

October 23, 2012

By e-mail: rule-comments@sec.gov

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090  
Attention: Elizabeth M. Murphy, Secretary

Re: Eliminating the Prohibition Against General Solicitation and General  
Advertising in Rule 506 and Rule 144A Offerings  
(Rel. No. 33-9354; File No. S7-07-12)

Ladies and Gentlemen:

Artivest Holdings, Inc. (“Artivest”) appreciates this opportunity to comment on the proposal of the Securities and Exchange Commission (the “Commission”) to amend Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”) to eliminate the prohibition against general solicitation and general advertising in certain Rule 506 offerings and in Rule 144A offerings. We note that the Commission has proposed these amendments in order to implement certain portions of Title II of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”). We applaud the Commission’s efforts in proposing an approach which seeks to implement the JOBS Act-mandated changes in a manner that fully recognizes the flexibility necessary for verifying the “accredited investor” status of purchasers in private offerings, without imposing significant additional restrictions on communications in connection with these offerings.

Artivest is a new entrant to the marketplace, and is in the process of developing a platform for offering innovative exchange-traded products and private funds that will give investors and their advisors access to alternative investment strategies. Artivest intends to utilize online communications and an engaging web-based approach to transparency in order to transform the experience of personal investing. With both original and curated investment content, the Artivest website, [www.artivestfunds.com](http://www.artivestfunds.com), will offer sophisticated insight about alternative investing and how it can improve investment portfolios. Through the Artivest website, we intend to engage directly with prospective investors, empowering them to make informed investment decisions. We believe that our direct engagement efforts will be facilitated by the ability to identify and develop content that is most useful to our investors, communicated in a manner that will facilitate an informed investment decision.

Our overriding goal is to provide potential investors who come to our website with engaging content, to enable them to educate themselves about their investments, and alternative investing and finance generally, and to engage with us and with others in a community environment. Along with a series of alternatives-inspired exchange-traded products, we plan to offer a private fund platform comprised of a select group of asset managers who have undergone our diligence process. We enable our investors, sophisticated investors who previously may



have had access to those managers, to learn more about each manager and its strategy and, if they choose, to allocate assets to a manager by investing in an Artivest fund that allocates its assets to such manager. We coordinate with each underlying manager to generate content to provide to potential investors – the manager’s performance, its views on the market, and other information that would enable an investor to evaluate the manager and to engage in a dialogue with us about their potential interest in an investment. For current investors, we coordinate with each underlying manager to provide enhanced transparency about the relevant fund’s performance, the manager’s views, and other information that enables investors to evaluate their investment on an ongoing basis.

We plan to tailor the offering of each Artivest fund to reflect the suitability of the manager’s relevant underlying investment vehicle – for example, if our manager is offering a fund in accordance with Section 3(c)(7) of the Investment Company Act of 1940, our Artivest fund will be offered only to “qualified purchasers.” The Artivest website will be a way for us to present our investors with a curated set of private fund managers, and to provide our investors with the benefits of our diligence and enhanced transparency. We strongly believe that our online communications efforts will be an effective and attractive way to attract appropriate potential investors for our funds and to engage on an ongoing basis with those who invest therein.

**I. The Commission has selected the best approach for specifying reasonable steps to verify accredited investor status.**

We note that the Commission has taken a thoughtful and measured approach to the proposed changes to Securities Act Rules 506 and 144A in implementing the statutory directive in Section 201(a) of the JOBS Act. In this regard, we note that Section 201(a)(1) of the JOBS Act directs the Commission to permit general solicitation and advertising in a Rule 506 offering, provided that all purchasers are accredited investors, and that the Commission adopt rules requiring that “the issuer take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission.” Rather than propose a prescriptive standard or a non-exclusive safe harbor for purposes of establishing the methods by which this verification is to occur, the Commission has proposed an approach that preserves the necessary flexibility for both issuers and regulators to determine if the verification steps taken are reasonable. The Commission has helpfully provided in the proposing release certain of these factors, such as the nature of the purchaser, the category of accredited investor that describes the purchaser, the amount and type of information that the issuer has about the purchaser, and the nature of the offering, which may each be relevant to the verification process in varying degrees depending on the size or type of offering.

We believe that the proposed approach for verification is entirely consistent with the statutory mandate and the ultimate objective of the JOBS Act, which is to remove barriers to capital access, while providing an appropriate level of investor protection. Moreover, this approach may facilitate the utilization of third-party services which can collect information and provide verification as to investor status. By contrast, we believe that a prescriptive standard or a non-exclusive safe harbor would potentially be viewed as, at least, the minimum required standard



for any offering, which in many cases could make Rule 506 significantly less attractive as an offering exemption.

