Collectable Technologies, Inc
120 Bloomingdale Rd., Ste 304
White Plains, NY 10605

July 26, 2022

VIA ELECTRONIC DELIVERY

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attn: Vanessa A. Countryman, Secretary

Re: Petition for Rulemaking to Amend Regulation A

Ladies and Gentlemen:

Collectable Technologies, Inc. ("Collectable")[1] respectfully submits this petition for rulemaking pursuant to Rule 192(a) of the Securities and Exchange Commission's ("Commission" or "SEC") Rules of Practice[2] to request that the Commission amend Regulation A (Rules 251 through 263)[3] to allow "shelf" offerings by certain "seasoned" issuers.

I. Background

The Securities Act of 1933 (the "'33 Act") provides for three types of offerings – registered, exempt and illegal. Companies that register securities offerings (other than exchange offers and securities being offered in business combination transactions) typically do so on one of two forms – Form S-1 or Form S-3.[4] A comparison of the two forms reveals that they both contain the same requirements as to what information must be disclosed in the prospectus (Part I of any registration statement). The primary difference is the ease and the efficiency with which that information is included in an S-3 prospectus, which provides for liberal incorporation by reference[5] and the

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1 Collectable (primarily through its affiliated Regulation S issuer, Collectable Sports Assets, LLC) is a leading firm specializing in the fractionalization of collectable sports memorabilia. Since its inception in 2020, Collectable has fractionalized (through Regulation A offerings) more than 300 items of sports memorabilia. Collectable broadly supports innovation and enhancements to transparency and fairness that enhance liquidity to the benefit of all marketplace participants, including sellers of collectable sports memorabilia who desire to take advantage of an often volatile marketplace.

2 17 CFR § 201.192(a).

3 17 CFR § 230.251 through 263.

4 Foreign private issuers would utilize the foreign counterparts of these forms – Form F-1 or Form F-3, respectively.

5 Although Form S-1 does allow some "backward" incorporation by reference by somewhat "seasoned" companies (a company required to file and current in its reports under the Securities Exchange Act of 1934 (the "Exchange Act"), that has filed at least one annual Report on Form 10-K, and is not a shell, blank check or penny stock company) and "forward" incorporation by reference by "smaller reporting companies," a true "shelf" is allowed by Rule 415 (17 CFR § 415) only if the securities are registered on Form S-3. *See* Rule 415 (a)(1)(x) (17 CFR § 415(a)(1)(x)).

ability to provide for delayed or continuous (*i.e.*, "shelf") offerings by certain "seasoned" issuers[6] and in certain types of transactions.[7]

Exemptions to the '33 Act's registration requirements generally are set forth in sections 3 (entitled "Exempt Securities") and 4 (entitled "Exempt Transactions") of the '33 Act. Certain provisions of the '33 Act give the SEC the power to promulgate exemptions from the '33 Act's registration requirements. One of these provisions is section 3(b), under which Regulation A was promulgated decades ago. Prior to the Jumpstart our Business Startups ("JOBS") Act,[8] section 3(b) limited the SEC's exemption authority to $5 million, which, over time, rendered Regulation A of little use as it was an expensive way to raise $5 million of capital given other potential avenues – *e.g.*, private offerings under Regulation D or section 4(a)(2) of the '33 Act.

In 2015, Congress passed the JOBS Act, which, among other things, mandated that the SEC update Regulation A and provided authority to exempt offerings up to $50 million – subsequently, the SEC has increased that amount in Tier 2 Regulation A offerings to $75 million, using the SEC's general exemptive authority set forth in section 28 of the '33 Act. Companies relying on Regulation A offer and sell their securities to the public under two different tiers that have two different requirements—Tier 1 and Tier 2. Under both tiers, the issuer must file an offering statement on Form 1-A with the SEC. The offering statement includes the offering circular, which is the primary disclosure document for investors. Investors must be provided with, or given information on how to access, the offering circular. An issuer can only accept payment for the sale of its securities once its offering statement is qualified by the Staff at the SEC. Under Tier 1, an issuer can raise up to $20 million in any 12-month period, including no more than $6 million on behalf of selling securityholders that are affiliates of the issuer. Under Tier 2, an issuer can raise up to $50 million in any 12-month period, including no more than $15 million on behalf of selling securityholders that are affiliates of the issuer.

