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VIA E-mail (rule-comments@sec.gov)
Division of Trading & Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: File Number S7-14-19; Proposal for a similar rule or amendment to Securities Exchange Act Rule 15c2-11 for private companies that desire a secondary market for their securities by providing ongoing disclosures, audits, and trading only through alternative trading systems

Dear Commission –

In September, the Securities and Exchange Commission proposed amendments to Exchange Act Rule 15c2-11, designed to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. The proposed amendments would provide greater transparency to the investing public by requiring that information about the issuer and the security be current and publicly available before a broker-dealer can begin quoting that security. The established premise is that information and disclosures leads to symmetries, transparency market credibility and investor protection. We believe the basis for allowing broker-dealers to quote OTC securities should likewise apply to broker-dealers wishing to facilitate secondary trading of unrestricted private company securities.

The burgeoning private securities market coupled with companies remaining private for longer has created a huge unmet audience for secondary trading of unregistered and unrestricted private company securities. Given the lack of transparency in the private markets, the SEC should consider a similar rule to require ongoing disclosures (similar to those in Rule 15c2-11) for private companies seeking liquidity for their investors in secondary markets. The rule should standardize the scope and frequency of disclosures, require audits and 3rd party verification of the disclosures in return for allowing secondary trading. As a result, many private issuers will be motivated to furnish information to current and potential investors. Doing this will not only align incentives (companies can better attract investors if they provide ongoing disclosures and access to liquidity) but will bridge information gaps/data asymmetries and provide valuable data similar to public-market generated pricing information including EBITA multiples and cost of capital estimates that are essential to the functioning of private markets.

By creating this rule, not only will investors in private companies have reviewed disclosures equivalent to 15c2-11 reporting companies but such a rule can tackle state level challenges that inhibit investor protection because state laws are not universal, not uniform, not standardized,

bureaucratic and costly – all of which deter issuers from state registration without necessarily stopping investors from transferring unregistered, exempt securities.

According to Chairman Clayton, "When there is little or no current and publicly available information about an issuer, it is difficult for an investor or other market participant to evaluate the issuer and the risks involved in purchasing or selling its securities."[1] This statement is true for both public and private markets. By creating a similar rule to 15c2-11 for private companies that wish to have liquidity for their investors on secondary markets, regulators and investors would essentially have what they have in the public markets: standard disclosures, trading only through regulated entities and audited financials.

Introduction – ongoing disclosures are a rarity in the private capital markets

Ongoing fulsome disclosures are uncommon in the private capital markets. However, when it comes to protecting investors, it seems *everyone* (the SEC, FINRA, NASAA, as well as Republicans and Democrats) agrees that more company disclosure means better investor protection. The lack of ongoing reporting requirements for private companies similar to those for public companies leaves investors in the dark when they wish to buy or sell private securities. This is becoming more of a concern as exempt, unregistered securities continue to enter the secondary market at an accelerated pace due to the JOBS Act. We believe the SEC should consider enacting a rule change to provide that certain privately issued securities are deemed a "covered security" and pre-empt state Blue Sky laws to better facilitate secondary trading, so long as such issuers agree to three requirements: 1) they will provide current and ongoing disclosures in a publicly available manual or database; 2) trades will only be conducted through a registered alternative trading system ("ATS"); and 3) they will maintain audited financial statements.

Background

The private markets continue to grow and eclipse the public markets. At the September US House Financial Services Committee titled "Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment," there was much discussion about the growth of the private capital markets, whether there are sufficient guardrails to protect investors and what more Congress and the SEC could be doing. Congresswoman Maxine Waters (D-CA), Chairwoman of the House Financial Services Committee, said "In 2000, private assets under management totaled less than $1 trillion. That figure has since skyrocketed to over $5 trillion today, and recent research has indicated that private markets are growing at more than twice the rate of their public counterparts."

