



Via Hand Delivery

August 16, 2012

The Honorable Mary L. Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Chairman Schapiro:

I am writing on behalf of the Council of Institutional Investors (“Council”). The Council is a nonprofit, nonpartisan association of public, corporate and union pension funds, and other employee benefit plans, foundations and endowments with combined assets that exceed \$3 trillion.<sup>1</sup>

The Council and our member funds are committed to protecting the retirement savings of millions of American workers. With that commitment in mind, we have taken a strong interest in the Jumpstart Our Business Startups Act (“JOBS Act”).<sup>2</sup>

As you are aware, the Council commissioned and recently released a series of “Issue Briefs” designed to education Council members on the key elements of the JOBS Act. That series includes an Issue Brief entitled “General Solicitations for Certain Private Offerings” focusing, in part, on issues relating to the implementation of Section 201(a) of the JOBS Act.<sup>3</sup>

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<sup>1</sup> For more information about the Council of Institutional Investors (“Council”), including its members, please visit the Council’s website at <http://www.cii.org/about>.

<sup>2</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission 1-2 (August 9, 2012), [http://www.cii.org/UserFiles/file/resource%20center/correspondence/2012/08-09-12%20JOBS%20Act%20Letter%20doc\(final\).pdf](http://www.cii.org/UserFiles/file/resource%20center/correspondence/2012/08-09-12%20JOBS%20Act%20Letter%20doc(final).pdf).

<sup>3</sup> James Cox, JOBS Act Issue Brief: General Solicitations for Certain Private Offerings 1-4 (July 2012) (on file with Council).

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We note that next Wednesday, August 22, 2012, the Securities and Exchange Commission (“Commission” or “SEC”) has announced that it will hold an Open Meeting to consider rulemaking to:

[E]liminate the prohibition against general solicitation and general advertising in securities offerings conducted pursuant to Rule 506 of Regulation D under the Securities Act and Rule 144A under the Securities Act, as mandated by Section 201(a) of the Jumpstart Our Business Startups Act.<sup>4</sup>

We also note that some press reports have indicated that at the August 22<sup>nd</sup> Open Meeting the Commission may adopt an interim final temporary rule lifting the ban on general solicitation and advertising in private offerings without first issuing a proposed rule for public comment.<sup>5</sup>

It is the Council’s longstanding position that absent extraordinary circumstances, investors should be provided a meaningful opportunity to comment on significant SEC rules before those rules are adopted.<sup>6</sup> In this instance, we are unaware of any extraordinary circumstances that, in our view, would support the adoption of an interim final temporary rule.<sup>7</sup>

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<sup>4</sup> Securities and Exchange Commission, Sunshine Act Notice 1 (July 2, 2012), <http://www.sec.gov/news/openmeetings/2012/ssamtg082212.htm>.

<sup>5</sup> See, e.g., Sarah N. Lynch, Investor Advocates to Meet with Treasury on JOBS Act Concerns, Reuters, July 31, 2012, at 2, <http://www.reuters.com/article/2012/07/31/jobs-act-treasury-idUSL2E8IVBGX20120731> (“the SEC is considering adopting an interim rule that would lift the advertising ban right away”).

<sup>6</sup> See, e.g., Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Nancy M. Morris, Secretary, Securities and Exchange Commission 1 (Jan. 25, 2007) (on file with Council) (“Absent extraordinary circumstances, we believe investors should be provided a meaningful opportunity to comment on significant changes to SEC rules and regulations *before* those changes become effective.”).

<sup>7</sup> See, e.g., David M. Lynn, Whither the Title II Rulemaking, MOFOJumpStarter (June 22, 2012), <http://www.mofojumpstarter.com/2012/06/22/welcome-to-the-mofo-jumpstarter-blog/> (legal commentator noting that the “Title II [90 day] deadline [relevant to the Section 201(a) JOBS Act rulemaking] does not have any ‘teeth,’ in the sense that the provisions do not become automatically operative once the deadline has passed, so that, much like the Dodd-Frank Act deadlines, the SEC could proceed at its own pace regardless of Congressional expectations”).

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The Council respectfully requests that the Commission issue a proposed rule for public comment and carefully consider the comments received from investors and other market participants before adopting any rule to implement Section 201(a) of the JOBS Act.

Thank you for consideration of our views. Should you have any questions, please feel free to contact me at 202.261.7081 or [jeff@cii.org](mailto:jeff@cii.org).

Sincerely,

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

Jeff Mahoney  
General Counsel

CC: The Honorable Commissioner Elisse B. Walter  
The Honorable Commissioner Luis A. Aguilar  
The Honorable Commissioner Troy A. Paredes  
The Honorable Commissioner Daniel M. Gallagher