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September 4, 2013

To: Mary Jo White, Chair
Elizabeth M. Murphy, Secretary
Charles Kwon, Office of Chief Counsel,
Division of Corporation Finance
Securities and Exchange Commission
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From: Jason Coombs, Co-Founder and CEO
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Re: Release No. 33-9416; Release No. 34-69960; Release No. IC-30595; File No. S7-06-13

Raising capital from the public in a Rule 506(c) Offering is not going to be the same type of activity as an IPO of securities that are underwritten by an underwriter then listed on an exchange when being offered to the public for the first time. A public offering under the JOBS Act, whether a Rule 506(c) Offering or future crowdfunding transaction type of Offering, is fundamentally an exercise of our constitutionally-protected freedom of association and freedom of speech. All persons in America have the "unalienable right" to form relationships with other persons, and to do so without undue government surveillance or control.

To the extent that the Federal government has an important role to play in governing private relationships which result from general solicitation and advertising, such as when the relationships take the form of new financial agreements, debt obligations (including debts that the Commission does not deem to be validly-issued "debt securities" such as private loans that are not issued in connection with any securities Offering) and other economic activities that are the direct result of regulated commercial speech or potentially-false and fraudulent public claims that do not belong in civil society, these constitutionally-guaranteed freedoms are not absolutes. However, Congress obviously did not authorize the Securities and Exchange Commission to ignore the U.S. Constitution when making rules and enacting regulation. The Commission should enact a policy of providing a constitutional law analysis along with each proposed Rule, in the manner that the Commission does presently when it provides an economic analysis. This will help the Commission avoid losing the plot again in the future, and perhaps the SEC could then become something that it has never been before, a legitimate American institution of government, rather than continuing to be a political deception.

It's time for the American economy to reflect American values, instead of being a political deception.

Many commenter recommendations, including those submitted by the AARP and AFL-CIO, have misplaced the blame for failed or fraudulent private placement investment losses, and have perpetuated the false belief that the Commission somehow has the authority to do anything about the true source of these problems.

When the Commission engages in public political discourse with those commenters and acts on their flawed political recommendations, it satisfies political relationships and deflects further meaningful analysis of the problems that are in fact the Commission's core responsibility to analyze and to solve. The SEC must stop engaging in politics and begin implementing reasonable steps to regulate, using a method other than politics in order to do so. If politics is going to continue to be the only method of market regulation utilized by our market regulators in America, then we should just fast-forward thirty years to the time when the Federal government is going to default on all of its obligations to everyone, and we should just confiscate all of the

wealth of every American and every American company and redistribute that wealth according to politics. Hollywood could create a reality television show in which every one of the hundreds of millions of people in our country get an opportunity to avoid being voted off the island, and those that do not get voted off will get to collect Social Security, Medicare, and food stamps for the rest of their lives while everyone else could be relocated to an internment camp in Alaska. If politics is going to rule the economy then let's all be honest about it so that everyone can see how absurd it is for politics to rule the economy! It was absurd beyond all sanity for the Commission to refuse to pass the JOBS Act rule by the original deadline of July 4, 2012, just because political commenters such as the AARP and AFL-CIO were beating the drum of fear and panic to perpetuate political deceptions that have been the source of literally trillions of dollars of wealth transfer, and future promises of wealth transfer mandated by Federal law, in America.

Capital formation and business growth are all about forming equitable, productive relationships and doing things of actual value for real people who are willing to exchange value for value in individual transactions each day. No new check boxes on Federal forms or revised wording of Rules, and no "rulemaking process" in the name of political Commissions like the SEC, will ever turn unproductive, meaningless relationships into productive and meaningful ones. When fraud occurs it is almost always the result of people choosing to be defrauded by failing, or not knowing how, to form and to govern economically-productive relationships.

It is not the Securities and Exchange Commission's job to interfere with relationship formation, nor to force relationships to contain certain political qualities because those qualities are what the currently-powerful and presently-wealthy actors in the economy assert are better than other qualities. Frequently those in power and those with all the wealth in a nation turn out to be completely misguided and delusional, such as at the end of a 79-year-long government-sponsored politically-biased Ponzi economy.

The continuation of politically-controlled market regulation, rather than regulation based on forensics and transparency and the freedom of each individual to govern themselves and to choose their relationships, to consciously occupy the positions that each of us believe to be the highest and best use of our resources and our talents and our efforts during our economic lives, is contrary to the public policy interests of America.

Because the Commission has failed to bring anything other than politics to the task it has been entrusted to perform within our society, and because those Commission politics have been so terribly biased in favor of the investment bankers, securities lawyers, and other finance industry insiders, all of whom know the truth of how the "regulatory game" is played and profit enormously from playing the game rather than solving any of the actual problems (because, if the problems got solved it would be "game over") individual people who buy and sell securities, start businesses, and plan for their financial futures in reliance on the idea that they can trust the regulators, or trust the banks, or trust the brokerages, or trust issuers of securities, are all deceiving themselves. It is the Commission's core responsibility to ensure that the entire American economy is based on something more substantial than politics and false promises. People need to know who can be trusted, and who cannot be trusted, when there is a way to discover such information other than by trusting other people's opinions, because just trusting people is not a reasonable basis for investments of any kind.

The Commission needs to introduce new methods of forensic record-keeping and reputation management. For example, a reverse credit bureau could be established by the Commission, where the previous activities of issuers, control persons, and others on the supply side of the economy could be rated or logged, and the individual experiences of real people could be chronicled by everyone on the demand side of the economy. This would allow investors to evaluate, and to verify, the value-creation skill and ability of each issuer. If an issuer, or its control persons, have a history of selling products or securities that did not provide value to the people who bought them, this material information should be easily-discoverable before an investor makes an investment of any kind whether in connection with public Offering via Rule 506(c) or a private Offering. The Commission's current mindset is so contaminated by delusional politics that there isn't even any way for an investor to ask the SEC whether a particular offer is from legitimate representatives of a given issuer!

The Commission should go back to the drawing board on its entire existence, and remake itself in the role of either a law enforcement agency (Congress will probably agree to make such a change at this moment in time, under Mary Jo White's leadership, in the wake of the American Great Recession financial crisis) or the SEC should stop wasting all of its resources and talents on politics and instead focus on building automated information systems and verification procedures that provide everyone who does business and who invests in America with new capabilities that do not exist today and may remedy recurring root causes of fraud. The Commission knows better than any other organization precisely what white collar crime looks like, and how it slips between the cracks of criminal statutes by typically being abuses of civil agreements or uninformed decision-making by people who are deceived by their own mental narratives and willingness to trust others.

The Commission could easily require Form ID to be submitted for every control person and promoter and other person who is affiliated with or paid a commission via the issuer's Offering, as a condition to qualify for use of Rule 506(c). This will, except for incidents of falsified Notary seals and other fraud and deception associated with the filing of Form ID, enable the Commission to follow the money that is raised, in the form of equity capital or debt obligations, by individuals associated with multiple legal entities at once, or over time. It will also make identity theft, both the theft of natural persons' identities and corporate identities, less likely to occur in connection with Rule 506(c) Offerings by giving the Commission advance notice of each natural person's corporate affiliations and personal fund-raising activities, which will otherwise be very hard for anyone to track, even privately, in the new JOBS Act era with crowdfunding and general solicitation.

The Commission should coordinate with the IRS to ensure that a 1099 filing is required by the IRS for all commissions paid in shares of stock by issuers who raise capital from the general public, such as in Rule 506(c) Offerings and in future JOBS Act crowdfunding transactions. The SEC should note, officially, that issuers are required to value any securities that are paid in commissions at the same price that the investors are paying to purchase those securities from the issuers, such as in Rule 506(c) Offerings.

The Commission should consider requiring any Rule 506(c)-related 1099s to be filed with the Commission in addition to the IRS, as a condition of a continuing privilege to conduct any Rule 506(c) Offering sales. If the Form 1099 does not work for this purpose, or if its filing would be limited by law to only US persons, then an alternative form could be created by the Commission for this purpose which would be applicable to all persons, including foreign natural persons and foreign companies, who pay commissions in cash or stock in connection with Rule 506(c) Offerings so the Commission can monitor and detect abuses of market trust.

The Commission should consider enhancing Form ID so that REAL ID Act and DHS watch list checks for control persons, promoters, affiliates and 10% equity or 20% voting owners can be conducted upon filing, or in the process of preparing the Form ID for submission. The current mechanism of identity verification, notarized signatures, is completely useless. In practice, transfer agents and others associated with the filing of Commission forms routinely skip any actual identity verification or notarization and simply rubber stamp Form ID submissions with notary seals by having a notary on-staff for this purpose who violates State law in doing so but whose abuse of authority reduces operating costs for such companies. One idea would be for the Commission to require a “medallion signature guarantee” rather than just a simple notarized signature for all Form ID submissions. This would bring into alignment the identity verification procedures employed by financial institutions when share certificates are transferred and the identify verification procedures that actual issuers of securities are subject to when securities are first offered and sold, especially to the public.

It is time for the Commission to stop diverting money into the pockets of investment bankers and securities lawyers, which created a 79-year-long fraudulent economy that made it easy for the Federal government to run up $60 Trillion+ of debts that it refuses to account for properly. When Mary Schapiro resigned in 2012 rather than comply with the JOBS Act she became emblematic of the entire corrupt systemic collapse. In a moment of pure irony and political delusion, this act revealed exactly what the Commission truly has been for 79 years: a shell agency that is systemically-broken and hopelessly-self-serving just like NASD/FINRA.

NFL stadium security measures have been changed recently in order to attempt to better protect the public from an event that has never happened before at an NFL stadium: a bombing or other large-scale act of violence that would presumably be politically-motivated "terror" if it were to occur in the future. See:

NFL Stadium Bag Policy #NFLALLCLEAR http://www.nfl.com/qs/allclear/index.jsp

Improving security measures in reasonable ways that are economical and effective is extremely important, in every part of our society, especially in politically-sensitive areas that pose a systemic risk to stability, safety, peace and justice. Finance is just such a systemically-important, politically-sensitive field in which improved security measures that are reasonable, economical and effective should be a national priority.

The NFL is willing to take action in advance of events of a serious criminal nature, based on the idea that it is reasonable for everyone to accept new rules that govern and restrict behavior of people when we gather in crowds and peaceably assemble for socially-enriching purposes. Part of the reason that the NFL is willing to take such preemptive, proactive action to improve its security measures is that failing to do so would risk possible harm to the value of the NFL brand, and may undermine the generally-positive social influence in our society of the political institution that is American football. If the NFL did not take reasonable steps prior to a terror attack at an NFL stadium, the long-term consequences of such an event could be far worse.

When power goes out at a Super Bowl, do Americans panic and run for the exits out of fear of terror? No.

http://en.wikipedia.org/wiki/Super_Bowl_XLVII#Power_outage

Do improved security measures themselves sometimes lead indirectly to the very events or precisely the harm that those measures were supposed to prevent? Yes, sometimes they do. Ironically, the Super Bowl power outage was caused by a device that was meant to prevent it! See: http://www.cbsnews.com/8301-400_162-57568360/super-bowl-blackout-caused-by-device-installed-to-prevent-power-outage/

A future act of terror at an NFL stadium may be blamed, indirectly, on the use of "enhanced interrogation" measures by America outside of our country, or on other improved measures of security targeting violent criminals or political groups who are driven by extremist ideology. Acts of violence are driven by complex dynamics, and everyone knows that they are also driven by mental illness. It is possible that the first NFL stadium bombing may be perpetrated by a mentally-ill football fan who carries out their violent act because of the way their mental illness reacted to the improved security measures at NFL stadiums. If we attempt to detect all risk of acts of insane violence with improved surveillance measures and additional restrictions of personal liberty, then those new surveillance measures and restrictions of liberty could have the same effect.

The more economic and social resources we pile on to watching and governing everything that everyone does in their lives, the more government employees the taxpayers are required to work to pay to watch us live and work, the more imbalance and injustice we may have, and the more systemic risk we may create, for which the solutions might cause more harm and cost more money than the real problem itself. In every security decision, politics and fear drive us to certain ideas because we fear certain threats but not others.

When the Securities and Exchange Commission proposes to enact new restrictions on liberty and new and improved governance measures, it must remember what it means to be American. Likewise, those groups who write comments and provide research reports and policy advice to the Commission, particularly special interest groups whose constituents have taken advantage of the American system throughout their lives and throughout their careers, should stop and think for a moment about whether they are advocating measures that are consistent with what it means to be American or whether the advice would perhaps result indirectly in the end of the American way of life by causing lasting unintended systemic harm to our nation's values. The Commission, and the American way of life and systems of value and commerce that the SEC is meant

to regulate to further the political objectives of the Federal government, cannot afford to be afraid of every possible threat to everyone all the time. We must prioritize correctly, or we risk squandering our national treasures and we all risk losing the substantial socioeconomic value of being Americans in America. In my opinion the SEC has failed to prioritize its security measures correctly ever since its inception back in 1934.