When the SEC responded to the Congressional mandate in section 401 of the JOBS Act, and passed what many refer to as Regulation A+, it noted in the Adopting Release that then existing Regulation A "currently allows for continuous or delayed offerings under Regulation A if permitted by Rule 415." In a footnote, however, the SEC acknowledged that "[c]ertain shelf offerings . . . are only permissible in offerings on Form S-3, which Regulation A issuers are ineligible to use" and referenced Rule 415(a)(1)(x).[9] In a registered offering, Rule 415(a)(1)(x) allows securities that are registered on an S-3 to be offered and sold on an immediate, continuous or delayed basis. To complement this process, Rule 430B then allows a form of prospectus filed as part of a registration statement for offerings pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) to omit from the prospectus information that is unknown or not reasonably available to the issuer pursuant to Rule 409 (§ 230.409). Information omitted from a prospectus that is part of an effective registration statement in reliance on Rule 430B(a) (which references Rule 415(a)(1)(x)) may be included subsequently in the prospectus that is part of a registration statement by filing:

- A post-effective amendment to the registration statement; or

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6 The primary eligibility requirements are that issuers must have a class of securities registered under section 12 of the Exchange Act or be required to file reports pursuant to section 15(d) of the Exchange Act, and have timely filed all Exchange Act reports for at least 12 calendar months.

7 In an offering of securities for cash, the issuer must have "public float" of at least $75 million. Certain issuers (*i.e.*, those failing to satisfy the public float requirement) that are not shell companies and have a class of securities listed on a "national securities exchange" nevertheless can sell on a Form S-3 during any 12-month period securities with a market value of not more than one-third of the issuer's public float – this is what is often referred to as the "baby shelf" rule. *See* General Instruction I.B.6. to Form S-3.

8 *See* Pub. L. No. 112-106, 126 Stat. 306

9 *See* Securities Act Rel. No. 9741 (March 25, 2015) (hereinafter the *Adopting Release*) at 133. *See also* Note 5 *supra*.

- A prospectus filed pursuant to Rule 424(b) (§ 230.424(b)) – in other words – a prospectus supplement.[10]

In the Adopting Release for Regulation A, the SEC noted the efficiency and cost savings intended to be promoted by Rule 415 and indicated its intention to "clarify" the scope of permissible continuous or delayed offerings under Regulation A and the related concept of offering circular supplements.[11] In fact, in the Adopting Release, the SEC, borrowing from the registered offering framework, allowed the use of offering circular supplements similar to those envisioned by Rules 430A[12] and 424(b) with respect to registered offerings. Prior to the adoption of these rules, Regulation A issuers were required to file post-qualification amendments, which had to be reviewed and qualified by the SEC – acknowledged to be costly and time consuming for issuers conducting continuous offerings of securities under Regulation A.[13]

In allowing the use of offering circular supplements, however, the SEC did not go further and adopt the registered offering framework envisioned by Rule 430B. Rule 430B allows information in addition to that allowed by Rule 430A (the latter of which generally is limited to price-related information) to be omitted from the registration statement at the time of effectiveness and, like Rule 430A, to be added with a prospectus supplement filed pursuant to Rule 424(b). In the Adopting Release, the SEC expressly declined to allow shelf offerings that required registration on Form S-3 to also be conducted under Regulation A.[14]

A somewhat related concept – "at the market" offerings[15] – also were prohibited under Regulation A. Significantly, the SEC had this to say with respect to "at the market" offerings: "While it is possible that a market in Regulation A securities may develop that is capable of supporting primary and secondary at the market offerings, rather than permit such offerings at the outset, we believe that any determination as to whether the exemption would be an appropriate method for such offerings should occur in the future.[16] Perhaps now is not the time to revisit the ability to conduct "at the market" offerings under Regulation A; however, we believe that developments do make it appropriate to revisit the ability to conduct true "shelf" offerings (as envisioned by Rule 415(a)(1)(x) but for the S-3 eligibility requirement) under Regulation A.

First – until 2019, Exchange Act reporting companies were not allowed to utilize Regulation A to offer or sell securities. The amendments in 2019 that allowed such offerings by Exchange Act reporting companies then were quickly followed in 2020 with amendments to Regulation A increasing the size of potential Tier 2 offerings to $75 million during any 12-month period. Some of these Exchange Act reporting companies no doubt would be permitted to conduct shelf offerings under Rule 415(a)(1)(x) – either because they met the qualifications to conduct primary offerings; or, if they did not, because they could meet the requirements of the "baby shelf" rules under General Instruction I.B.6. to Form S-3. In those cases, they could conduct "shelf" offerings of securities under the '33 Act through a combination of Rules – Rule 415(a)(1)(x) (which allows immediate, delayed or continuous offerings), Rule 430B (which allows certain information to be omitted from the prospectus in the registration

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[10] In addition to filing either an amendment or a prospectus supplement, Rule 430B provides that if the applicable form permits, the information can be included in the issuer's Exchange Act reports filed that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with applicable requirements.

[11] *See* Adopting Release at 134.

