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Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SEC Regulatory Initiatives Under the JOBS Act: Title II, Access to Capital for
Job Creators

Dear Ms. Murphy:

Anyone that reads the comment letters submitted by Secretary Galvin of Massachusetts and other state securities regulators might think that Congress passed the JOBS Act to make it more difficult for private businesses to find accredited investors. Au contraire, Ms. Murphy. The stated purpose of the JOBS Act is “to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.”

Having failed to persuade Congress to retain the anachronistic, unnecessary and unconstitutional ban on general advertising and solicitation for issuers of unregistered securities, these same bureaucrats now claim to know what Congress really wants, i.e., to have the Commission impose additional costs and red tape on small businesses and make potential investors jump through hoops. That would transform the JOBS (Jumpstart Our Business Startups) Act into the SOBS (Stifle Our Business Startups) Act.

For example, the North American Securities Administrators Association proposes the following procedure, which it says is a “reasonable” way to verify whether an individual has sufficient income to be deemed an accredited investor:

An individual’s income can be verified with documents that are readily available, including tax returns, Form W-2, and Form 1099. To satisfy the safe harbor for verification, the issuer or its broker-dealer should be required to obtain copies of adequate documentary proof that the investor has satisfied the income requirements for the past two years. In addition, the investor should be required to produce a recent pay stub to demonstrate a reasonable expectation of reaching the same income level in the current year.

Skeptics might think requiring that sort of documentation is intended to deter accredited investors from making an investment in a business startup. But surely that is not the

NASAA's goal. Like Brutus, the state securities regulators are "all honourable men." Their noble concern is that less affluent investors, lured by a "get rich quick" solicitation from an unsavory promoter, will unethically misrepresent their financial status just so they can qualify to make a "can't miss" investment. And, it is the duty of the Commission, these honourable bureaucrats maintain, to protect such gullible and greedy investors from losing their money, even the ones willing to lie about being accredited.

Seriously, I followed the Congressional hearings pretty closely. I do not recall anyone claiming that having a prospective investor certify in writing that he or she is accredited, as many private companies already do, is not a reasonable way to verify accreditation. Nor have I seen any evidence that large numbers of investors lie about their financial status to induce a private business to take their money. Congress apparently saw nothing broken because it mandated the Commission to complete its assignment within 90 days. If Congress wanted the Commission to engage in a major overhaul of Rule 506, it would not have required it to act within such a short time period.

The Commission knows very well that Congress wanted private companies to be able to solicit to locate accredited investors within 90 days after the JOBS Act took effect. By failing to meet its mandated deadline, the Commission is undermining the intent of Congress. It should not procrastinate any further. The Commission should see through the transparent agendas of the state securities regulators and other JOBS Act obstructionists and promptly create a simple form that an issuer can provide to an investor to certify that he or she is accredited.

The plain truth is nothing is broken with the current verification procedure. There is no evidence that large numbers of investors misrepresent their financial status to invest in private companies. In sum, this is not rocket science and it should not take more than 90 days to adopt a workable rule.

Very truly yours,



Phillip Goldstein
Principal