Where the NFL tries to design security measures to defend against impossible-to-prevent ***hypothetical*** acts of future violence, and it does so using reasonable steps that are carried out with care and attention to brand value and customer satisfaction, the SEC doesn't even design security measures to defend against easy-to-prevent ***actual*** acts of ***current*** financial fraud that ***can*** be prevented if the SEC actually wants them stopped.

It costs relatively little for the Commission to operate its public forensic database, EDGAR, and its website. The SEC could, if it wished, require every direct buyer of unregistered securities who acquires securities directly from issuers to register as EDGAR filers, and to file Form 3 and Form 4 when such securities are purchased and then later resold. The SEC could, if it wished, require all transfer agents to file daily reports, which would be publicly-reviewable, summarizing the number of shares of unregistered stock that were issued to buyers by issuers in such first-sale transactions. The SEC could also require all human issuers of unregistered securities to register as EDGAR filers, which all corporate issuers must do anyway in order to file Form D as the Commission is proposing to require in any Rule 506(c) Offering. Thereafter, registered EDGAR filers could be required to file, and the EDGAR forensic database could publish in perpetuity to the public at no cost, every financial record or other document that each securities issuer publishes publicly in connection with a crowdfunding or “public” Rule 506(c) Offering, in a permanent enhanced Rule 510T.

See the following SEC.GOV website regarding Forms 3 and 4: http://www.sec.gov/answers/form345.htm

In the future, crowdfunding portals and broker/dealers would be able to automate Form 3 and Form 4 filings on behalf of retail investors who purchase or resell unregistered 'first-resale' transactions. Prior to any initial purchase of unregistered securities the buyer could be required to certify they have reviewed the EDGAR filings associated with the issuer including specifically verifying that financial records and other documents that the issuer provided to the buyer were in fact already present in the EDGAR forensic database so that no buyer ends up buying unregistered securities based on Offering documents that are different from those that are in EDGAR which other buyers have relied upon previously or may rely upon concurrently. Furthermore, the Commission could easily recommend to Congress that any 'first sale' of unregistered securities which relies on Federal legal jurisdiction and Federal securities regulations, permitting direct sales to investors by issuers, be required to include the use of a Federal law enforcement agency as a financial intermediary. If all new funds that all investors choose to convert into the form of unregistered securities were to pass, initially, through a Federal law enforcement agency's accounts, then there would be meaningful SEC oversight, and features like a “cooling-off period” during which investors could receive refunds, or new privacy defenses for investors, would become possible. The SEC itself could verify “Accredited” investor status, if needed.

When the Commission does not use the tools that it already has at its disposal to improve security measures for investors, and then investors end up being defrauded in actual rather than hypothetical criminal acts that the Commission was supposed to have regulated the only possible interpretation is that something is wrong. In trying to understand, over years, what is wrong with the SEC it has become clear to me that the SEC was not actually trying to achieve its mandates as evidenced recently by its refusal to comply with the JOBS Act until somebody who actually comprehends Federal law became the new Chair. Instead, it appears that the SEC's primary mission in practice was, from 1934 until 2013, to divert value in the American economy to securities lawyers, investment bankers, and others whose jobs would not exist if not for Federal regulations. If the Commission wants to actually regulate *actual criminal abuse* of the American free market economy, it must design cost-effective reasonable steps. It is not reasonable to require people to read 186 mind-numbing pages like Release # 33-9416 with one hundred one (101) Requests for Comment to understand SEC intent.

However, the Commission has a long history of issuing interpretive guidance and publishing plain language summaries of its voluminous (and mostly-pointless, always convoluted and nuanced and self-contradictory) political rules or regulations which guidance turns out to be *COMPLETELY WRONG AND MISLEADING!*

For the entirety of the 79-year history of the Securities and Exchange Commission, it has apparently been a violation of Federal regulation for any issuer to offer or to sell unregistered securities through any form of "general solicitation or general advertising." However, during periods of time when the Commission has purported to create new exemptions to registration, such as Regulation D Rule 504 which it has termed the "Seed Capital" exemption, and associated reasonable steps for compliance therewith (such as the reasonable reliance upon State securities regulations instead of the Federal rules) where "general solicitation or general advertising" were supposed to have been permitted, or where the sale of free-trading unregistered securities could be accomplished in compliance with regulation, so that buyers could freely resell the securities to any other buyer such as through a stock broker, the Commission has habitually accused fraudsters of engaging in fraud by doing the very same things that honest issuers were doing during that same period of time.

Quoting from SEC complaint: http://www.sec.gov/litigation/complaints/2012/comp-pr2012-278.pdf

"During the relevant period, the stocks of these companies were "penny stocks" as defined by Section 3(a)(51)(A) of the Exchange Act [15 U.S.C. § 78c(a)(51)(A)], meaning that, among other things, they traded below five dollars per share and were not listed on a national securities exchange."

"32. Section 5 of the Securities Act prohibits any person, directly or indirectly, from offering or selling any security unless a registration statement is filed as to such offer, and is in effect as to such sale, or unless an exemption from registration is available."

"33. Rule 504(b)(l)(iii) provides an exemption from registration for certain limited offers and sales of securities only if the offers and sales are made "exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to '**accredited investors**' as defined in [Rule] 501(a)." **Accredited investors** are investors who meet certain income or net worth requirements. General solicitation and general advertising includes advertisements published in newspapers, magazines, and ***unrestricted websites***; (*emphasis added*) communications broadcast over television and radio; and seminars whose attendees have been invited by general solicitation or general advertising."

"Moreover, the Minnesota, Texas, Delaware, and New York state law exemptions that the Defendants claimed did not satisfy the Rule's requirements and, with respect to the claimed Texas exemptions, the Defendants failed to comply with Texas law."

"The Defendants' Rule 504(b)(l)(iii) Scheme
39. Since at least January 1, 2007 and continuing until at least early 2010, the Defendants improperly claimed exemptions from registration pursuant to Rule 504(b)(1)(iii) for more than 200 stock transactions, and obtained proceeds in excess of$15 million from the sale of unregistered shares wrongfully issued pursuant to the Rule."

"71. As noted, Rule 504(b)(1)(iii) provides an exemption from registration for certain limited offers and sales of securities only if the offers and sales are made "exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to 'accredited investors' as defined in [Rule] 501(a)."

72. Texas Rule 109.4 does not satisfy Rule 504(b)(l)(iii) because this provision does not permit general solicitation or general advertising, To the contrary, it exempts the "offer and sale" of securities to

"institutional accredited investors," "qualified institutional buyers," and other specific types of entities. Because the Texas rule, by its terms, limits the types of investors to whom the shares may be offered, the rule prohibits general solicitation to all members of the public. Therefore, sales made pursuant to this provision do not qualify for the exemption from registration under Rule 504(b)(1)(iii).

73. Texas Rule 139.16 does not satisfy the requirements of Rule 504(b)(l)(iii). This exemption from registration expressly applies only to offers and sales made "without advertising," or only with "limited use advertising" under certain circumstances. Thus, contrary to the requirements of Rule 504(b)(l)(iii), Texas Rule 139.16 does not permit general solicitation and general advertising.

74. Minnesota Statute 80A.15(2)(g), now repealed, did not satisfy Rule 504(b)(l)(iii) because the Minnesota statute did not limit sales to accredited investors. This state provision exempted from registration any offer or sale to any institutional buyer, "whether the purchaser is acting for itself or in some fiduciary capacity." The definition of institutional buyer included, but was not limited to, accredited investors. Moreover, the Minnesota rule does not expressly permit general solicitation and general advertising. Effective August 2007, this exemption was repealed. The Defendants' subsequent use of the provision, on about a dozen occasions, also was unjustified.

75. Delaware Section 7309(b)(8) does not satisfy Rule 504(b)(l)(iii). Like Texas Rule 109.4, Delaware Section 7309(b)(8) exempts "offers" to certain accredited investors and several specifically enumerated types of institutions. A general solicitation, by contrast, is one directed at the public at large, which means that it reaches both accredited and non-accredited investors. Therefore, Section 7309(b)(8) does not permit general solicitation.

76. New York Martin Act does not satisfy Rule 504(b)(l)(iii) because there is no New York State exemption requiring that sales be made to accredited investors.

77. Thus, **regardless of the language in the attorney opinion letters**, the Rule 504(b)(l)(iii) exemption **was unavailable to the Defendants' transactions.**" (*emphasis added*) (end quote)

In summary, despite decades of the Commission asserting that there was such a thing as an "exemption" in reality ***there was not one single method of possible compliance with Rule 504 of Regulation D!*** When my company acquired a website (www.504investor.com) in October, 2008, for the purpose of growing a viable, regulatory-compliant crowdfunding and peer-to-peer equity investing platform, which was similar to Angel List (angel.co) or the other seed capital fundraising websites that the Commission recently ruled are allowed to exist because the issuers who use them are not engaging in "general solicitation and general advertising" it was not long before it became clear that it was impossible to operate such a website without violating the Commission's rules and regulations, and thus every user of our website would risk Federal prosecution.

How are issuers supposed to know whether their attorneys are interpreting Federal and State law, and the Commission's Rules, correctly? I have worked for over 15 years as an expert witness in civil and criminal cases involving complex technical issues, cybercrime, and intellectual property law – and I am currently the CEO and Chairman of an OTC-quoted issuer, and I can tell you from experience that attorneys are usually wrong. Even very good, honest attorneys make mistakes all the time. This is why they hire other experts and do not undertake complex casework alone. The only way anyone can possibly know whether they are complying with SEC regulations is by getting multiple opinions, and then deciding which ones to ignore. When the opinions that get ignored turn out to be the very ones that the Commission goes to trial to litigate, even then nobody knows whether the particular legal interpretations being advanced by the Commission are going to hold up at trial, or whether the Commission's **OWN ATTORNEYS ARE MISTAKEN!**

There is no other way to describe this entire situation than to call it ABSURD AND UNREASONABLE.

The Commission must devise a fundamentally-different way to regulate. Fewer impossible-to-follow rules would be a good place to start. Create rules that affirm that Americans have more fundamental freedom to conduct business, and to accept the risks of doing so, based on the idea that all men are created equal and that there in fact are certain unalienable rights. When the Commission promulgates systemic dysfunction in which nobody can possibly know whether they are violating Commission Rules, or who will end up being blamed, sued, or prosecuted if the Rules do end up being deemed violated, this becomes an absurd and unreasonable system of regulation that deprives everyone of liberty and happiness, and also ruins lives.

In practice, the Commission appears to have created self-contradictory overlapping rules and regulations that simultaneously outlaw and expressly permit everything that everyone might do in American business, and by ensuring that everyone is subject to prosecution or lawsuits on the whim of politics, and depending on how the wind is blowing each day, anyone who anyone else chooses to accuse of wrongdoing can be relatively easily put out of business or can be deprived of liberty or property without due process of law.

In the past the Commission has apparently engaged in premeditated entrapment. By creating the appearance that the Commission was permitting certain high-risk activities, such as seed investing in startup companies or offering and selling unregistered securities using limited general solicitation and general advertising by relying on State law and the “Seed Capital” exemption promulgated by Commission Rule 504 of Regulation D, but in reality bringing charges against anyone who attempts to use those exemptions in a manner that is not consistent with the spirit or letter of the Commission's constantly-evolving-interpretive-guidance, the Commission has been able to lure “bad actors” into committing “bad acts” and then the trap springs and those people can be caught and labeled as the “bad actors” that perhaps they are. From the outside, looking at those cases, even reading Commission legal pleadings, nobody has any way to know whether the actors who are being charged with wrongdoing by the Commission actually did anything wrong, or whether the wrong being done is originating from malicious or mistaken prosecutors, politically-motivated Commission attorneys. Because we cannot know the truth, we all give the Commission the benefit of the doubt. If an SEC attorney or a Federal prosecutor claims that something was fraudulent, then that must be the truth.

However, the Commission has, under Mary Schapiro's former influence and control, lost all credibility that it previously had. The Commission's actions and inaction in cases such as Bernie Madoff or the JOBS Act Rulemaking (by the Congressionally-mandated deadline) have revealed that the Commission was formerly a shell Commission that did not honestly carry out its responsibilities, and as a shell Commission it had no legitimate intention of doing so, but stayed “in business” purely for political reasons and for reasons of personal self-interest for those whose careers were a direct result of the systemic fraud and dysfunction.

I want to know what the current Commission intends to do to assure everyone that current SEC Rulemaking and “interpretive guidance” is not more of the same political maneuvering to entrap and to exploit issuers or their customers and investors whose faith in the integrity of the American free markets is the only thing that gets defrauded and destroyed when there is no realistic way for anyone to comply with regulations, thereby making it impossible for honest people to be distinguished from the dishonest, and turning “honesty” into a simple matter of “opinion” rather than something that anyone can ever affirmatively demonstrate to others.