The private capital markets have worked well for Venture Capital and Private Equity where professional managers can perform due diligence, require disclosures and negotiate valuations. And VCs and PE pride themselves on their performance with these private companies. Retail investors have been predominately excluded from these markets until the 2012 JOBS Act when Regulation D Rule 506 general solicitation, Regulation Crowdfunding and Regulation A+ increased the ability for retail investors to access private company financings. Now there is much speculation that the real opportunity for retail investors is in the secondary market for unrestricted

[1] https://www.sec.gov/news/press-release/2019-189

unregistered securities where unrealized value still exists for high growth ventures. However, where will the most recent company and financial information come from to inform investors about any material changes or assist them in determining if a valuation/share price is reasonable? In the public markets this information comes from ongoing disclosures through public filings. In the private markets, access to information is dependent on voluntary disclosures by the issuer.

Why there are no ongoing disclosures for private companies

The rationale is that private companies wish to keep their company and financial information private and do not wish to deal with the cost, burden and compliance of public disclosures. Since there are no reporting requirements for the overwhelming majority of private companies there is a dearth of information about these companies as they continue to operate. The only private companies that must comply with ongoing reporting requirements are those that raise money under Regulation A, Tier 2 or have the streamlined reporting obligations under Regulation Crowdfunding. Hence there are many thousands of unregistered securities that have been issued and are outstanding with no data to inform investors about the status of the respective businesses. For those companies that wish to stay private and not facilitate liquidity for their investors this may be acceptable since lack of liquidity was the expected norm when investors invested. However, for companies that wish to provide liquidity for their investors on an ATS this should not be the case.

Why this is a risk to investors in the private marketplace

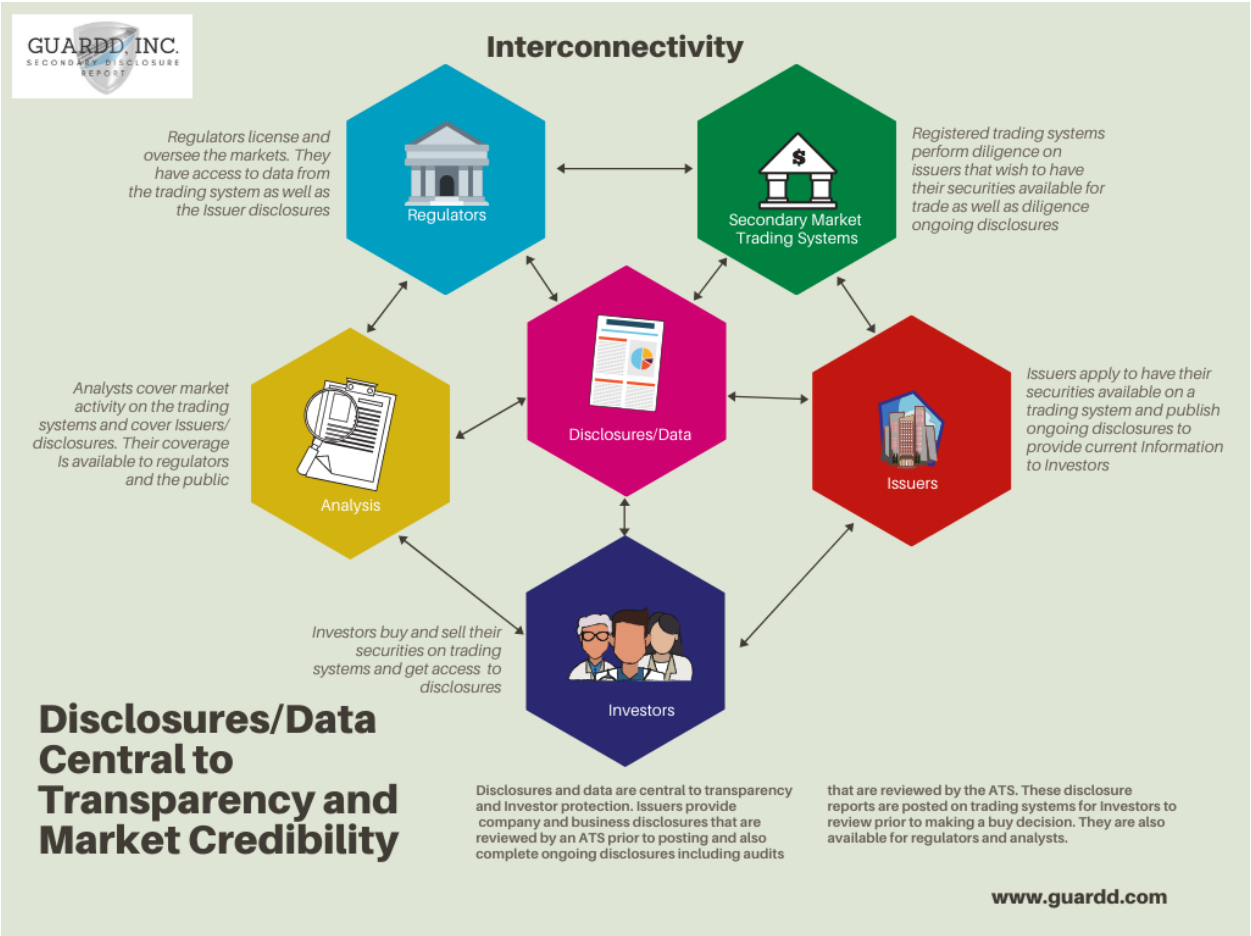
Without access to continuing business and financial information about a company, investors are in the dark. There is no basis for an investor to make an informed decision about the company, the valuation or the share price on an ongoing basis. They do not know the company's financial condition, the company's business and management status and prospects, related-party transactions, share ownership, fundamental changes, bankruptcy, change in accountant, non-reliance on prior financial statements or audit report, change in control and departure of officers. Yet with advances in financial technology, management can file ongoing disclosure reports in a matter of hours and at a fraction of the cost of public disclosures. This information can be distributed to participants in an ATS, investors, state securities regulators and the SEC at no charge and on a real-time basis. Doing so would provide investors, regulators and media with information and data that support informed decisions as well as credible, efficient markets.

