

**SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES**
Washington, DC 20549-3628

September 23, 2015

The Honorable Mary Jo White
Chair
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chair White:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation to modernize Rule 147 to facilitate recently enacted and future state-based crowdfunding initiatives. This recommendation was discussed at a meeting held on June 3, 2015, and the general concept of the recommendation was unanimously approved by the members of the Advisory Committee present and voting at that meeting. The specific recommendation, as enclosed, was voted upon and approved on September 23, 2015.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request with respect to this recommendation.

Respectfully submitted on behalf of the Committee,

Stephen M. Graham
Committee Co-Chair

M. Christine Jacobs
Committee Co-Chair

Members of the Committee

Charles Baltic
David A. Bochnowski
John J. Borer, III
Dan Chace
Milton Chang
Stephen M. Graham
Shannon L. Greene
Sara Hanks
John Hempill
M. Christine Jacobs
Richard L. Leza**
Sonia Luna
Catherine V. Mott
David J. Paul
Timothy Reese*
Timothy Walsh
Gregory C. Yadley

Official Observers

Michael Pieciak
Javier Saade

* Not present at the meeting held on June 3, 2015.

** Not present at the meeting held on September 23, 2015.

Enclosure

cc: Commissioner Luis Aguilar
Commissioner Daniel M. Gallagher
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Keith Higgins
Elizabeth Murphy
Sebastian Gomez
Julie Davis

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

Recommendation to Modernize Rule 147 under the Securities Act of 1933

AFTER CONSIDERING THAT:

1. The ability of emerging companies to raise capital in the private markets is critical.
2. In the near future, a majority of states will have adopted some form of state-based crowdfunding. According to the North American Securities Administrators Association (“NASAA”), as of June 3, 2015:
 - 16 states and the District of Columbia have fully enacted some form of state-based crowdfunding pursuant to which 91 offerings have been undertaken within the last twelve months since the adoption of these provisions;
 - 9 states have passed crowdfunding legislation and are engaging in rulemaking to finalize these state-based crowdfunding provisions;
 - 12 states have crowdfunding legislation pending; and
 - 3 states are investigating whether to adopt state-based crowdfunding provisions.
3. Section 3(a)(11) of the Securities Act of 1933 provides an exemption from federal registration for intrastate offers and sales of securities. Securities Act Rule 147 provides a “safe harbor” for companies seeking to meet the requirements for the Section 3(a)(11) exemption. The Commission adopted Rule 147 in 1974 but has not since updated the rule. State regulators and practitioners have indicated that current requirements in Rule 147 make it difficult for issuers to take advantage of the new state-based crowdfunding provisions.
4. There are three identified areas that currently make it difficult for issuers to use Rule 147:
 - The rule does not allow offers to out-of-state residents; therefore, an offering placed on a publicly-available website or actively promoted on social media and viewable by out-of-state residents is impermissible under the rule. This is an impediment in the age of the Internet and social media.
 - The rule requires three 80% tests for an issuer to be deemed “doing business” within a state: that the issuer generates at least 80% of its revenues in-state, holds at least 80% of its assets in-state, and uses at least 80% of the gross proceeds of the offering in-state. These tests are difficult to satisfy and render many contemporary small businesses seeking local financing ineligible to rely upon the rule.
 - Issuers must be incorporated or organized in the state where the intrastate offering would be conducted.

THE COMMITTEE RECOMMENDS THAT:

The Commission modernize Securities Act Rule 147 to facilitate recently enacted and future state-based crowdfunding initiatives. The Commission should consider the following:

- 1) Allowing offers made in reliance on Rule 147 to be viewed by out-of-state residents, but require that all sales be made only to residents of the state in which the issuer has its main offices;
- 2) Removing the need to use percentage thresholds for any type of issuer eligibility requirement, and evaluating whether alternative criteria should be used for determining the necessary nexus between the issuer and the state where all sales occur; and
- 3) Eliminating the requirement that the issuer be incorporated or organized in the same state where all sales occur.