If the Commission's rules are designed solely to ensure that everyone needs to hire multiple attorneys, then why not simplify the entire system by eliminating the Commission entirely? Congress could just pass a law that requires everyone to buy an insurance policy and a legal opinion for everything we do in the economy. Congress could craft this new law in the spirit of Obamacare, such that anyone who does business without insurance and the required legal opinions could be penalized by the IRS each year, and anyone who does not do business could be required to buy the insurance policies, anyway. Warren Buffett could sell them!

The following pages contain my answers and responses to the Commission's Requests for Comment. When the Commission issues RFCs in the future, please include case law citations and constitutional law analysis.

#1. Q: We are proposing that issuers file an Advance Form D no later than 15 calendar days before the commencement of general solicitation in a Rule 506(c) offering. Is such an advance filing useful and appropriate for an effective analysis of the Rule 506(c) market? Should the 15-calendar day period be increased or decreased? Why or why not? Should the filing deadline be tied to the commencement of general solicitation or the commencement of the offering, whether or not general solicitation is used?

#1. A: Advance Form D filing should be required prior to commencement of a general solicitation, but the act of filing the Advance Form D should immediately authorize commencement of a general solicitation. There should be no 15-day wait. Form D filings must now be done electronically, which means each filer must first obtain a Central Index Key (CIK) by filing a Form ID to obtain EDGAR Access Codes from the SEC's EDGAR Filer Management (filermanagement.edgarfiling.sec.gov) website. Quoting therefrom:

"*Notice: Before you can electronically file with the SEC on EDGAR, you must become an EDGAR filer with authorized access codes. This website will allow you to create a* ***Form ID*** *and submit it for authorization to the SEC. Upon acceptance, you will receive a unique CIK via e-mail. You will then return to this site and use your CIK and a passphrase to create your EDGAR access codes. Once you have your access codes, you may use EDGAR to begin electronically filing."*

After a new Form D is submitted, which is accomplished using the Commission's EDGAR OnlineForms Management (onlineforms.edgarfiling.sec.gov) website, the website provides the filer with an electronic receipt in the form of an immediate electronic copy of the filed form. That filed Form D, in electronic form, should be considered the only acknowledgment that is required to commence general solicitation, because in practice it is the only acknowledgment that the filer will ever receive from the Commission. There is no filing approval process for filed Form Ds, and the only possible benefits to adding a review and approval process would require the Commission to become significantly more involved in the new capital formation process for unregistered issuers, such as in ways that I have recommended in my various Comment letters.

#2. Q: What should the consequences be for failing to timely file an Advance Form D for a Rule 506(c) offering? Should the filing of the Advance Form D be a condition to Rule 506(c) so that failure to file results in the immediate loss of Rule 506(c) as an exemption from Securities Act registration for the offering at issue?

#2. A: General solicitation of unregistered securities should continue to be a violation of Federal regulations if and when the solicitation occurs across State lines or in Federal jurisdiction, or when Federal jurisdiction is elected by the issuer such as in a conventional Regulation D Offering, unless an Advance Form D is filed and the Rule 506(c) procedures are followed. The final Rule 506(c) procedures need to be more substantive than just placing a check mark in a check box to elect Rule 506(c) safe harbor designation for the Offering.

If general solicitation of unregistered securities is permitted, without consequences for the issuers and the promoters and others involved in such unregistered offerings, in violation of the 1933 Securities Act, and if the only steps required to "cure" these defective Offering procedure so they become "legal" after-the-fact were to be the simple filing of a delinquent Advance Form D, then you might as well ask Congress to repeal the 1933 Securities Act *and dissolve the Securities and Exchange Commission to save taxpayers' money!*

If issuers violate the 1933 Securities Act by engaging in general solicitation of unregistered securities prior to the filing an Advance Form D, the issuers and the control persons and promoters thereof should each be placed on the SEC'S OFFENDER REGISTRY. Any natural or corporate person who is listed on the SEC's Offender Registry should lose certain privileges for a period of two years, including becoming ineligible to rely on Rule 144 etc. during this two year period, not being eligible to rely on S-8 employee stock incentive programs, and not being eligible to participate in any initial or follow-on registration of securities. After the

expiration of the two-year period, the SEC's Offenders should remain listed, for historical purposes, in the offender registry so that the general public will be able to see, with a simple search on the SEC's website, this history of offending. The search interface for the SEC's Offender Registry should clearly identify the CIK and other identifying information of each offender, possibly including each offender's face photograph.

The SEC should make it clear that it has the authority, and that every private citizen has the right, to file a civil lawsuit against any natural or corporate person who violates Federal securities regulations. In any case where one of the SEC's Offenders does not sell, but only offers to sell, unregistered securities through the use of general solicitation and advertising prior to filing the required Advance Form D, there should not normally be any civil action taken against such "offering-only" *statutory offenders*, absent any aggravating circumstances. The filing of civil action should be reserved for cases in which offenders followed-through with sales of unregistered securities after making the public offers in violation of the 1933 Securities Act.

#3. Q: We are proposing to require the filing of an Advance Form D no later than 15 calendar days before the first use of general solicitation in a Rule 506(c) offering. We recognize, however, the possibility that a communication could be inadvertently disseminated beyond the intended audience without the issuer's knowledge or authorization. What should be the consequences for the issuer under such circumstances? Should there be a different filing deadline for the Advance Form D when there is an inadvertent general solicitation? For example, under Rule 100(a)(2) of Regulation FD, the information in a non-intentional selective disclosure must be publicly disclosed "promptly" after the issuer knows (or is reckless in not knowing) that the information selectively disclosed was both material and non-public. Should a similar filing deadline be considered for an inadvertent general solicitation?

#3. A: No. Inadvertent general solicitation is irrelevant. In those cases where it is clear that there was intent to generally-solicit, the offenders should be placed on the SEC's Offender Registry and lose privileges for a period of two years, as summarized in my answer above. Inadvertent general solicitation is going to happen by way of third-parties, copy-and-paste, social media, social networking, and other free or near-free mass communications. It would be absurd beyond all reason (just as the Commission has been for 79 years) for the Commission today, or in the future, to effectively criminalize free and voluntary sharing of information between members of the general public. Intentional general solicitation is very easily distinguished from the inadvertent variety, except when some malicious third-party attempts to frame an issuer by impersonating the issuer and disseminating offering materials in the name of the issuer without the authority to do so, in order to cause legal problems for the issuer or simply to cause the issuer to be placed on the SEC's Offender Registry. There is nothing the Commission can do, in practice, to detect identity theft of this sort. As the Commission is aware, it was grossly incompetent for 79 years and during its entire existence it has been unable or unwilling to design identity theft detection or prevention methodologies and technologies, which has resulted, many times, in **the fraudulent issuance of literally billions of shares of stock** and other securities by third-parties who claimed to have the authority to issue them in the name of the issuers. If the Commission can't even stop THAT SERIOUS FRAUD FROM HAPPENING DUE TO IDENTITY THEFT, which the Commission clearly can't, then it would be an absurd and outrageous waste of time for anyone to try to design a new punishment that the Commission would dole out when an issuer's identity and offering documents are stolen and misused (such as by a malicious hacker or competitor) to cause harm to the issuer.

#4. Q: Should issuers be permitted to file an Advance Form D even if no specific offering is contemplated? Why or why not? How would this impact the usefulness of the Advance Form D data? We have identified certain information that we believe should be included in the Advance Form D. Is the information proposed for the Advance Form D the appropriate information to be provided at that point of the offering? Is there other information that issuers should provide in the Advance Form D? Would it be more difficult for issuers to provide certain information in an Advance Form D? If so, which information?

#4. A: The issuer should be required to provide the Commission with every single bit of data that the issuer

intends to publish, prior to publication, and the issuer should be required to supplement and amend the disclosures provided to the Commission on a daily basis if and when the published materials change or are amended and revised. All of the data provided to the Commission by an issuer who is conducting a public offering in accordance with Rule 506(c) should become part of the issuer's permanent EDGAR record, associated with the issuer's CIK. When the crowdfunding provisions of the JOBS Act go into effect, any registered crowdfunding portal through which issuers engage in unregistered offerings and crowdfunding sales of securities to non-accredited investors should be required to file with EDGAR on behalf of each issuer, under the CIK of the crowdfunding portal if the issuer does not have its own CIK assigned. Issuers who are ready to conduct general solicitation already know what they plan to publish, they already have it in their computers in a format that is ready for publication, and it is trivial and inexpensive for the issuers to simply upload it to the SEC's forensic database via the EDGAR filing website. Use the existing mechanism.

#5. Q: We are proposing that an issuer have the option of either filing an Advance Form D for Rule 506(c) offerings to provide certain information required by Form D, with the complete Form D information provided in a subsequent amendment to Form D filed no later than 15 calendar days after the first sale of securities, or providing all of the required Form D information in the Advance Form D, if known at that point in the offering. Should issuers be provided this option? Or should issuers be limited to providing certain specified information in the Advance Form D and required to file a subsequent amendment, after the first sale of securities, to provide the remainder of the information required by Form D? Would allowing issuers to have the option of providing all of the information required by Form D no later than 15 calendar days before they commence general solicitation (as compared to the current requirement of no later than 15 calendar days after the first sale of securities) affect the quality or usefulness of the Form D information for purposes of the Commission’s efforts to analyze the Rule 506 market? For example, what is the likelihood that issuers will be in a position to provide all of the information required by Form D no later than 15 calendar days before the commencement of general solicitation?

#5. A: The information required by Form D is almost entirely useless, currently, except for estimating the size of Offerings and other simple record-keeping. The only difference between Form D information and Form ID information is that the Form D information includes numbers for the size of the proposed or the already-in-progress Offering. An Advance Form D will likewise be useless, other than for keeping track of who is selling unregistered securities under Federal jurisdiction. However, as discussed in my opening remarks, above, the Commission could definitively track the entire unregistered securities marketplace, with ease, and at very low cost, just by requiring transfer agents to supply the Commission with all sales information on a daily basis in an automated information system. Who cares what the issuers' Form D contains in the way of numbers? Ask the transfer agents, they are the ones who know the truth, they have the definitive and accurate information. It is a stupid waste of time to require somebody to try to fill out that same information in repeated Form D filings or to try to estimate size and duration of a new Offering.

#6. Q: What would be the benefits of requiring the Advance Form D for Rule 506(c) offerings? What would be the costs to issuers, market participants and other parties? Would the requirement to file an Advance Form D deter issuers from conducting Rule 506(c) offerings? Would the requirement to file an Advance Form D have differing or unique effects on certain types of issuers, such as Exchange Act reporting companies, non-reporting companies, foreign companies or private funds?

#6. A: Require the Advance Form D for the purpose of creating metadata for attaching to the disclosures of actual offering materials and public communications that the issuer has prepared and intends to publish. The Advance Form D should be the method of obtaining automated, instantaneous permission to commence the publication by an issuer, within Federal jurisdiction, of the items uploaded to the EDGAR forensic database.

#7. Q: Would potential investors or other market participants review Advance Form D filings on a real-time basis? If so, how would they use the information in the filings? How would state securities regulators use the Advance Form D filings?

#7. A: Yes, everyone who is monitoring the markets and investing or just doing business in America would review Advance Form D filings, and the Offering publication materials and disclosures that issuers intend to begin distributing publicly. This forensic "firehose" of business ideas, intellectual property, and Offerings to invest in same, would become one of the most interesting and valuable financial news publishing "social media" resources ever created by humanity. It would become critical to searching prior art for future patent litigation. It would bring into sharp focus the importance of filing for patent protection prior to disclosing the patentable inventions of any business that intends to sell products or services in the American market. The Commission would, by creating such a "forensic social media firehose" real-time data stream, provide the one thing that has been missing from the marketplace until now: a single place for everyone to look in order to discover new opportunity, and the Commission would succeed, virtually overnight, in its mission to promote efficient capital formation and job creation and growth in the American regulated and unregulated financial markets in one simple, low-cost action. This is what everyone needs in order to be able to raise new capital in the first place: a free, authoritative, centralized, ***digital government firehose of innovation***.

#8. Q: Are there situations in which an Advance Form D filing should not be required? If so, what are these situations?

#8. A: No Advance Form D filing should be required when the general solicitation will exclusively target international investors, and when the issuer will be refusing to sell securities domestically to Americans.

#9. Q: Should an Advance Form D filing be required before or at the commencement of all offerings under Rule 506, or all offerings under Regulation D? If not, why?