Key elements to efficient secondary markets

We believe there are six key elements to the secondary market (see image below): (1) issuers who wish to allow their securities to be available on secondary market trading systems; (2) disclosures and data about issuers that include the most recent and accurate business and financial information; (3) investors who wish to buy or sell their exempt unregistered securities; (4) marketplaces which act as clearinghouses between investors who wish to buy and sell securities; (5) regulators who facilitate and oversee the markets; and (6) analysts and researchers that cover the markets and securities and help bring transparency.

Disclosures & data are key to transparency and market credibility

Disclosures and data are central to transparency and investor protection. While regulators oversee the markets, they cannot perform proper oversight without data. Likewise, investors cannot make informed decisions without the most recent underlying company information behind a security. Without ongoing disclosures, buyers and sellers have little information upon which to base the price of a security, nor do analysts have any information to estimate fair value. Therefore, it is our belief that disclosures and data need to be the central point for any discussion about enabling secondary markets for unrestricted unregistered private company securities.



What needs to change?

To encourage private companies to publicly disclose information as described above, the SEC would need to propose and adopt changes to existing regulations and/or rules. This would not need to impact all private companies, only those that wish to enable liquidity for their investors on an ATS. Using new financial technology will allow companies to disclose information in a standard format at no cost to the SEC, state securities regulators or investors. This need for secondary market liquidity was recognized in the SEC's Concept Release on Harmonization of Securities Offering Exemptions[2] (the "Harmonization Concept Release") which addressed the prospect of blue sky pre-emption for secondary trading of unregistered securities and noted the benefit that would accrue to several parties: investors for liquidity; issuers for access to capital; and regulators for greater transparency in the private markets.

