

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1149

MONICA J. LINDEEN, Montana State
Auditor ex officio Montana Commissioner
of Securities and Insurance,

Petitioner,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Respondent.

CONSOLIDATED WITH

No. 15-1150

WILLIAM F. GALVIN, Secretary of the
Commonwealth of Massachusetts,

Petitioner,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Respondent.

PETITIONERS' JOINT PRELIMINARY STATEMENT OF ISSUES

Pursuant to this Court's Order of May 22, 2015, petitioners in these consolidated cases jointly file this preliminary Statement of Issues:

1. Whether the Commission's adoption of the rule – which defines “qualified purchaser” to mean “any person to whom securities are offered or sold” pursuant to a Tier 2 offering under Regulation A – is arbitrary and capricious, an abuse of discretion, or otherwise unlawful because it conflicts with the plain language of Title IV of the JOBS Act and Section 18(b)(3) of the Securities Act and the legislative history of those provisions, disregards how “qualified purchaser” and related terms are used in other federal securities laws and regulations, violates fundamental canons of statutory construction, and exceeds the scope of preemptive authority delegated to the Commission.

2. Whether the Commission violated Sections 2(b), 3(b)(2)(G), and 18(b)(3) of the Securities Act and Section 3(f) of the Securities Exchange Act by preempting state registration and qualification laws in a manner that is inconsistent with the public interest and the protection of investors.

3. Whether the Commission violated Section 2(b) of the Securities Act and Section 3(f) of the Securities Exchange Act by failing to adequately consider the protection of investors and the public interest, among other factors, prior to its adoption of the rule.

4. Whether the Commission otherwise acted in a manner that was arbitrary and capricious, an abuse of discretion, or otherwise unlawful within the meaning of the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other

applicable law in adopting its amendments and revisions to Regulation A's exemption from state registration and qualification laws under the Securities Act.

Respectfully submitted,

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Date: June 22, 2015

CERTIFICATE OF SERVICE

I certify that the above document will be served on June 22, 2015, by electronic notice for registered counsel and a copy will be served by first-class mail, postage pre-paid, for non-registered counsel.

/s/ Seth Schofield _____

Seth Schofield