#9. A: No. The old Regulation D and the old Rule 506 should not be combined in any way with a public offering of unregistered securities. There should not even be any legal concept of "integration" between a public offering pursuant to the JOBS Act (either Rule 506(c) or a future crowdfunding Offering) and a conventional Regulation D Offering of unregistered securities. All JOBS Act Offerings should be allowed to be done in parallel with any other form of Regulation D Offering, and only the other forms of Offering should be subject to "integration" rules, such as those that apply in Regulation A and Rule 504 or Rule 506.

The reason for drawing a firm boundary between the old way and the new way of Offerings is simple: the old way was born of systemic fraud and corruption, it was ridiculous harmful wasteful stupid politics and it was unconstitutional from the start in 1933 and should have been challenged on these grounds long ago. The SEC has no authority, and the Federal government cannot legitimately defend its actions when a legacy of fraud and deception is properly presented in a constitutional law framework. The old Rule 506 should continue to be what it is, and the SEC should continue to threaten to sue and prosecute people who do not understand that Rule 506 is an unconstitutional sham and a deception perpetrated by the former shell SEC.

Those of us who understand these things clearly and wish to move beyond the old corrupt system would appreciate it if the Commission would not mix metaphors. Allow the countless securities lawyers who still think they are entitled to big paychecks (for doing nothing) to maintain the appearance that they are useful and valuable and important, so they can retain their jobs and their positions of trust and authority in the minds of their misinformed loyal clients. The new generation of American businesspeople who are digitally connected and aware of their rights and willing to comply with straight-forward, efficient, sensible rules and regulations will do it ourselves and practice forensic transparency on a scale that is unprecedented in history but only if the Commission lets us do so. Give us the freedom to create the future without being burdened by, or lumped together with, the legacy of fraud and deception that is the Commission's political past.

#10. Q: Are any other rule amendments necessary if the Commission were to require the advance filing of Form D for Rule 506(c) offerings, as proposed?

#10. A: New rules to establish the SEC's Offender Registry, revisions to Rule 144, etc. as discussed above.

#11. Q: Should we require a closing Form D amendment for Rule 506 offerings, as proposed? Why or why not? Should the closing amendment requirement apply to all Regulation D offerings, as was the case when Regulation D was originally adopted? Alternatively, should the closing amendment requirement apply only to offerings under new Rule 506(c)? Are there situations where a closing amendment to Form D should not be required? If so, what are these situations? For example, should no closing amendment be required if no sales of securities have been made?

#11. A: No closing amendment should be required under any circumstances. However, issuers who do file a closing amendment voluntarily could receive some benefit for doing so, if the Commission cared to provide one – such as helping to prevent any fraudulent offerings or sales of forged or fake securities purporting to be authentic securities of a particular issuer who commenced an Offering but never filed a closing Form D. For the duration of any Offering, there remains an elevated risk of identity theft against the issuer, however the Commission has not yet taken such risks seriously with a view to stopping this type of corporate identity theft or hijacking. It would be easy for the Commission to require a closing Form D prior to the opening of any new Regulation D Offering, and that requirement would be useful, but the utility of all of these filings that the Commission is currently failing to capture for issuers and for the investing public requires the intent of the Commission to close the loop with issuers and investors by maintaining official forensically-secure channels of electronic communication and US Postal Service high-priority confidential official government encrypted and digitally-signed notices, neither of which facilities exist today. Only when these channels of trusted communication exist will the Commission be able to instantly notify an issuer of any filings the SEC receives in its name other than via the EDGAR forensic database, which issuers themselves must monitor.

#12. Q: As proposed, a closing Form D amendment would be required to be filed not later than 30 calendar days after the termination of a Rule 506 offering. Should we use a different time frame for the filing of the closing Form D amendment? If so, why and how long?

#12. A: The Commission should not impose a requirement for a closing Form D.

#13. Q: We have not proposed that the filing of a closing amendment be a condition of Rule 506. If the closing amendment were a condition of Rule 506 and an issuer failed to make the required filing, the issuer would lose the exemption for the entire offering at issue, including sales that were made while the issuer was in compliance with Rule 503. Should the filing of a closing Form D amendment be a condition to Rule 506(b) or Rule 506(c)?

#13. A: This is more political deception nonsense that is characteristic of the Commission's true function and purpose since 1934. Asserting that “compliance with Rule 503” might be required in the future conceals the fact 17 CFR 230.503 has ***always*** required the filing of a Form D in connection with a Rule 506 Offering. The language of Rule 503 has ***always*** been “must file with the Commission a notice of sales” however, due to the political deceptions and the absurd history of the un-American shell SEC since 1934, the Commission has established policies and procedures that directly contradict the Commission's own written regulations.

It is absolute insanity for the Commission to enact a false Rule that contains the words “must file” and then for the Commission to promulgate a separate, truthful set of practices and procedures that are known only to the cadre of “securities lawyers” who earn hundreds of thousands of dollars per year advising issuers. This Commission has a duty to truth and transparency. The SEC should be our nation's “truthkeeper-in-Chief” for the majority of Federally-regulated business activity and nearly all capital formation or equity exchange. The Commission should immediately cease and desist its pattern and practice of political deceptions such as Rule 503. When you ask questions that reference “compliance with Rule 503” when you know very well that there has never been any such thing, it is clear that the Commission is still suffering from the effects of its 79-year dysfunctional and deceptive political history. I suggest that the Commission solve this problem. The Commission knows that threatening issuers might “lose the exemption” is nonsense. Stop the nonsense.

#14. Q: As proposed, the closing amendment must be filed within 30 calendar days after the issuer terminates the offering. Should we provide a more detailed explanation of what constitutes the termination of an offering?

#14. A: The Commission should provide a comprehensive revision to its existing Rules to redefine, using words that are not political deceptions, every stage of offering and sale, from pre-offering exploratory steps by promoters of new corporations or securities, through to final dissolution of the issuer and nullification of the issued securities. Nobody, not even the nation's top securities lawyers, know what the Commission will say about the interpretation of its own Rules until we ask the Commission for a “No Action” letter, and if the Commission's interpretations evolve over time (as they do) then everyone who does not obtain a “No Action” letter from the Commission is perpetually at risk of being accused of wrongdoing in the future.

This condition of perpetual uncertainty gives the Commission political and legal power, but it is wrongful.

#15. Q: What would be the costs to issuers of filing a closing Form D amendment? Would a requirement to file a closing Form D amendment deter issuers from conducting Rule 506 offerings? Are there any costs or benefits that we have not discussed? If so, please specify.

#15. A: There could be benefits to voluntary filing of a closing Form D but the Commission hasn't provided any benefits yet and until it does there should be no requirement (not even a false political one) to file.

#16. Q: What are the alternatives to requiring a closing amendment to Form D? For example, rather than requiring a closing amendment to Form D for all Rule 506 offerings, should the Commission only require an amendment when an issuer sells an amount of securities in excess of a certain percentage (for example, 10%) above the amount reported as sold in the last Form D or Form D amendment previously filed for the offering?

#16. A: The best alternative to requiring closing amendment is to stop trying to use Form D as a mechanism of regulatory oversight. If the Commission wants to know what is happening in markets that it is supposed to be regulating, all it needs to do is ask the people and companies who have the definitive information. It would be entirely reasonable for the Commission to require that any transfer agent who issues securities on behalf of any issuer who engages in a Rule 506(c) Offering, whether or not the securities are issued in connection with a Rule 506(c) Offering, to report on a daily basis to the Commission all newly-issued securities of the issuer. This is reasonable because, for those issuers who choose to become “public” issuers including through conducting offerings that utilize general solicitation and advertising, every single holder of the issuer's securities is in effect engaging in a financial relationship with a publicly-traded company.

This is an extremely important distinction. The fact that members of the general public may, at some point in time in the future, become holders of securities of a particular issuer is the definition of “publicly-traded” that distinguishes the securities from those issued by private issuers in purely-private transactions. For any issuer that chooses to stop being “private” there is a perpetual obligation to remain “public” and to honor the public securities implied contract that they will remain “public” until and unless all publicly-issued and publicly-held securities are redeemed and retired by the issuer. If the Commission adopts a comprehensive revision to its existing Rules so as to provide factually-correct, non-deceptive definitions for these stages of existence of issuers and securities throughout the private/public continuum these issues will finally be clear.

#17. Q: Rule 503(a)(3)(ii) currently requires issuers to file an amendment to a previously filed Form D to reflect changes in the information provided, subject to certain enumerated exceptions. Should the proposed closing amendment to Form D serve as a substitute for this type of Form D amendment? If the proposed closing amendment requirement is adopted, should Rule 503(a)(3)(ii) be eliminated or simplified, so that only certain changes (e.g., the size of the offering) would trigger the obligation to amend Form D?

#17. A: Rule 503 is meaningless and irrelevant, as the Commission is well aware, because failure to file a Form D does not result in an issuer being ineligible for the Rule 506 (or other Regulation D) exemptions. It is not clear at this time whether the Commission intends to adopt a less-politically-deceptive regulatory role in these markets such that the meaning of words like "must file with the Commission" will mean, under the Rule 506(c) regulatory enforcement regime, the same that these words have always meant with respect to private placement offerings (wherein words like "must" actually mean "who cares, do whatever you want"), or whether there will be actual enforcement of the plain language meaning of the Commission's words.

#18. Q: Alternatively, in light of the proposal to impose disqualification from reliance on Rule 506 for failures to comply with Rule 503, as discussed in Section II.E below, should the Commission further amend Rule 503(a)(3)(ii), or provide additional guidance, in regard to the circumstances in which an amendment to Form D is or is not required? For example, should the Commission amend Rule 503 to set forth additional situations in which an amendment to Form D would not be required to reflect a change in the information provided in a previously filed Form D? Conversely, should the Commission amend Rule 503 to require the filing of an amendment to Form D to reflect a change in information where such amendment is not currently required under Rule 503?

#18. A: I do not believe the Commission is actually going to disqualify anyone for failures to comply with Rule 503, and I believe that as soon as the Commission does try to disqualify somebody who has enough money to fight the disqualification in court, that the Commission's attempt to give itself the power to limit the freedom of speech and freedom of association of issuers or natural persons who fail to comply with Rule 503 will be ruled unconstitutional by the courts. What the Commission should do instead is create the SEC's Offender Registry and place offenders on this Registry any time the Commission believes the public needs to know about past failures. For a period of two years from the date that any "bad actor" is placed on the SEC's Offender Registry the privileges that the Commission does have the authority to revoke (such as eligibility to rely on Rule 144, etc) can be temporarily suspended with respect to the offender and/or issuer.

In addition to losing privileges that are not constitutionally-guaranteed freedoms, this idea of placing on the SEC's Offender Registry any "bad actor" who in the Commission's sole judgment has committed an offense the comprehensive public record of previous offending will be an effective and lawful deterrent to offenses.

#19. Q: As discussed in Section II.D below, we are proposing amendments to Form D to require additional information, primarily with respect to Rule 506 offerings. After an issuer files a Form D that includes this additional information, any change to this information (for example, a change in the number of purchasers who qualified as accredited investors or the methods used to verify accredited investor), would generally require the filing of an amendment to Form D under current Rule 503. Should the Commission amend Rule 503 so that an amendment to Form D would not be required when there is a change to some or any of this information? If so, which information and why?

#19. A: I do not believe there is any point or purpose in requiring issuers to supply information about the methods used to verify accredited investors. Periodic updates to Form D as the Offering continues to result in new sales is a valuable disclosure process, for both issuers and investors. The Commission's ability to regulate the public unregistered securities marketplace will be enhanced by periodic updates in connection with active Offerings. However, there should not be a requirement to file updates with the Commission. If the Commission wants to monitor sales of unregistered securities then the Commission should require the transfer agents who issue securities on behalf of issuers in connection with Rule 506(c) Offerings to report to the Commission on a periodic basis. Remember that anything the Commission requires of issuers each State will probably also require, so every mandatory filing requirement could become fifty times as much cost and administrative burden for the issuers. The Commission could simplify the entire process of both Federal and State securities regulatory compliance by obtaining information directly from the most reliable source, transfer agents, and by sharing that information with State securities regulators as-needed.

#20. Q: Should issuers conducting ongoing offerings pursuant to Rule 506(c) be required to amend their Form D filings more frequently than on an annual basis to provide, to the extent that such information has not already been provided in a previous Form D filing, updated information regarding the dollar amount of any securities sold during such period pursuant to such offering, and any other securities of the same class (or any securities convertible into or exercisable or exchangeable for securities of the same class) sold during such period pursuant to an exemption from the registration requirements of the Securities Act? If yes, how frequently? For example, on a semi-annual basis or a quarterly basis?

#20. A: The only mandatory requirement should be the filing of the initial Form D, and, if the Advance Form D is used to supply each specimen of general solicitation materials that the issuer plans to use in connection with a Rule 506(c) Offering, the filing of those periodic Advance Form Ds and associated solicitation materials. If the Advance Form D and the Form D are merged into one Form D and if the only requirement for filing of a Form D in a Rule 506(c) Offering is prior to, or immediately after, first use in commerce of particular general solicitation materials, this would be sufficient mandatory Form D filing.