One alternative is for the SEC to expand the definition of covered securities in Section 18(b) of the Securities Act of 1933, as amended (the "Securities Act") by utilizing the flexibility conferred in Section 18(b)(3) to add a definition of the term "qualified purchaser" to include secondary market purchasers of securities issued in offerings exempt from registration pursuant to Section 4(a)(2), Regulation D, Regulation Crowdfunding and Regulation A *provided that the security is*

[2] Concept Release on Harmonization of Securities Offering Exemptions (File No. S7-08-19).

eligible for resale under the primary offering exemption, the issuer of the unrestricted securities provides continuous disclosures as well as audit reports in a publicly available manual or database; *and the transaction is conducted on a registered ATS*. Alternatively, the SEC can add a category of covered securities in Section 18(b)(4) for secondary market transactions of securities that 1) were sold in primary offerings exempt from registration under Section 4(a)(2), Regulation D, Regulation Crowdfunding and Regulation A+ provided that the security is eligible for resale under the primary offering exemption; 2) the issuer of the unrestricted securities provides continuous disclosures as well as audit reports in a publicly available manual or database; and 3) the transactions are conducted on a registered ATS.

Limited State Blue Sky exemptions and the potential for an established disclosure regime

Secondary transactions have limited exemptions from state laws, which vary significantly from state to state, unless they are deemed a "covered security"; companies must either find an available exemption, register their securities with states, or risk non-compliance with state blue sky laws by allowing their securities to be bought and sold by investors. The SEC acknowledged the need for attention to secondary market upgrades in its Harmonization Concept Release.

Our suggested solution is for the SEC to adapt the state law exemptions for companies that maintain a listing in a recognized securities manual to provide the resource for a "publicly available manual or database" (the "Disclosure Exemption"). Approximately 40 states have adopted a form of manual exemption which provides an exemption for certain secondary market activity based upon the availability of current core corporate and financial information drawn from disclosure filings publicly available on the SEC EDGAR database. This ensures that investors and selling agents have access to relevant information needed to make an investment decision. Currently, there are only two securities manuals recognized by the states, published by OTC Markets Group and Mergent (formerly Moody's), but neither of these manuals serves the market for private companies with unrestricted unregistered securities.

For several months now we have been reaching out to the member states of NASAA. They are unanimously open to the prospect of more fulsome disclosure and investor protection and the potential for greater oversight. The immediate past President of NASAA told Congress that "[r]egulators should have sufficient data to oversee the markets they police"[3] and that their job is to provide "regulatory pathways for local business and entrepreneurs seeking to raise investment capital."[4] A federal regulation or rule that requires public disclosure of private company corporate and financial information in a publicly available manual or database would be wholly consistent with state law disclosure regimes and could pre-empt the requirement for state-by-state adoption of the exemption.

What ongoing disclosures should include

To ensure that investors have the information required to make an informed decision and regulators (SEC and states) have data to conduct ongoing surveillance, reporting should include:

[3] From Congressional testimony provided by Micheal Pieciak, outgoing President of NASAA at a September 11, 2019 hearing. https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-pieciakm-20190911.pdf
[4] Ibid, Michael Pieciak Congressional testimony.

- Business summary, location, telephone number, website, and email
- Tax id, auditors, legal counsel, transfer agent, listing information, shareholder relations and telephone number
- Two most recent periods of
    - Consolidated Income Statement
    - Consolidated Balance Sheet
    - Any material notes/changes to either
- Auditors report, opinion and emphasis of matter
- Summary of the company's capital stock, total number of investors and beneficial owners in excess of 5%
- Information on the two most recent offerings including type of offering, amount raised, use of proceeds and contingency to closing
- If a company issued tokens data fields that identify the token, describe its characteristics and lists where it is trading
- And finally, the name and email for the person completing the form. This is the person who has verified the authenticity of the disclosed information in the report. (This person must also pass a bad actor/background check).

