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## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

July 29, 2013

The Honorable Mary Jo White  
Chair  
U.S. Securities and Exchange Commission  
100 F ST NE  
Washington, D.C. 20549

Dear Chair White:

As you know, the Jumpstart Our Business Startups Act (the "Act") received endorsement from the White House and passed with bipartisan support in the House and the Senate to become law more than a year ago. While the Act contains innovative solutions for small businesses and startups that with appropriate implementation and oversight could result in a potential boost to the economy, the Act is far from perfect; its successful implementation depends on the Securities and Exchange Commission (SEC) taking a balanced approach in its guidance, rules and enforcement. To that end, I am concerned by the approach taken by the SEC, adopting a final rule implementing Section 201 of the Act and issuing a separate proposal to make up for what the final rule was lacking.

The final rule, which allows general solicitation and general advertising in private offerings and outlines limited ways issuers may verify accredited investor status, is an essential step called for by the Act, but it fails to acknowledge the risks that were identified by various stakeholders and experts through comment letters, briefings and testimony before Congress when the Act was being debated.

The purpose of the Act is to facilitate capital formation for small businesses, but the advent of general solicitation and general advertising in private offerings without proper protections may invite unwanted, inappropriate behavior that puts investors at risk and reduces confidence in such private offerings. Accordingly, it is clear that investor protection needs further attention; the new proposed rule approved at the July 10, 2013, Open Meeting is an initial step. The proposed rule's changes to certain private offering procedures may begin to provide protections and oversight mechanisms that would help safeguard the interests of investors, but only to the extent the proposal is finalized and takes effect as soon as possible.

Because the proposed rule will require pre- and post-offering filings, disclosure of additional offering information and submission to the SEC of general solicitation materials, it would provide the SEC necessary information for its regulatory and enforcement duties. Making sure the SEC has access to this information recognizes that an aggressive stance on monitoring and preventing any deceptive schemes that seek to mislead or defraud investors is an indispensable complement to the ability to engage in broad marketing of private offerings.

The significant penalties specified in the proposed rule signify to the market the importance of complying with the new filing requirements. If implemented, issuers would expect that failing to file as required, which is the chief way the SEC will know of a general solicitation in a private offering, carries real penalties. Without appropriate penalties, investors and the marketplace are at even greater risk.

The Honorable Mary Jo White  
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Page 2 of 2

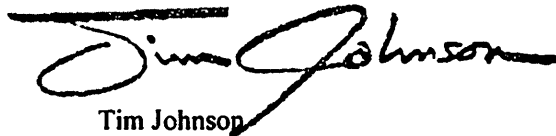
The proposed rule also functions to protect investors by requiring issuers to include legends and cautionary language in general solicitation materials for Rule 506 offerings. This information would alert investors to investment risks and other information and distinguish those materials from materials used in non-private offerings. Overall, the filing and disclosure requirements set forth in the proposed rule provide crucial information to the SEC and investors with minimal imposition on issuers.

While the investor protections in the proposed rule are encouraging, the SEC should make every effort to finalize the proposed rule as quickly as possible following the end of the comment period. I am concerned that without swift rulemaking to aid in the protection of investors, the JOBS Act rules that have already been finalized will not be effective.

Finally, in furtherance of the investor protection mission, the Commission should also consider updating in due course the accredited investor definition. Even though the Wall Street Reform Act modified the accredited investor net worth provision and provides for further review of the net worth level in July 2014, the Commission is able to review the definition and propose amendments to further protect investors as the marketing of private offerings expands. The definition of accredited investor would benefit from additional provisions that incorporate improved and updated financial thresholds or require investor sophistication.

As the Commission works to complete the proposed rule and other rules relating to the Act, the SEC should take all appropriate actions and utilize the full range of its authority to ensure that investors are protected from abuse and fraud. In your testimony before the Senate Banking Committee earlier this year, you affirmed this approach when you said, "The SEC is always concerned about investor protection, and should be and is, and I would be throughout my tenure, if confirmed." I am hopeful that the SEC will craft a full set of rules in a manner that protects investors while encouraging the capital markets to support entrepreneurs, grow small businesses and put Americans back to work.

Sincerely,

A handwritten signature in black ink that reads "Tim Johnson". The signature is written in a cursive, flowing style with a long horizontal line extending from the top of the "T".

Tim Johnson  
Chairman