Preferably, the Commission would provide a mechanism other than the Form D filing for submitting to the Commission, and thereby publishing publicly, any general solicitation materials. Voluntary Form D update filings should be encouraged, but amended or closing Form D filings should not be required of issuers.

#21. Q: Rule 503 requires an amendment to a previously filed Form D to correct a material mistake of fact or error "as soon as practicable after discovery of the mistake or error" and an amendment to a Form D to reflect a change in the information previously provided, except in certain situations, "as soon as practicable after the change." Would such non-specific filing deadlines make it difficult for market participants to determine whether an issuer is disqualified from reliance on Rule 506 for failure to comply with Form D filing obligations, including the determination of when a cure period expires? Should the Commission consider amending Rule 503 to set forth more specific time frames for filing these amendments to Form D?

#21. A: There should be no mandatory requirement to file amendments. If issuers wish to specify anything other than "unlimited" for the amount of an Offering, and any time period other than "perpetual" for the Offering's planned duration, there should be a requirement to amend the Form D filing if the amount or the planned expiration date of the Offering are exceeded. All other amendments or updates should be voluntary.

#22. Q: Should the Commission amend Rule 503 so that an annual amendment for an ongoing offering is required to be filed on a specified date, such as the one-year anniversary of the initial filing of a Form D or Advance Form D?

#22. A: There should be no mandatory Form D amendment filing requirement nor arbitrary deadline.

#23. Q: Should the Commission provide additional guidance on what constitutes a "material mistake of fact or error" that would necessitate the filing of a Form D amendment?

#23. A: The Commission should eliminate this entire concept since every issuer can just specify "unlimited" as for the size of the Offering, and "perpetual" as to the Offering duration. The Form D should be simplified so that it merely discloses the existence of a particular type of Offering being conducted by a given issuer. In practice, the Form D filing is already the basis of State securities regulator required notices and there are numerous inefficiencies and defects in State securities regulator procedures. Frequently, in practice, the State securities regulators accuse issuers of failing to file forms even though the forms have been filed. In States where filing requirements are particularly burdensome and paper-based, it has proven to be nearly impossible for issuers and regulators to communicate reliably, resulting in repeated round-trips and frequent resubmission of the same documents over and over again before the regulators stop losing the paperwork.

There is no value and no regulatory purpose, it is simply harmful to investor interests and costly for issuers, for State securities regulators to attempt to emulate filing requirements of the Commission. Each mandatory filing inefficiency that the Commission creates is amplified downstream fifty-fold (or greater) so instead of asking issuers to provide updates, perhaps the Commission should require issuers to provide contact details for the transfer agent who is handling the issuance of certificates to investors on behalf of the issuers. It is more sensible for the Commission to require issuers to retain an independent third-party transfer agent, and then to require those transfer agents to provide periodic reports, as a condition of Rule 506(c) Offerings, than for the Commission and State securities regulators to crush smaller issuers with paperwork burdens that only serve to cause confusion and divert limited resources from investors to government as soft taxes.

#24. Q: Rule 503(a)(4) currently requires an issuer that files an amendment to a previously filed Form D to provide current information in response to all requirements of the form regardless of why the amendment is filed. Should the Commission amend this requirement in Rule 503? If so, how? What are the costs and benefits associated with this requirement?

#24. A: Please eliminate all Form D amendment mandatory requirements, making them voluntary instead.

#25. Q: Should the presentation of information in a closing Form D amendment be different than in an initial Form D filing or in other Form D amendments? If so, how?

#25. A: I am very skeptical that any Rule will ever have any actual value in practice, but the most useful policy for the form of presentation in a closing form D amendment would be whatever form the issuer chooses. Impose no burden on the issuer other than the burden of raw information disclosure. The SEC EDGAR forensic database should be capable of receiving raw data formats and recording the metadata associated with those raw data formats so that the binary information can be decoded by members of the public who wish to decode them using whatever software may be required for the doing of that decoding.

#26. Q: If an issuer filed an Advance Form D but subsequently terminated the offering without selling any securities, what information should the issuer be required to provide regarding the offering in its closing amendment?

#26. A: The issuer should be required to file a comprehensive digital copy of all Offering materials and other publications that were actually disseminated in connection with the Offering, including any that were disseminated privately to any prospective investors but not published publicly prior to the filing of the closing amendment and after filing the Advance Form D. If the issuer disseminated no Offering materials to any investors, privately or publicly, the issuer should indicate this in the closing amendment, if one is filed with the Commission, but the filing of that closing amendment should be voluntary.

The Commission should treat the Rule 506(c) Offering, commencing with the first Advance Form D filing, and ending with the closing amendment, as a binding contract with the public that guarantees everyone full disclosure permanent forensic database records (filed with EDGAR using the issuer's CIK) of the investor offering documents disseminated, publicly and privately, by such “public issuer” of securities. After there is a closing amendment filed, if any securities were issued in connection with the JOBS Act public Offering, the issuer will, in effect, continue to be a “public issuer” and there should be some security measure in place to regulate the follow-on actions of such issuers to help investors who hold shares of public issuers to better understand and protect their rights. The Commission should be designing Rules, including voluntary filing Rules such as the closing amendment filing, so that investors could, if they wished to do so, require issuers to promise contractually to file a closing amendment under certain circumstances when previous purchasers of public securities should have a right to know what happened, what the issuer did that might have impact on the securities previously-issued, between the time of first purchase and the time of the filing of a closing amendment. If the investors negotiate for the right to compel the filing of the closing amendment by the

issuer under certain circumstances then the Commission's authority to take action against issuers, and the Commission's authority to investigate anomalous or questionable securities or issuers, can be discovered easily in the normal course of investor/issuer relations. Central to the Commission's role in these relations is the requirement that the Commission always allow the public to search for and review filings submitted by all issuers who have, at any time in the past, become "public issuers" of generally advertised securities.

#27. Q: Are any other rule amendments necessary if the Commission were to require the filing of a closing amendment, as proposed? If so, please specify.

#27. A: The Commission will need to enact a Rule that states that Commission Rules are actually going to be interpreted and enforced according to their plain language meaning, or else a rule that seems to require issuers to file a closing amendment with the Commission will be just like all of the other Commission Rules from its legacy of political deception since 1934: a deceptive fraud and a sham that is designed to give the Commission the power to punish, and to threaten to punish, wrongdoers both economically and politically, but not in fact a rule that requires issuers to file a closing amendment. It is time for the SEC to admit that it has been lying to groups of people, willfully deceiving everyone, and that its only purpose in America has always been to publish meaningless documents that nobody understands and that everyone ignores, but to dutifully publish such documents as may periodically be requested by politically-powerful groups to use its annual operating budget to bring lawsuits against anyone who appears to have engaged in fraudulent acts.

It would have been better, in 1934, if Congress had simply allocated a larger budget to enforcement of the existing criminal statutes against fraud, and if Congress had just created a new criminal financial court as at least one commenter recommended recently, rather than creating the Securities and Exchange Commission in the first place. Because the SEC exists, criminal law enforcement agencies, prosecutors, and courts that could and should be taking actions against white collar criminals have, for 79 years, deferred that authority to a political commission that has no real power to do anything and has never been adequately capitalized. In addition to the other changes that the SEC is busy making, maybe it should crowdfund a bigger budget!

The Commission could just adopt a new "do whatever you want, but if we don't like you then we will try to punish you, and we'll file lawsuits against you no matter what you do" Rule unless the Commission is going to seek Congressional authority to be an actual agency of law enforcement rather than a political arm of the Federal legislative bodies. It makes no sense for the SEC to be nothing more than a whistleblower who gets funded by taxpayers to provide tips to law enforcement and conduct new forensic investigations, when the Federal and State courts, both civil and criminal, each have their own procedures already, and assign those roles and responsibilities, and public taxpayer funding, to others when the SEC staff do attempt to blow the whistle. The Commission's very existence is not currently in alignment with the civil and criminal court procedures and rules of evidence in the manner one would presume. This is a result of the Commission's previous 79-year fraudulent, deceptive political history. All effort to enact new Rules is meaningless if the Commission does not address this core issue and reform itself with the help of Congress.

Requiring issuers to pay attorneys whose work product the issuers cannot possibly fact-check and quality-control just so the issuers will be able to file lawsuits against the attorneys for malpractice, and thereby give the issuer the benefit of an insurance policy, is not a reasonable method of regulation unless that is the Rule in the first place: buy insurance. Cloaking this fundamental regulatory requirement to have insurance in the artifices of deception that "securities lawyers" and "the Securities and Exchange Commission" have always been is a political absurdity. The Commission should be creating infrastructure and new tangible value for the American economy, to ensure that everyone, regardless of personal or family origin, and regardless of wealth, has a truly level playing field and equal opportunity for access to capital based on their merits.

#28. Q: Should we require issuers to provide additional information in Form D filings as we have proposed? Should this additional information be required only for Rule 506(c) offerings? If so, why and what should

that information be? For example, should the Commission require issuers to provide information in Form D about counsel representing the issuer (if any) or the issuer's accountants or auditors (if any), as some have suggested? If the additional information were required only for Rule 506(c) offerings, what impact would this requirement have on the use of Rule 506(c) as compared to the use of Rule 506(b)? Are there particular items of information that do not provide sufficiently useful information or would be especially burdensome for issuers to provide? Should some of the additional information that we propose to require in Form D not be required for offerings under Rule 506(b)? If so, which requirements and why? Would the additional information that we propose to request in Form D provide useful information to state securities regulators in responding to inquiries from constituents about offerings conducted under Rule 506 and in enforcement efforts?

#28. A: Additional information in Form D filings is very important for Rule 506(c) Offerings, and would be helpful to every issuer and investor, and the public, in other Offerings as well. The minimum information required of a Form D filing should be equivalent to information on-file with a Secretary of State regarding the identity of officers and directors, plus the identity of the transfer agent, auditor, attorney, promoters, and any 20% or greater voting owners at the time the Offering commences. If classes of securities of the issuer are already quoted Over The Counter or on any exchange, that information should be provided also, even if securities being offered publicly by the issuer are not the same as those existing publicly-traded securities. I also support the other proposed items of additional information including the full list of former promoters.

The central risk that the Commission must take steps to safeguard the public against is identity theft or the use of fake identities by the natural persons who offer to sell unregistered securities to the general public.

None of the proposals that I have seen from the Commission thus far will prevent, nor even impede, any wholly-fraudulent issuer from completing every single step in the entire Rule 506(c) Offering process. The investment risk that investors choose to undertake when they purchase securities from legitimate issuers is not something that the Commission can attempt to regulate, other than by providing best practices standards and training materials to issuers and investors so that each can do a better job of governing the businesses that they create together by forming capital. However, nobody other than the Commission staff has the job of ensuring that investors are not sending their money off to die in the hands of unknown criminals located in faraway places. Many Rule 506(c) investment decisions will likely be made without in-person meetings between the investors and the issuers, and the Commission must have some way to verify that the people behind the Offering are real people not stolen identities or fictitious aliases constructed by criminals. The Commission should require, at a minimum, a certified copy of an FBI criminal history summary check to be submitted, identifying the President or Chief Executive Officer of an issuer, when a Form ID is filed. See:

https://forms.fbi.gov/criminal-history-summary-checks-review/
http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks/state-identification-bureau-listing
http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks
http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks/submitting-a-criminal-history-summary-request-to-the-fbi
http://www.fbi.gov/about-us/cjis/fingerprints_biometrics

Only issuers for whom the Commission has received an FBI criminal history summary check, issued by the FBI within the last three years, for a President or CEO should be permitted to initiate Rule 506(c) Offerings.

Other security measures can be devised to further verify that the FBI criminal history summary check being submitted to the Commission is an authentic document truthfully pertaining to the natural person identified. This additional verification is necessary even for non-US persons to prevent identity theft or criminal fraud. The requirement to obtain and provide to the Commission a copy of a single FBI criminal history summary check is a minor burden and expense. Currently the fee charged by the FBI is only $18.00. The process can

be completed easily by anyone with help of their local police department, who will ink fingerprints for free.

#29. Q: What are the costs or burdens on issuers in providing the additional information in Form D, as proposed? Are there ways to reduce any costs or burdens on issuers? Would the requirement to provide this additional information result in issuers choosing not to rely on Rule 506 to raise capital?

#29. A: The costs and burdens on issuers in providing the additional information in Form D is small and reasonable, provided that the Commission does not require mandatory Form D amendments without cause. There should be a mandatory requirement for filing of a new Form D, and a closing Form D for any prior Offering that was commenced and is still in-progress, when there is a change of control of the issuer such that the previous President or CEO for whom the Commission previously received an FBI criminal history summary check is no longer the active President or CEO of the issuer.

