20515

June 3, 2014

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

Dear Chair White:

We write to express concern about the sweeping preemption of state law that the Securities and Exchange Commission (“Commission”) has proposed as part of its rules to establish a new exemption from registration under Section 3(b) of the Securities Act and implement Title IV of the Jumpstart Our Business Startups (“JOBS”) Act (referred to herein as “Regulation A Plus”).

Preemption of state and local law by the federal government is an extremely serious matter. The Supremacy Clause of the U.S. Constitution vests preemptive authority exclusively with Congress. Questions related to the exercise of this authority are among the most sensitive and important questions that Congress considers, especially when enacting major legislation such as the JOBS Act. We are deeply concerned that in proposing such preemption, the Commission has exceeded its authority, acting in direct contravention of the clear and expressed intent of Congress that state authority to review these offerings be preserved.

When debating the legislation that would eventually become Title IV of the JOBS Act, Congress debated at length and ultimately rejected provisions that would have completely preempted the States’ authority to regulate Regulation A Plus offerings. In fact, the House of Representatives voted on an overwhelmingly bipartisan basis 421-1 to strike language that would have broadly preempted state authority to regulate Regulation A Plus securities, opting instead for a narrow, tailored preemption when such securities are sold to a small universe of sophisticated investors who are deemed to be “qualified purchasers.” Congress intended this new language to preserve state authority over the vast majority of Regulation A Plus offerings, particularly when those securities are sold to smaller retail investors. In crafting this limited preemption, Congress recognized that state securities regulators are closest to the investing public

and have extensive experience in overseeing smaller, regional offerings, such as those that will result from the implementation of Title IV of the JOBS Act.

Notwithstanding the expressed intent of Congress, the Commission recently proposed rules to implement Title IV that would change the traditional definition of “qualified purchaser” in order to impose precisely the type of broad preemption of state authority that Congress decisively rejected. By proposing rules that would define any purchaser of a Regulation A Plus security as a “qualified purchaser,” irrespective of such investor’s circumstances, sophistication, or any other criteria, the Commission’s proposed JOBS Act rule would have the practical effect of preempting all state authority to review Regulation A Plus offerings. Such broad preemption should only occur with the express consent of Congress, and it certainly should not occur against clear congressional intent to the contrary.

We are alarmed by the Commission’s action. The Commission has no authority to substitute its own preference for the clear judgment of Congress regarding preemption of state law—to do so is both unlawful and likely unconstitutional. Given the States’ historic role as the primary regulators of smaller offerings, the Commission’s strained resources, and express congressional intent to preserve the States’ authority over Regulation A Plus securities, we believe the Commission has significantly overstepped its authority in proposing its qualified purchaser definition.

The Commission has an obligation to implement Title IV of the JOBS Act in a manner that is consistent with both the interests of investors and businesses and the clearly expressed intent of Congress. The Commission should remove the preemption of state law prior to adopting final rules.

Sincerely,


STEPHEN F. LYNCH


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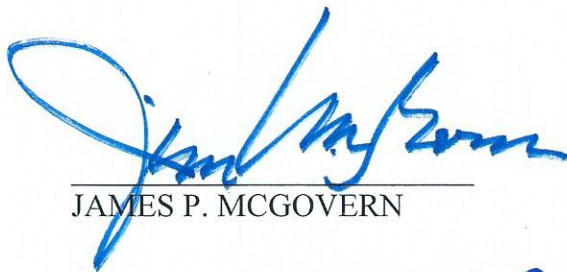

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