SECURITIES AND EXCHANGE COMMISSION

ADVISORY COMMITTEE ON SMALL AND EMERGING COMPANIES

Washington, DC 20549-3628

May 15, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chairman Clayton:

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 regarding secondary market liquidity for Regulation A securities. This recommendation was discussed at the Advisory Committee meeting held on February 15, 2017, and approved by the members of the Advisory Committee present and voting at a meeting held May 10, 2017.

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 these recommendations.

Respectfully submitted on behalf of the Advisory Committee,

Stephen M. Graham
Committee Co-Chair

Sara Hanks
Committee Co-Chair

Members of the Advisory Committee
Robert Aguilar
Xavier Gutierrez* **
Brian Hahn
Jenny Kassan**
Catherine V. Mott
Jonathan Nelson**
Patrick Reardon
Lisa Shimkat
Annemarie Tierney
Gregory C. Yadley*
Laura Yamanaka

Non-voting members
Michael Pieciak
Joseph Shepard*

* These members plus Co-Chair Stephen Graham were not present at the meeting held on February 15, 2017.
** These members were not present for the Advisory Committee discussion and vote held on May 10, 2017.

Enclosure
cc: Commissioner Michael S. Piwowar
Commissioner Kara M. Stein
Shelley E. Parratt
Elizabeth Murphy
Sebastian Gomez Abero
Julie Z. Davis

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

Recommendation Regarding Secondary Market Liquidity for Regulation A, Tier 2 Securities

AFTER CONSIDERING THAT:

1) The Advisory Committee's objective is to provide the U.S. Securities and Exchange Commission (the "Commission") with advice on its 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, among other things, capital raising by emerging privately held small businesses and publicly traded companies with less than $250 million in public market capitalization.

2) Secondary market liquidity is integral to capital formation. Small businesses trying to attract capital often struggle because potential backers are reluctant to invest unless they are confident there will be an exit opportunity. Capital is often more expensive or not available for issuers that are not able to provide investors with secondary market liquidity. Also, securities lacking an available market generally bear an illiquidity discount on value.

3) Limited possibilities for liquidity means investors' capital may be locked up longer than they would like, hindering their ability to build portfolios with multiple, diverse investments. Liquidity limitations also prevent capital from being put to use in the next investment.

4) Regulation A provides for the preemption of state securities law registration and qualification requirements for securities initially offered or sold in Tier 2 offerings; however, secondary sales of these same Tier 2 Regulation A securities require compliance with disparate state law requirements. This means willing sellers and buyers in the secondary trading market must find exemptions on a state by state basis.

5) There are substantive differences in the various state exemptions. This lack of uniformity inhibits the development of a national secondary trading market.

6) One popular exemption for secondary trading is the "manual exemption," which is currently available in 39 of the 54 U.S. jurisdictions. These provide an exemption for secondary trading by non-issuers through a broker dealer, if the issuing company has financial and other information published in a designated securities manual. The exemption is based on the availability in the manual of current information about an issuer that enables parties on both sides of the trade to make an educated investment decision.

7) While there used to be more, there is currently only one remaining designated securities manual (published by Mergent, formerly known as Moody's). However, company information available on certain OTC Markets marketplaces is now recognized for purposes of the state blue sky manual exemption in 21 jurisdictions.

8) Complying with the manual exemption can be costly for companies, since issuers must pay to have their information disseminated. Additionally, there is not currently a centralized information portal accepted by all jurisdictions where investors can find that information.

9) Tier 2 Regulation A issuers are subject to initial and ongoing disclosure requirements that are greater than the information that is included in a manual.

10) The information in Tier 2 Regulation A ongoing reports is easily available to the public on EDGAR.

THE COMMITTEE RECOMMENDS THAT:

1. The Commission take steps to help reduce friction in secondary trading by holders of Tier 2 Regulation A securities where the issuer is current in its ongoing reports.

2. The Commission collaborate with NASAA in this endeavor.

3. The Commission use its authority under Section 18 of the Securities Act to preempt from state regulation the secondary trading in securities of Tier 2 Regulation A issuers that are current in their ongoing reports.[1]

[1] This approach would replicate what is the equivalent of a uniform manual exemption across all 54 jurisdictions, with EDGAR serving as the central repository.