#30. Q: Should some of the additional information that we propose to require in Form D be required only in the closing amendment to Form D?

#30. A: I would like to see the Form D become a basic disclosure of identity and intent of an issuer to form capital, but be less burdensome on issuers and less problematic in practice for using to comply with State securities regulators' separate requirements for this notification of the issuer's identity and intent. If this recommendation were followed, it would make the most sense to require disclosure of amounts raised and other metrics relating to the Offering only upon filing of a closing amendment to Form D.

#31. Q: Should the Commission define what it means for an issuer to make information publicly available for purposes of Item 5, or to take reasonable efforts to maintain such information as confidential? For instance, would confidential information about an issuer that is publicly disseminated by a third party in violation of a duty to keep such information confidential be deemed to be publicly available?

#31. A: Item 5 should be removed entirely. Make Form D simpler, and more focused in its purpose. The Commission staff does not need issuers to provide information about issuer size, this information is either available elsewhere already or should be tracked by the SEC using its internal databases and IT analytics.

#32. Q: Should the Commission amend Item 5 to require an issuer that conducts a Rule 506(c) offering to provide information on its revenue range or aggregate net asset value range, as applicable, regardless of whether the issuer has otherwise made this information publicly available (for example, by including this information in general solicitation materials)?

#32. A: Item 5 should be removed entirely. The Commission should simplify Form D and give issuers the benefit of the doubt that they are honest and that they have legitimate reasons for keeping confidential data such as revenue or aggregate net asset value confidential. Issuers who do not solicit investors based on the metrics of past or present revenues or net asset value, and issuers for whom such metrics change drastically from time to time in the normal course of business, shouldn't be lumped together with other issuers by size.

#33. Q: Should the Commission amend Form D to include a check box for issuers to indicate whether they are filing an Advance Form D or a closing amendment to Form D, as proposed? Should there be other changes to Form D to indicate that an issuer is filing an Advance Form D or a closing amendment?

#33. A: The Commission has not made it clear which of the alternative ideas it might adopt for how to revise the structure and function of Form D, Advance Form D, amendments to Form D, and possibly using Form D as the basis of providing the Commission with copies of written or other forms of general solicitation materials used by issuers in connection with Rule 506(c) Offerings. Make Form D simpler, and if possible please make the filing of Form D a one-time mandatory requirement for a Rule 506(c) Offering.

#34. Q: Should the Commission amend Form D to provide a checkbox to indicate that the issuer is required to provide disclosure of prior "bad actor" events under Rule 506(b)(2)(iii)?

#34. A: It seems likely that the question pertains to Rule 506(e) "Disclosure of prior 'bad actor' events" as there does not seem to be a Rule 506(b)(2)(iii) being proposed by the Commission. Rather than requiring that issuers self-identify as issuers who will be covered by Rule 506(e) and thereby will be making such disclosures to would-be purchasers of their unregistered securities, I recommend simply including the entire Rule 506(e) language in the revised Form D, and requiring acknowledgment by the issuer that they will be complying with this disclosure requirement. Otherwise, the lack of a check mark in the check box during a time period in the past when the issuer was not subject to such disclosures would become misleading if the issuer does become subject to such disclosures in the future which could occur by way of something as simple as selling a large block of voting securities to a former "bad actor" investor. From the point in time in the future when such an issuer becomes subject to the additional disclosure requirements of Rule 506(e) that issuer should simply begin supplying new prospective investors with the additional disclosure.

This entire issue is extremely complex, and I do not want to see Form D nor amendments to Form D used as an attempt to capture this complexity as circumstances change over time for real-world issuers. The burden on issuers and the likelihood of confusion or abuse make Form D an inappropriate place for this complexity to be managed, particularly in the form of a single check box that would seem to imply the requirement to file periodic amendments to Form D every time the "correct" value of the check box changes as covered persons come and go over time within the voting authority or mechanisms of control of the issuer. If the full text of Rule 506(e) is not contained within the Form D itself, there is also a risk that issuers will submit the revised Form D without proper training and comprehension of the implications of leaving this proposed check box blank. It will presumably be many years before everyone who files Form D becomes acquainted with the new Rule subsections, and people skip over items they do not understand on forms. Finally, were the Commission to include a check box to self-identify past "bad actor" status, fewer Form Ds may be filed.

#35. Q: Should pooled investment funds be required to provide additional or different information in connection with Rule 506(c) offerings? Should the Commission require a pooled investment fund to disclose its investment adviser's CRD number rather than (or in addition to) its adviser's SEC registration number? Item 3 of Form D asks for the identity of the issuer's promoter. Should information on a pooled investment fund's investment adviser be added to Item 3, rather than the proposed Item 20? Does the proposed amendment to Item 3, requiring disclosure of any controlling persons, raise any particular concerns for pooled investment funds?

#35. A: I do not have an opinion on the question of pooled investment funds and Rule 506(c) Offerings, other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent, every penny wasted today would have become $0.41 over just forty years!

#36. Q: Should the Commission require issuers to provide more or less specific information in Form D about the methods of general solicitation used in Rule 506(c) offerings? Do certain methods of general solicitation raise particular concerns from an investor protection standpoint? For example, are some methods of general solicitation more likely to result in an increased risk of fraud or manipulation or more likely to reach non-accredited investors? Should we require additional information in Form D with respect to these methods of general solicitation? If so, what information should we require issuers to provide regarding these solicitation methods?

#36. A: Method of general solicitation used is irrelevant, as is likelihood of reaching non-accredited people.

#37. Q: Should the Commission require issuers to provide more or less specific information on Form D

about the methods used to verify accredited investor status? If so, what information should the Commission require issuers to provide regarding verification practices? For example, should we require issuers to identify any registered broker-dealers, registered investment advisers, attorneys, certified public accountants or other third parties that assisted the issuer with the verification process?

#37. A: No. Leave this out of the Form D, as it is subject to change with standards of practice and market conditions over time, and would be an unreasonable burden for issuers to be required to amend with future Form D filings. Furthermore, the method of verification depends primarily on who the investors are and not as much on who the issuer is.

#38. Q: Is disqualifying issuers and their affiliates and successors from reliance on Rule 506 for future offerings an appropriate sanction to incentivize compliance with Form D filing requirements? Why or why not? How would these amendments affect the Rule 506 market?

#38. A: The one-year disqualification for future Offerings appears reasonable, however the Commission should also notify the public of the disqualification by way of the SEC's Offender Registry, or else the disqualification will not be meaningful in practice because compliance with Rule 503, and therefore the filing of future Form Ds to notify the Commission of future Offerings remains optional despite the strong (intentionally deceptive) wording “must file” of Rule 503. Also, without the SEC's Offender Registry it will not be possible for issuers to detect, absent voluntary disclosure by newly-acquired covered persons such as those who join the company as new employees in the future, that such covered persons are disqualified.

#39. Q: Proposed Rule 507(b) would not impose any consequences with respect to the offering for which an issuer failed to file or amend a Form D as required, or for other offerings that were ongoing at the time of the failure to file. Would disqualification from reliance on Rule 506 for future offerings be a sufficient incentive for issuers to comply with Form D filing requirements? Why or why not? Should an issuer engaged in an ongoing offering be permitted to continue relying on Rule 506 if it or an affiliate failed to comply with the filing requirements of Rule 503?

#39. A: In addition to temporary disqualification from Rule 506 for future Offerings, offenders should be placed on the SEC's Offender Registry where the public can easily locate information about their offense. At the Commission's sole discretion, privileges such as the ability to rely on Rule 144 could also be suspended for a period of two years in the case of more egregious and willful violations or offenses.

#40. Q: Should the result be the same for failure to comply with all parts of Rule 503? For example, should the result be the same when the issuer does not file an amendment to a Form D as it would when the issuer does not make an Advance Form D filing or an initial Form D filing? Should there be a distinction between annual amendments to Form D and amendments required to correct a material mistake of fact or error or to reflect a change in information?

#40. A: There should be no requirement to amend Form D. If the Advance Form D and Form D are not merged into a single filing event which takes effect immediately with respect to a Rule 506(c) Offering (to eliminate the 15-day waiting period, which is likely to have the unintended consequence of creating the unwanted appearance that the Commission has approved or reviewed and verified some aspect of the issuer Offering and/or the Offering materials) then filing of an Advance Form D should be the mechanism used by an issuer to inform the Commission of its intent to begin using certain Offering materials immediately in a Rule 506(c) general solicitation. In all cases where an Advance Form D or a Form D is not filed prior to the commencement of Rule 506(c) Offerings, failure to comply should result in the same consequences; loss of privileges and placement on the SEC's Offender Registry. If Form D is simplified, mistakes of fact or error won't occur. However, changes of management should require a new Form D filing, and a current Form ID.

#41. Q: As proposed, outside of the cure period, disqualification under Rule 507(b) would not be lifted until one year after all required Form D filings are made or, in the case of offerings that had been terminated, a closing amendment is made. Is this an appropriate requirement? If not, what are the alternatives?

#41. A: This is an appropriate requirement, but it will result in no disqualification in practice for most offenders unless the disqualification period commences after the filing of a closing amendment. After the delinquent Form D is filed to formally commence and legitimize an already-initiated (illegal) Offering, in virtually all cases the Offering will continue for at least one year thereafter which coincides with the year during which the offender has superficially been disqualified from initiating any further (new) Offerings.

The proposed disqualification period therefore appears to be more of the same meaningless political nonsense that is so typical of the Commission's modus operandi since 1934. The Commission has proposed such a toothless enforcement rule in order to mislead the public into believing there is some consequence of substance to non-compliance with the Commission's Rules when in fact the rule is still “anything goes.”

A more meaningful or substantive requirement would be to place offenders on the SEC's Offender Registry and to require anyone listed on the Registry to file a closing amendment, and then accept disqualification for a period of one year thereafter, whereas everyone else would not be required to file any closing Form D. For egregious and willful violations, the Commission should have the authority to disqualify the issuer, not just the natural persons who failed to comply with Rule 503, and to further prohibit those issuers from any reliance on Rule 144, S-8, and other privileges that are essential to future liquidity for the issuer's securities.

#42. Q: What would be an appropriate disqualification period as an alternative to the proposal, such that issuers would be sufficiently incentivized to comply with Form D filing obligations without unduly burdening capital formation under Regulation D? Is the proposed one-year disqualification period appropriate, or should the disqualification period be shorter or longer? Why?

#42. A: One-year is sufficient disqualification, but it will need to be implemented slightly differently than has been proposed, such as by commencing the disqualification after a closing amendment to Form D.

#43. Q: Under the proposal, disqualification would not be triggered by any failure to comply with Rule 503 that occurred more than five years before the offering. Is it appropriate to include a look-back period in this way? Why or why not? If so, is the five-year period proposed appropriate, or should it be shorter or longer? If so, why?

#43. A: This look-back period is confusing, given the stated commencement of the disqualification which is reportedly going to be based on failure to file a Form D, or an amended Form D, or a closing Form D, and in practice only a failure to file a closing Form D would have any actual impact on the offender unless they are a high-volume source of Offerings, such as by virtue of being a director of many issuers simultaneously. If the disqualification will only last for a period of one year, it should commence upon filing of a closing amendment to Form D, but for issuers and natural persons who have not failed to comply with Rule 503 the Rule should not impose a mandatory filing requirement for any amendments or any closing Form D.

#44. Q: The look-back period would not extend to the period prior to the effective date of proposed Rule 507(b). Is it appropriate not to consider these filings before the effective date of the rule? Why or why not?

#44. A: The look-back period should be eliminated in favor of commencing the one-year disqualification at a more sensible point in time, such as upon filing of a required closing amendment to Form D for the active Offering in connection with which the offending party failed to comply with Rule 503. Provided there is a mandatory closing amendment to improperly-commenced Regulation D Offerings no look-back period will be required. Requiring only an initial Form D if filed on-time would substantially reduce regulatory burden.

#45. Q: Are there particular situations where disqualification under Rule 507(b) should not be triggered for failure to file a required Form D or Form D amendment?

#45. A: In cases where Offerings are commenced without proper notice to the Commission via Form D, including cases of general solicitation and advertising that should have complied with Rule 506(c), but where no securities were actually sold as a result of the general solicitation and advertising, there should be no disqualification under Rule 507(b). This should include cases where sales were contemplated pursuant to Rule 506(c) but where the only sales that occurred took place in reliance upon some other exemption from registration, such as when the only buyers end up being friends and family and Rule 506(b) is used instead.

#46. Q: As proposed, issuers would be disqualified from using Rule 506 based on noncompliance with Rule 503 within the past five years in connection with a Rule 506 offering by their predecessors and affiliates. Is it appropriate to disqualify issuers for non-compliance by their predecessors and affiliates? If not, would it be too easy to avoid disqualification by using an affiliate or successor entity to conduct a Rule 506 offering? How should the Commission address this concern?

