



National Congress of American Indians

January 2, 2008

Securities and Exchange Commission
Mr. Steven G. Hearne,
Special Counsel - Office of Rulemaking
100 F Street, NE
Washington, DC 20549

RE: **File Number S7-18-07**
Comments on Proposed Changes to SEC Regulation D

Dear Mr. Hearne:

The National Congress of American Indians (NCAI) is charged with representing the interests of Indian tribal governments throughout the United States. The organization was established to represent the common needs of tribes and serve as a liaison between tribal governments and the federal government. With this mandate, we respectfully submit our comments to the Securities and Exchange Commission (SEC) on the proposed revisions to Regulation D which directly affects the ability of Tribes to invest and raise capital.

In May of 2007, NCAI and the Department of Interior hosted the National Native American Economic Policy Summit to discuss the barriers and challenges faced by Tribes when trying to grow and diversify their economies. One of the main concerns voiced by the 500 participants was access to capital including the lack of parity with other government entities like states and municipalities when investing or raising capital.

More specific and directly relevant to the proposed SEC regulatory changes, tribal leaders commented on removing the barrier of not being included as an accredited investor¹. This lack of inclusion directly inhibits the ability of tribes to invest in other tribal enterprises by making the process of raising capital and investing more cumbersome and costly.

¹ National Native American Economic Policy Report of 2007 ([Policy Report PDF](#)), The Department of Interior and National Congress of American Indians, 2007. Page 14

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The Revisions of Limited Offering Exemptions in Regulation D (33-8828) currently proposed by the SEC offers the opportunity for previously-overlooked Indian tribes to be properly defined as government bodies and included as accredited investors.

To achieve parity with other government entities, it is important that Indian tribes be included and listed as such in the definition of “government body” used in section § 230.501 Definitions and terms used in Regulation D.

The definition of “governmental body” as proposed is extremely broad and already implicitly includes Indian tribes as it includes any “jurisdiction of any nature” and any “body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.” Indian tribal governments regularly exercise all of these forms of governmental powers. See generally, Cohen, Felix, Handbook of Federal Indian Law (2005 ed.); United States v. Lara, 541 U.S. 193 (2004); and the Indian Tribal Tax Status Act, 26 U.S.C. §7871. The Commerce Clause of the United States Constitution also recognizes the status of Indian tribes as governments.

To avoid confusion and remain consistent with the large body of federal law on this topic, we would strongly encourage the SEC to expressly include Indian tribal governments within the definition of “governmental body,” keep the reference to government bodies in the definition of “accredited investors,” and then to exclude as unnecessary the specific reference to Indian tribes in the text of the regulation on accredited investors.

In addition, we would suggest creating a definition of “Indian tribe” that would include the federally recognized tribes that are acknowledged under the Federally Recognized Tribes List Act, 25 U.S.C. 476a, as well as state recognized tribes. State recognized tribes generally exercise governmental powers within the boundaries of state law, and also fall within the proposed definition of “governmental body.” Although Indian tribes derive their authority from inherent sources, for these purposes an analogy can be drawn between state recognized tribes and state municipalities and subdivisions. We note that the proposed definition of “governmental body” would apply only the definition of “accredited investor” in Rule 215 and Rule 501(a), so including state recognized tribes would not implicate other issues.

We would also like to express our concern about including Indian tribes in a catch-all definition of “legal entity” proposed as “any legal entity that can sue or be sued in the United States.” As sovereigns with government protections, placing Indian tribes within this catch-all definition would add confusion and

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further complicate a rule meant to provide clear guidance and safeguards to the investing public.

We strongly feel the SEC should take advantage of the opportunity to not only include tribes as accredited investors, but to recognize their long-standing government status by giving them parity with other governments by rightfully defining them as government bodies in the Regulation D revisions.

We look forward to the SEC's assistance in including tribes in Regulation D revisions thereby expediting the much-needed flow of capital to Indian tribes and allowing tribes with assets to efficiently invest in other tribes as requested by tribal leaders and included in the National Native American Policy Report.

Thank you for including our comments. We look forward to working with your agency in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Garcia', with a stylized flourish at the end.

Joe Garcia,
President

Submitted via Email Form