[12] Rule 430A allows information regarding offering price, the underwriting syndicate, underwriting discounts and other information dependent on the offering price and delivery dates to be omitted from prospectus in a registration statement at the time it is declared effective and for the information to be added later by filing a prospectus supplement pursuant to Rule 424(b). That framework essentially was adopted in Rule 253, with certain limitations that the SEC believed appropriate for Regulation A offerings. *See* Adopting Release at 140.

[13] *See* Adopting Release at 133.

[14] *See* Adopting Release at 135, note 494 – referencing earlier note 484, which referenced offerings pursuant to Rule 415(a)(1)(x).

[15] An "at the market" offering means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price. *See* Rule 251(d)(3)(ii).

[16] *See* Adopting Release at 139.

statement) and Rule 424 (filing a prospectus supplement to furnish the information allowed to be omitted pursuant to Rule 430B).

We believe that those Exchange Act companies as well as Regulation A issuers that are "seasoned" should be able to conduct true "shelf" offerings under Regulation A given the similarity between traditional registered offerings and the Regulation A framework.

II. Recommendation

Our specific recommendation is that the following amendments be made to the SEC's rules to allow issuers to conduct certain "shelf" offerings under Regulation A:

- Delete the "or" that currently appears at the end of Rule 251(d)(3)(i)(E) and redesignate current section (d)(3)(i)(F) as "(G)" (and change all references in current section (F) to "(G)");

- Add new subsection (F) to Rule 251(d)(3)(i) to read as follows:

  (F) Securities qualified that are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of an issuer described in Rule 253(b)(2), a majority-owned subsidiary of such an issuer or a person of which such an issuer is a majority-owned subsidiary; or

- Redesignate Rule 253(b) as 253(b)(1) (with corresponding changes to the subparts of current Rule 253(b));

- Change the reference to "paragraph b" that currently appears in Rule 253(b)(4) to "paragraph (b)(1)";

- Change the heading "Note to paragraph (b)" to "Note to paragraph (b)(1)";

- Change the final two sentences in Note to paragraph (b) to read as follows:

  Except as set forth in paragraph (b)(2) of this section, an offering circular supplement may not be used to increase the volume of securities being offered. Except as set forth in paragraph (b)(2) of this section, additional securities may only be offered pursuant to a new offering statement or post-qualification amendment qualified by the Commission.

- Add new subsection (b)(2) to Rule 253 to read as follows:

  (2) Additional information that may be omitted in limited offerings by certain issuers. Notwithstanding paragraph (a) of this section and in addition to the information that may be omitted pursuant to paragraph (b)(1) of this section, a qualified offering circular filed as part of an offering statement for offerings pursuant to Rule 251(d)(3)(F) (§ 230.251(d)(3)(F)) may omit from the information required by the Form 1-A to be in the offering circular information that is unknown or not reasonably available to the issuer pursuant to Rule 409 (§ 230.409). In addition, a form of offering circular as part of a qualified offering statement also may omit information as to the plan of distribution for the securities and a description of the securities registered other than an identification of the class (which identification shall not require a description of any series if the class of such securities is to be offered in multiple series); provided, that the following conditions are met:

  (i) the offering is being made pursuant to Tier 2 of Regulation A; and

  (ii) (A) the issuer, for at least twelve calendar months preceding the offering, has been either: (x) subject to the requirements of Section 12 or 15(d) of the Exchange Act; or (y) subject to the requirements of Rule 257 (§ 230.251(d)(3)(F)); and,

(B) in the case of either (A) (x) or (A)(y), has filed with the Commission during the preceding twelve months all reports and other materials required to be filed, if any, pursuant to Sections 13(a), 14 or 15(d) of the Securities Exchange Act of 1934 or Rule 257 (§ 230.257), as applicable.

III. Conclusion

We hope that you, the Commission, and the Staff find these comments useful and productive in any review or update of Regulation A as a model of capital formation. As a serial issuer of Regulation A securities, we would welcome the opportunity to discuss with you how the amendments that we propose facilitate a cost-effective model that promotes the orderly sale of unregistered securities, while continuing to protect investors. If we can be of further assistance to you in this matter, please do not hesitate to contact us at the address above or at (858) 245-2955 or our counsel Gary M. Brown at 615-390-7230.

Very truly yours,

Collectable Technologies, Inc.

By:_____
Name: Jarod Winters
Title: COO/CCO

cc: Gary Gensler, Chairman, Securities and Exchange Commission
Hester M Pierce, Commissioner, Securities and Exchange Commission
Caroline A. Crenshaw, Commissioner, Securities and Exchange Commission
Mark T. Uyeda, Commissioner, Securities and Exchange Commission
Jaime Lizárraga, Commissioner, Securities and Exchange Commission