#46. A: This is very confusing as-proposed. It appears that the Commission is proposing to disqualify every future Rule 506 Offering if any issuer, control person, 20% vote-holder, promoter or “affiliate” of the issuer has, at any time in the preceding five years (after the date of the new rule) failed to comply with Rule 503 and also failed to file the delinquent initial Form D, or any correcting amendments and a closing Form D, so that the offender's one-year disqualification period can commence as of the date that compliance resumes.

In essence, the Commission proposes, therefore, to create an impossible-to-manage condition in which each and every issuer or every control person, 20% vote-holder, promoter or “affiliate” of an issuer must find out (or at least attempt, in good faith, to discover) whether any *other* control person, 20% vote-holder, promoter or “affiliate” of an issuer has, at any time during the preceding 5 years, ever NOT FILED A FORM D when the Commission's Rule 503 would have required the filing of one. Failure to make a diligent effort to learn whether any of these non-events in fact did not occur, failure to try to discover whether any of the issuer's covered persons did anything in the economy UNRELATED TO THE BUSINESS OF THE ISSUER prior to the issuer commencing a new Rule 506 Offering, and failure to comply with the proposed Rule 507(b) by removing any of the SEC's Offenders from current or planned Rule 506 Offerings, would be failures that would result in the issuer, its control persons, every 20% vote-holder, promoter and “affiliate” of the issuer losing the privilege to conduct future Rule 506 Offerings for one year, or for the balance of five years if the parties involved do not ensure compliance with Rules 503 and 507(b) in connection with a present Offering.

There is obviously no way for anyone to know if somebody is one of the SEC's Offenders unless the SEC establishes the SEC's Offender Registry and begins to disclose the identity of every such SEC's Offender.

The only way that it will be possible for anyone to know whether they, or any other party, are disqualified is if the Commission publishes this information itself. Furthermore, the Commission has made it clear that it will not, in fact, ever declare an Offering to have lost its registration exemption even if the Offering should have been prohibited because of such disqualification because the loss of the exemption is too severe a consequence for something like failing to notify the Commission of the existence or size of an Offering.

Whether it is “easy” to avoid disqualification or not is irrelevant unless the Commission is going to take affirmative steps to disqualify the SEC's Offenders including by establishing an Offender Registry.

In any case, this proposal will not hold up under legal challenge because it is obviously unconstitutional.

#47. Q: Would portfolio companies that are affiliates of a private fund be unduly affected by any disqualification triggered by noncompliance of the private fund, its predecessors and its affiliates with Rule

503? If so, should the Commission treat portfolio companies of private funds differently for disqualification purposes? If yes, how?

#47. A: The Commission's entire concept of disqualification needs to be redesigned so as to conform to the requirements of the U.S. Constitution and to common sense. The Commission does not have the authority to prohibit, nor to compel, speech. It does have the authority to withhold or temporarily revoke privileges such as Rule 144 which an issuer and its securities holders might otherwise rely upon to be able to resell publicly any covered securities that are unregistered. However, the Commission's authority to revoke privileges is entirely dependent on the voluntary cooperation of other parties, including but not limited to FINRA, broker dealers, securities lawyers, and transfer agents, because these third-parties choose to follow the Commission Rules. If these third-parties choose to ignore the Commission when unconstitutional Rules are enacted by the Commission then the authority to revoke privileges would cease to exist. The Commission needs to be more sensitive to the reality that its authority does not exceed the authority of Congress and the majority of its true power originates with the good people who want to help, voluntarily, with SEC market regulation.

#48. Q: Is it appropriate to prohibit a private fund or its successors or affiliates from engaging in a subsequent offering under Rule 506 if the private fund failed to comply with Rule 503? For instance, if a private fund issuer fails to file its Form D or the appropriate amendments in accordance with the filing requirements of Rule 503, is it a disproportionate response to prohibit any private funds affiliated with the private fund from relying on Rule 506? Should proposed Rule 507(b) contain an express provision that excludes affiliated private funds from such consequences?

#48. A: It is appropriate to prohibit actions such as public resales of unregistered securities issued by a fund in a circumstance where the fund fails to comply with Rule 503, provided that the revoked privileges apply for a period of time not to exceed two years. The proposed Rule 507(b) should be completely redesigned so that the effect of the one-year disqualification is workable in practice, compliant with the U.S. Constitution, and discoverable by the general public. The core wrongful action that the Commission should be trying to regulate, with the help of the public, in crafting a Rule 507(b) is the undesirable and dangerous practice of issuers conducting general solicitation and advertising, and then concluding actual sales of securities, in the United States, without first filing a verifiable and truthful Form ID with the Commission so that the public, and the Commission, has some way to know whether the apparent issuer is a legitimate issuer rather than a stolen identity or a fake identity that is being used by a criminal to engage in serious fraud and theft.

By habitually focusing on the politics of its Rules rather than the intended security function the Commission has made itself into a tool of political deception that has helped a systemically-corrupt industry grow strong.

#49. Q: Is it appropriate to include a cure period for noncompliance with Rule 503? Would the benefits of including a cure period justify the potential detriments, such as undercutting issuers' incentive to comply with the existing Rule 503 filing deadlines? If a cure period is included, should it apply to all required Form D filings, or only some? For example, should there be a cure period for the closing amendment only? Or for amendments, but not the initial filing? Should the Advance Form D have a cure period? Instead of providing a cure period, should we move back the deadlines for Form D filings? Are there other alternatives to a cure period or further provisions that the Commission should consider?

#49. A: The only required filings should be Form ID and Form D (and the Advance Form D, if that form becomes the form associated with the mandatory filing of disclosure of general solicitation materials) which collectively must be filed by an issuer prior to first use in commerce of any general solicitation materials in connection with a Rule 506(c) Offering. There should not be a "cure period" because there is no way to "cure" a failure to comply with a mandatory filing requirement prior to first use in commerce, but in the case where a general solicitation occurs without the prerequisite filings and no public investors end up buying securities in connection with the general solicitation there should be no consequences for the issuer.

#50. Q: The cure period is not available if the issuer has previously failed to comply with a Form D filing deadline in connection with the same offering. Is this condition appropriate? Why or why not? Should the cure period be available if the issuer has failed to timely file a Form D or Form D amendment more than once in connection with the same offering? If so, how many times in a single offering or otherwise how frequently should an issuer be able to invoke the cure period? Should the cure period become available again after a certain amount of time, such as five years, has elapsed since the issuer previously failed to comply with a Form D filing deadline? For example, should an issuer, such as a private fund, that is conducting a continuous offering be permitted to have a cure period if five or more years have elapsed since the initial failure to timely file a Form D? Should we impose additional requirements or conditions on an issuer's ability to take advantage of the cure period? For example, should the cure period be unavailable if the failure to file Form D was intentional? Would additional guidance be necessary to explain what constitutes intentional or repeated failures to file? Should the issuer have to indicate that the filing is late and state the reason for its being late? Should there be more specific requirements to rely on the cure, such as the issuer suffered an intervening event (for example, a clerical or technological problem)? Alternatively, should the cure period be automatically available to all issuers without other conditions or qualifications? Are there other events that should make the cure period unavailable to an issuer?

#50. A: The Commission should establish the SEC's Offender Registry and eliminate the "cure period" idea.

#51. Q: Should a cure period be available for repeated or intentional failures to comply with Rule 503? If yes, should there be a look-back period for determining whether failures to comply with Rule 503 are repeated?

#51. A: The Commission should give itself the power to identify the SEC's Offenders publicly so that the politics of these situations can become a matter of public decision-making and standards of practice. It is not the Commission's job to rewrite the law of the land nor to try to force people to obey the law. If the Commission wishes to get into the business of law enforcement then it should ask Congress for this power.

#52. Q: If a cure period is included, is the 30-day period we propose appropriate? Should the cure period be shorter or longer? Should it be the same for all types of filings, or should the Commission vary the cure period for different filings? For example, should there be a shorter or longer cure period provided for the Advance Form D filing, the closing amendment or other amendments, compared to other Form D filings?

#52. A: There should not be a "cure period" in the first place because Form D filings should be simplified.

#53. Q: As an alternative or in addition to a cure period, should we amend Rule 507 so that disqualification can be triggered by a Commission cease-and-desist order as well as court injunction? Should we add a provision similar to existing Rule 508, under which insignificant deviations from the requirements of Rule 503 would not result in disqualification under proposed Rule 507(b) if the issuer could demonstrate good faith and a reasonable attempt to comply with filing requirements?

#53. A: The Commission should be the source of disqualifications through cease-and-desist orders, when the offending is egregious and willful, but the Commission should also have the ability to add offenders to the SEC's Offender Registry without the need to issue a cease-and-desist order based on a bright line test for whether or not an issuer who conducted a Rule 506(c) Offering complied with the Form ID and Form D filing requirement prior to commencement of the Offering. There should be only one mandatory filing event and this mandatory filing should be prior to commencement of the general solicitation. Minor consequences such as simply being listed in the SEC's Offender Registry should be the result from commencing general solicitation without first filing these forms, and a copy of the solicitation materials, with the Commission. A more serious loss of privilege such as two-year prohibition on use of Rule 144 should result from cases in which non-compliant Rule 506(c) issuers complete sales to persons other than friends and family investors.

#54. Q: Should we amend Rule 507 to disqualify an issuer from relying on Rule 506 for future offerings if such issuer, or any predecessor or affiliate of the issuer, has been subject to a Commission order requiring such person to cease-and-desist from committing or causing any violation or future violation of proposed Rule 509 or proposed Rule 510T, both of which are discussed below?

#54. A: Yes. The core regulatory purpose and security measure that the Commission should be attempting to effect through the entire concept of one-year disqualification, or five-year look-back period for what seem to be unresolved compliance failures that should have resulted only in one-year disqualifications, is to ensure that every single time any issuer engages in general solicitation and advertising using Rule 506(c) that prior to doing so the issuer has filed a Form D and provided the Commission with an advance filed copy of the Offering materials. Furthermore, the Commission should take specific steps to guarantee that the President or CEO of the issuer has personally filed a Form ID with the Commission, and biometric ID information such as proof that a "direct print" inked fingerprint card is on-file with the FBI and that the Commission has received and verified the authenticity of the copy of the FBI check document submitted.

Without this new security measure, the Rule 506(c) Offering marketplace will have substantial amounts of identity theft, and false identities will be used to solicit investments from the general public, and there will be substantial numbers of cases in which non-accredited investors are allowed to invest and do so because they feel like they are being given a valuable opportunity that is extra-valuable because it is a violation of SEC Regulation for the purported issuer to permit the non-accredited investor to invest.

If the Commission does not enforce, as strongly as possible, the basic requirement that general solicitation materials be compliant with Rule 509 and Rule 510T, and if the Commission does not institute new security measures to verify the identities of persons who engage in general solicitations, then the Commission will obviously be revoking these new Rules in the future, just like the Commission revoked Rule 504 previously.

#55. Q: Should the Commission amend Form D to provide a checkbox to indicate that the issuer is relying on the proposed cure period?

#55. A: There should not be a cure period. And in general, check boxes are a poor way to regulate.

#56. Q: Is it appropriate to amend Rule 507's existing waiver provision so it applies to proposed Rule 507(b)? Should we provide guidance regarding factors that the Commission may take into account when considering whether to grant a waiver?

#56. A: Yes, the Commission should be clear about the waiver approval process and also publish every waiver that is issued so everyone can understand the details of past waivers and verify that individual waivers have been granted with respect to persons or issuers of interest to them.

#57. Q: Are there other methods for improving compliance with Rule 503 that the Commission should consider? For example, should there be other consequences for non-compliance with Form D filing requirements? Would the combination of proposed Rule 507(b) and increased enforcement of existing Rule 503, which could result in monetary penalties or imposition of disqualification under existing Rule 507, provide a sufficient incentive to comply with these requirements?

#57. A: The Commission should establish the SEC's Offender Registry and use it to achieve many of the political objectives that have, in the past, contaminated the rulemaking process of the Commission. The Commission's Rules should be functional, not political, and its Rules should create clear and permanent forensic records of political actions that resulted from the application and interpretation of the Rules. The non-compliance with Form D filing in the case of Rule 506(c) should be a very serious law enforcement matter in any case where a Form ID is not on-file for the President or CEO of an issuer prior to an Offering.

#58. Q: As an alternative to proposed Rule 507(b), should the availability of Rule 506 be conditioned on compliance with Rule 503, as was the case when Regulation D was originally adopted? If so, should compliance with Rule 503 be a condition to both Rule 506(b) and Rule 506(c), as well as to Rules 504 and 505? Alternatively, should compliance with Rule 503 be a condition to reliance on new Rule 506(c) only? Should the availability of Rule 506 be conditioned on compliance with all of the filing requirements of Rule 503 or should it be conditioned on compliance with only some of the filing requirements of Rule 503 (and if so which filing requirements)? If compliance with Rule 503 is a condition to Rule 506, should there be a mechanism for issuers to request a waiver from Form D filing requirements? If so, how should that mechanism work? Are any other rule amendments necessary if the Commission were to require compliance with Form D filing requirements as a condition to reliance on Rule 506? If so, what amendments?

