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June 3, 2012

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

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

Dear Ms. Murphy:

By adopting Section 201 of the JOBS Act, Congress eliminated the ban on general advertising and general solicitation for issuers that otherwise comply with Rule 506 and sell unregistered securities only to accredited investors. The only task Congress assigned to the Commission was to promptly modify Rule 506 to specify reasonable steps that an issuer should take to verify that purchasers are accredited investors (who are presumed to be able to fend for themselves).

From this acorn, certain commentators that unsuccessfully lobbied against Section 201 now urge the Commission to create a forest of regulations that would undermine Congress's stated intent, i.e., to make it easier for unregistered issuers to locate accredited investors without significantly undermining investor protection. Without citing a shred of evidence, these commentators persist in claiming that wholesale regulatory changes are necessary to prevent unscrupulous private issuers from enticing unaccredited investors to lie about their financial status in order to sell them speculative or worthless securities without providing adequate disclosure.

Ironically, these commentators, which include the Investment Company Institute and a variety of self-proclaimed advocates for investors, do not disclose their real motives. Having failed to persuade Congress or President Obama of the merits of their arguments, they now appeal to the Commission to water down the lifting of the ban on general advertising and solicitation by imposing onerous regulations on unregistered issuers that Congress did not mandate and that would undermine its intent. (In the case of the ICI, it also does not disclose that its true motive is to protect its member mutual funds from competition by hedge funds for accredited investors.)

There is no basis for the Commission to do anything more than promptly establish a reasonable safe harbor for issuers to verify whether an investor is accredited. The key word is "reasonable." As the Commission is undoubtedly aware, many, if not the vast majority of unregistered issuers that rely on Rule 506 already require investors to verify that they are accredited at or prior to the point of sale. Unless the Commission has evidence that a significant number of investors have made misrepresentations about their

financial status, that seems like a “reasonable” way to verify accreditation, in particular where a sizeable investment is involved. Conversely, absent credible evidence that self-verification has been inadequate, requiring an issuer to take steps that will deter accredited investors from investing would be contrary to Congress’ intent.

As for the aforementioned commentators with hidden agendas, the Commission should ignore their views. The battle for the hearts and minds of Congress and the President is over.

They lost.

Very truly yours,

A handwritten signature in red ink, appearing to read "Phillip Goldstein", with a long horizontal flourish extending to the right.

Phillip Goldstein
Principal