We strongly believe that one of the most promising aspects of the JOBS Act is that it will promote innovation in the market for capital, and thereby create opportunities for investors, issuers and investment funds alike which were not present prior to the enactment and implementation of the JOBS Act. These changes help to facilitate the entry into the market of entities such as Artivest, which is seeking to change the relationship of prospective investors with their investments through ongoing transparency and education efforts. We believe that investors should be aware of, understand, and have access to, alternative investment strategies that may be beneficial to their overall investment returns and risk profile, and the flexibility afforded by the JOBS Act in attracting and communicating with prospective investors provides Artivest with the ability to build an investment platform that can realize the full potential for capital access contemplated by the JOBS Act. We do not believe that it would be consistent with the mandate of the JOBS Act and the Commission's mission for any unduly burdensome standards to be imposed for verification of accredited investor status that would serve to undermine the overall flexibility of the exemption.

## **II. The Commission should not impose any restrictions on the content of communications or the manner by which communications take place under Rule 506(c).**

We do not believe that the Commission should adopt any specific standard for the content of materials utilized in connection with an offering under proposed Rule 506(c), including information that would be comparable to what is required with respect to a public offering. Any attempt to impose restrictions on or standards for content would severely curtail the attractiveness of Rule 506(c) as an exemption and undermine the purposes of the JOBS Act. We do not believe, as some commenters have suggested, that the lack of any content standards with respect to these types of offerings will inevitably result in investors being taken advantage of with misleading and deceptive marketing material. Moreover, we do not believe that the means by which investors receive information about a prospective investment should be limited by the Commission's implementing regulations.

We strongly believe that an existing framework is in place for regulating the content of information that may be used to solicit prospective investors under Rule 506(c). In this regard, we believe that the existing anti-fraud provisions of the federal securities laws provide a significant deterrent to the use of misleading or deceptive materials in the course of any offering, including the types of offerings contemplated by Rule 506(c). While we recognize that there is always a risk of fraud in connection with securities offerings, and that certain market participants may be willing to violate existing anti-fraud laws in connection with any type of offering, nothing in proposed Rule 506(c), the JOBS Act or otherwise would suggest that the removal of the general solicitation and advertising ban, in conjunction with the requirement to sell only to accredited investors where the company has taken reasonable steps to verify their status, is likely to increase that risk. Given that the suitability of the ultimate investor is not changing as a result of the proposed amendments, but rather the degree of access to managers is changing, we do not believe the risk is greater that investors will be misled, and there are already standards and guidance that would prohibit a manager from using misleading or deceptive soliciting materials.



Specifically with respect to the example of Artivest’s contemplated private fund platform, we note that there is pre-existing guidance about the types of performance information that may be provided by a broker-dealer. Further, for those private funds managed by a registered commodity pool operator (“CPO”), National Futures Association (“NFA”) Rule 2-29 contains standards regarding marketing materials. In general, the NFA’s rules do not distinguish content based on the public or private nature of the offering; for example, a CPO cannot include claims regarding seasonal trades in marketing materials regardless of whether the offering is public or private. The only content-based distinction in Rule 2-29 relates to the use of certain hypothetical performance information, and that distinction is drawn along investor suitability lines; it does not relating to the breadth or scope of the relevant offering.

We favor the same approach for private offerings under proposed Rule 506(c). There are currently standards in place for what can be said to accredited investors or to qualified purchasers, and whether or not those persons are approached with a private offering or through a general solicitation should not be relevant to determining whether there is the potential that communications could be deemed to be deceptive or misleading. With regard to Artivest’s plans in particular, we believe that the public nature of our website makes it even more important to present information in compliance with applicable law, as it would be much easier to uncover any deceptive or misleading information contained therein if it is readily available to anyone with computer access.

We recognize that complete disclosure is an important component of any communication with investors – not only to protect issuers from liability but also to clarify various aspects of the material being presented in a manner that promotes full transparency with prospective and current investors. We favor tailored disclosures that allow issuers to have the flexibility to include clear disclosures that are appropriate for the relevant content. In our view, if disclosures were to be prescribed under standards established by the Commission, the information therein may be less effective for fully communicating the nature of the investment to a prospective investor, and issuers would be exposed to the risk that prescribed “boilerplate” disclosure ultimately is ignored. Moreover, any standards imposed on the content of communications would not address every scenario, and could potentially discourage an issuer from being forthcoming with information for investors, thereby having a potential chilling effect on full transparency and the exchange of useful information with investors.

For these reasons, we encourage the Commission to adopt Rule 506(c) as proposed. We appreciate the opportunity to comment on these proposals, and we would be pleased to meet with the Commission’s staff to discuss these issues or to answer any questions.

Sincerely,

A handwritten signature in black ink that reads "Heather Wyckoff". The signature is written in a cursive, flowing style.

Heather N. Wyckoff, Esq., General Counsel