

December 3, 2012

U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Via Email: rule-comments@sec.gov

Attention Ms. Elizabeth M. Murphy, Secretary

Ladies and Gentlemen:

Re: JOBS Act Regulation D
506(c) Offering Platform
33 Act Section 4 Amendment

I write regarding an uncertainty in the language of the JOBS Act § 201(c) safe harbor for the Regulation D accredited investor “platform,” which presents a matter which should be addressed by the Commission to carry out the full intent of the Act.

A brief regulation, or a Commission release, should clarify the safe harbor for those who participate in the platform enabled transmission of private placement information for accredited investors. Various enterprises and associations are planning a private interactive web platform to facilitate disclosure and discussion by an issuer’s officers for the accredited audience. Such live programs are expected to be presented through a roundtable discussion with an independent host to pursue probative questioning regarding the issuer’s presentation, not unlike a Charlie Rose interview on the Bloomberg Business Channel. The host or moderator is paid a set fee solely by the program producer and regardless of the success of the presentation or the issuers offering.

By asking the questions and commenting on responses, the host may highlight the issuer’s operating history, market position, business model, underlying assumptions, use of proceeds, and risk factors. The remote audience is able to post questions through the host or moderator and receive answers as well as subscribe for additional information as the discussion progresses. They are thus provided the opportunity to verify issuer information and listen to the concerns of other investors. Such a robust platform and due diligence service should have safe harbor benefit of not being deemed a broker.

While there are two potential statutory bases for covering such program participants under the Act’s exemptions from “broker,” the protection is not explicit. If allowed to remain uncertain this may chill the very inquiry that would otherwise assist investors and promote better disclosure than is currently available by a private placement memorandum.

One basis is the exemption for those persons who maintain the platform service on a flat fee, assuming that is the intent of the Act’s §201 addition of the §(b)(2)(A) specifying the exemption requires a person who “receives no compensation in connection with a purchase or sale of securities.” This is similar to existing regulations whereby a company’s management who perform substantial duties, may conduct presentations and not be deemed a broker as long

as they are “not compensated ...by the payment of commissions ...based either directly or indirectly on transactions in securities...,” 17 CFR §240.3a4-1. Thus, both seem to turn exemption on the point that compensation can not to be contingent on purchase or sale of an issuer’s securities. As a follow-on to the concept, the work of a host interviewing the officers of the offering company could also be considered associated with the person maintaining the platform and thereby enjoy the § (b)(2)(A) exemption for work on the platform program, as long as they receive no compensation contingent on purchase or sale of securities issuer’s security.

If their participation were to be viewed as more than maintaining the platform, however, a second basis can be found in that independent host or moderator be considered performing ancillary services within the additional § (b)(2)(A) exemption for due diligence services which “...do not include, for *separate compensation*, investment advice or recommendations to issuers or investors...” Thus, exemption is also achieved if the “*separate*” term is understood to mean the independent host or moderator who receives a customary flat fee payment from the platform producer for their work, without any additional payment by issuer.

Therefore perhaps the final rules could elucidate and include guidance something like:

A person participating in a public platform or mechanism permitting offer, sale, or purchase of securities in compliance with Rule 506, shall not be considered to be providing investment advice or recommendation to issuers or investors, by reason of analyzing issuer information for the purpose of conducting interviews, making inquiries, and/or commenting on issuer provided information as long as such person does not receive compensation contingent on the success of the issuer’s offering and is not paid by issuer or investor.

This is consistent with public policy, since the host is not acting on behalf of the issuer, and is not offering individual advice attuned to a specific client, but rather involved in honest publication at large in an open form within the First Amendment boundary, see *Howe v. SEC*, 472 US 181.

Accordingly, it is respectfully requested that guidance be issued to encourage full and fair participation for the benefit of the accredited investors.

Very truly yours,

/s/ *Paul S. Sigelman*

xc:

Mary L. Shapiro, Chairman
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Daniel M. Gallagher, Commissioner

Office of Chief Counsel
Division of Corporation Finance