The list above goes above that which is required in 15c2-11 reporting and would provide further information for investors wishing to buy unregistered unrestricted securities issued by private companies.

Limitations on secondary trading would be consistent with the initial offering requirements

To further protect investors, availability for resale and other limitations consistent with the initial offering requirements would apply to secondary trading. For example:

1. Regulation A+ Securities issued under both Tiers 1 and 2 are unrestricted and freely transferable immediately upon issuance to any investor subject to annual investment limits consistent with initial issuance. Tier 1 issuers have no ongoing post-offering reporting requirements and certain Tier 2 issuers can suspend their reporting after the mandatory post-offering reporting period is satisfied, but eligibility for the Disclosure Exemption would mandate an annual audit, semi-annual reviewed financials, and interim reporting on material events and changes.

2. Regulation D Rule 506 – Securities are primarily sold to accredited investors (as defined in Regulation D Rule 501) and generally may be resold to accredited investors in compliance with Sections 4(a)(1) or 4(a)(7) of the Securities Act, and/or the safe harbor in Rule 144 promulgated under the Securities Act. Issuers have no ongoing post-offering reporting requirements, but eligibility for the Disclosure Exemption would mandate semi-annual reviewed financials and interim reporting on material events and changes.

3. Regulation Crowdfunding – Unaccredited purchasers are subject investment limits and resale is limited within the first year with securities freely transferable one year after issuance. Regulation Crowdfunding imposes ongoing post-offering reporting obligations for annual updates and material changes to previously disclosed information until certain

conditions occur. Eligibility for the Disclosure Exemption would follow the initial issuance purchaser limitations and issuer requirements for an annual audit for companies that raise over $500,000 in a crowdfunded offering and reviewed financials for companies that raise less than that threshold, plus semi-annual reviewed financials and interim reporting on material events and changes. Secondary market transactions should be conducted by or through broker-dealers or funding portals registered with the SEC and members of FINRA.

The benefit

There are many benefits to implementing regulations and rules that encourage ongoing disclosures while facilitating the development of secondary markets. First, it will clear up the confusion around blue sky laws and what companies need to do to be in compliance. Second, it will shed much needed light on what is happening with private companies that wish to have liquidity for their investors. Third, it will help regulators understand and monitor private markets and will deter fraud. Fourth, it will create market efficiency because companies will know what they need to do and when they need to do it. Fifth, it will for the first time provide valuable data to the marketplace such that analysts can perform research and valuations of the underlying companies for investors. And regulators can better understand where capital is going and why. Sixth, doing this creates a model (ongoing disclosure) similar to the public markets so as to put retail investors on a level playing field with institutional investors, insiders, and other sophisticated and informed traders. And finally, there will be more, structured information about private markets, which now dwarf the public markets in size, offering policymakers the data necessary to facilitate informed policymaking.

Closing

The proposed amendment to Exchange Act Rule 15c2-11 highlights the need for current and ongoing disclosures to protect investors. We encourage the SEC to adapt an exemption for secondary sales of securities issued by private companies that opt into a disclosure regime published in securities manuals that disseminate an established set of company and financial information publicly available to investors and regulators to examine investor gains and losses. This could happen via application of the definition of a "qualified purchaser" in Section 18(b)(3) or the expansion of categories of exempt transactions in Section 18(b)(4) of the Securities Act secondary market purchasers of securities issued in offerings exempt from registration pursuant to Section 4(a)(2), Regulation D, Regulation Crowdfunding and Regulation A provided that the security is eligible for resale under the primary offering exemption, the company issuer of the unrestricted securities provides continuous disclosures as well as audit reports in a publicly available manual or database, and the transaction is conducted on a registered ATS. To quote outgoing NASAA President Michael Pieciak, "Regulators should have sufficient data to oversee the markets they police, and policymakers like [Congress] should have the information necessary to make decisions based on facts and not ideological conjecture." We urge you to give serious consideration to our proposal in the interest of investor protection.

Sincerely,

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