#58. A: Form D filing should not be a condition for reliance on Rule 506. The filing of a Form D and also a Form ID for the President or CEO of issuers should be mandatory only for Rule 506(c) Offerings. Failure to file a Form D and a Form ID prior to sales of unregistered securities should result in a new law enforcement consequence for the offenders, at least the initiation of an active law enforcement investigation, whereas purely-political consequences should be bestowed upon anyone who commences a general solicitation in violation of Rule 503 and Rule 506(c) prior to filing a Form D and a Form ID or prior to Rule 510T filings.

All general solicitation materials should be filed, and published publicly by the Commission, prior to any Rule 506(c) Offering. These materials should become part of the Commission's permanent public forensic database record, such as by way of EDGAR. All issuers and persons who are disqualified temporarily for non-compliance events in connection with Regulation D should be placed in the SEC's Offender Registry.

#59. Q: Should we require all issuers to include the proposed legends in written general solicitation materials? Why or why not? Are accredited investors already aware of the information included in the proposed legends? Would the proposed legends be effective in reducing the incidence of non-accredited investors participating in Rule 506(c) offerings?

#59. A: Yes, all issuers should be required to include the proposed legends in written general solicitation materials. Additional disclaimers should be standardized and required by the Commission for forms of communication other than written. The legends should also include a URL for the SEC.GOV website. To be effective at reducing incidence of non-accredited investors passively participating in Rule 506(c) Offerings in a manner that is contrary to common sense and contrary to public policy interest, the Commission should provide enhanced investor education materials and explicitly describe in detail the option for non-accredited investors to become an issuer, themselves, or to seek employment as a director or executive officer of an issuer, in order to become “accredited” if they wish to invest in, and assume the risk and responsibilities of, a business that is conducting a public Offering via unregistered general solicitation. The Commission could dramatically improve its investor awareness and investor education materials by showing and telling, in dramatic detail and with presentation techniques similar to those used by other nation's securities regulators (see: http://www.bluehedge.ca/ and http://www.bluehedgeisntreal.ca/ for example) some basic concepts of business and investing everyone should look for when evaluating a business and deciding whether to invest.

#60. Q: Is it appropriate for the Commission to provide for disqualification from reliance on Rule 506 for non-compliance with Rule 509? How would this affect the Rule 506(c) market? Should the Commission amend Rule 507 to also include Commission cease-and-desist and administrative proceedings? Would another mechanism provide a better incentive for issuers to include legends and other disclosures in written general solicitation materials that relied on a simpler enforcement mechanism but did not impose an immediate disqualification?

#60. A: It is not clear what the Commission means by “disqualification” considering that it will obviously not be declaring that Rule 506(c) exemption from registration is unavailable for the benefit of the investors.

The Commission should create a new mechanism, such as the SEC's Offender Registry, whereby past violations of SEC Rules can be publicly disclosed by the Commission and as a result people can choose what standards of practice they will abide by when doing business with each other. The Commission can and should institute new two-year suspensions of privileges such as not permitting reliance upon Rule 144 for any issuer, including that issuer's securities holders, if the issuer violates Rule 506(c), Rule 509, Rule 510T, Rule 503, Rule 507, and so forth. The suspension of privileges is a better enforcement mechanism than whatever political nonsense the Commission would like people to believe "disqualification" means.

#61. Q: Should the Commission condition Rule 506(c) on compliance with the proposed requirements of Rule 509? What effect would such a condition have on the Rule 506 market? If compliance with Rule 509 were a condition of Rule 506(c), should the Commission provide for a cure mechanism for inadvertent errors in, or the omission of, legends or other required disclosure in the written general solicitation materials? If so, what should be the parameters of this cure mechanism?

#61. A: Regardless of what words the Commission adopts for its final conditions of Rule 506(c) compliance the fact remains that the Commission is obviously not going to be asserting that investors have purchased, or broker-dealers have brokered the resale of, securities that did not have the protection of an exemption from registration, unless those investors and broker-dealers were co-conspirators in a civil or criminal fraud. When there is no practical ramification to the "condition" for Rule 506(c) to be "available" to issuers, what is the point of wasting the Commission's time talking in circles about something that has no purpose? There is no point in a "cure mechanism" when the only possible scenario in which these Rules will ever become the subject of court-ordered enforcement is a scenario in which serious fraud has occurred and the investors were participants in that fraud. Where the investors are victims rather than co-conspirators, none of the Rules that condition the issuer's eligibility for Rule 506(c) or Rule 506 on anything, including Rule 509, should ever result in the victims being harmed more seriously than they have already been harmed. When investor harm from fraud or regulatory non-compliance does occur, the Commission should limit possible impact on those investors to something like a two-year suspension of the Rule 144 privilege because such a loss of privileges (even impacting the investors) must be effected in order to prevent further fraud and abuse that would potentially pass the harm of the fraud or abuse on to other investors when future resales occur. The investing public needs the SEC's Offender Registry in order to be able to see clearly which issuers have previously been the subject of Commission actions such as trading or resale suspensions so that investors can become informed about the possibility that they are purchasing some or all of the harm that resulted from the fraud or abuse. Over time, the Commission could improve its forensic information systems and its social media platforms so that investors can visualize such potentially-toxic qualities of all issued securities.

#62. Q: Do the proposed legends and required disclosures appropriately inform potential investors as to whether they are qualified to participate in Rule 506(c) offerings, the type of offerings being conducted and the potential risks that may be associated with such offerings? If not, how could they be revised to do so? Should additional legends or disclosures be required and, if so, what should these additional legends or disclosures be?

#62. A: The proposed legends and required disclosures appropriately inform the majority of investors as to whether they are qualified to participate in Rule 506(c) Offerings, but a minor modification to the proposed legends should be made so as to more clearly explain that directors, executive officers and general partners of the issuer are automatically qualified to participate in Rule 506(c) Offerings, even if they were not directors, executive officers and general partners of the issuer prior to the commencement of the Offering. There should be an explicit warning that nobody should agree to become a director, executive officer or general partner of the issuer in order to invest in the Offering, unless they are comfortable accepting the legal and other risk of that position in addition to accepting the risk of investment loss. As long as there is such a legend or new disclaimers to this effect in an issuer's general solicitation materials, the Commission should not allege in the future that this practice was a violation of the spirit of the Rule 506(c) exemption.

#63. Q: Should we have specific requirements for the legends and disclosures, such as for type size, type style, location and proximity? If so, what should they be? Alternatively, should we require the legends and disclosures to be presented in any manner reasonably calculated to draw investor attention to them?

#63. A: The requirement for “any manner reasonably calculated to draw investor attention to them” is fine.

#64. Q: Should we define the types of communications that constitute written general solicitation materials for purposes of the proposed requirements of Rule 509? If so, how should we define written general solicitation materials? For example, should we refer to the definition of “written communications” in Rule 405 under the Securities Act? Should we specify that the term includes any electronic communications?

#64. A: The term should include “any electronic communications” but the Commission should make it clear that a short form reference to Rule 509 legends and disclaimers can substitute for the full legends and full disclaimers, such as in the case of a 140-character tweet or other short form electronic communication. The Commission should provide the precise language that it requires issuers to include in such short form electronic communications, for example, the following could be required where electronic space is limited:

SEC.GOV/509

If the SEC adopts this recommendation, it should create a web page describing clearly what an issuer's obligations are for warning legends, disclaimers or disclosure in compliance with Rule 509 and Rule 510T.

Currently the SEC.GOV website does not have a /509 page. It would be anticipated that issuers would also create /509 web pages, and refer to their “SEC 509 Disclaimers” or “509 Warnings” or otherwise in the future use this “509” terminology in order to draw investor attention to the standard warnings, legends and disclaimers that issuers can't include in short form public electronic communications, such as Twitter.

#65. Q: Should comparable disclosure be required to be provided in oral communications used in a Rule 506(c) offering that constitute general solicitations? Why or why not? Should the legends and required disclosures be required to be included in all offering materials or just the materials used in connection with general solicitation activities? How would issuers provide such disclosure?

#65. A: Issuers should create a /509 web page for SEC Rule 509 Disclaimers, Warnings, and Disclosures.

In oral communications and short-form electronic communications it would be anticipated that issuers would use language similar to “SEC 509 Legends apply. See our website for more information.”

#66. Q: Are there alternative methods for encouraging important explanatory information regarding performance to be given sufficient prominence in written general solicitation materials? Would mandated legends be helpful in mitigating concerns regarding fraudulent statements in written general solicitation materials?

#66. A: I believe the Commission should require labeling of investment securities clearly as such. Such as:

THIS IS AN INVESTMENT SECURITY. SEC.GOV/509 LEGEND INVESTMENT RISKS APPLY.

#67. Q: The proposed amendments do not specify the precise wording of any required legends. Is that appropriate? Or should we require specific wording? If so, what would that be?

#67. A: Specific requirements for short form electronic communication labeling of investment securities Offerings as “SEC.GOV/509” should be minimally required for Rule 506(c) general solicitation materials.

#68. Q: Should we specifically require disclosure of the date as of which any performance data included in the written general solicitation materials was calculated? Should we require all such performance data to be current as of the most recent practicable date? To give issuers certainty, should we provide more specific guidance as to what constitutes the most recent practicable date? Should we require performance data to be provided for a specific period (e.g., for the last one, five, and ten year periods)? Should we require such performance data to be updated at specified intervals? If so, what interval or intervals would be appropriate? Should we require a private fund to provide narrative disclosure regarding the methodology used to calculate performance data? Will such required disclosure become standardized or unwieldy and, therefore, less useful to investors?

#68. A: I do not have an opinion about performance data, other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent, every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

Compounded annually at 10% a penny wasted today would have become $0.40 after 40 years!

#69. Q: If all purchasers in an offering receive a private placement memorandum that includes all of the required legends, is it necessary that other materials also include these legends?

#69. A: All materials should include at least the minimum SEC.GOV/509 label, including labeling such as:

SEC.GOV/509 THIS IS AN INVESTMENT SECURITY

#70. Q: To what extent do issuers, including private funds, currently use legends similar to those proposed in this release (for example, in the private placement memoranda given to the potential investors)? To what extent do they use other legends? Does this differ depending on the type of document used? For example, do private placement memoranda contain more extensive legends than other marketing materials?

#70. A: I do not have an opinion about performance data, other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent, every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

Compounded annually at 10% a penny wasted today would have become $0.40 after 40 years!

#71. Q: As proposed, private funds would be required to include a telephone number or a website where an investor may obtain current performance data. Is this requirement appropriate? Should private funds be required to provide performance information on a website? Should private funds be allowed to restrict access to such website through the use of passwords or other measures?

#71. A: I do not have an opinion about performance data, other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent, every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#72. Q: Do the proposed disclosures relating to performance data appropriately inform investors that there are limitations on the usefulness of past performance data and the difficulty of comparing the performance of one private fund to other funds, particularly in light of the fact that private funds are not required by law

to calculate or present performance pursuant to a standard methodology? If so, how? If not, why not?

#72. A: I do not have an opinion about performance data, other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent, every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#73. Q: If the amendments to Rule 482 proposed in the money market fund reform proposals are adopted, should we require liquidity funds to include similar disclosure statements in written general solicitation materials? For example, should we require liquidity funds to include a statement that the fund's sponsor has no legal obligation to provide financial support to the fund, and that an investor should not expect that the sponsor will provide financial support to the fund at any time? Why or why not?

#73. A: I do not have an opinion about money market funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#74. Rule 506(c) may cause certain types of issuers that have historically registered offerings under the Securities Act to instead conduct offerings under Rule 506(c). These issuers also may use performance data in written general solicitation materials. For example, non-traded REITs, which have historically included prior performance data in Securities Act registration statements and sales literature, may instead conduct Rule 506(c) offerings and provide similar data in written general solicitation materials. Should we adopt legends or other disclosure requirements that are tailored to additional types of issuers, such as non-traded REITs? If so, which types of issuers should be required to include legends or other required disclosure in their written general solicitation materials? What information should be required?

#74. A: I do not have an opinion about REITs other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#75. Q: What are the costs or burdens on issuers in providing the legends and other required disclosures, as proposed? Are there ways to reduce any costs or burdens on issuers?

#75. A: Providing two minimum prescribed forms of written or spoken or electronic communication legend will reduce compliance burden on issuers, and the SEC.GOV/509 web page should be created accordingly.

#76. Q: Should we adopt additional or different legends or disclosure requirements for written general solicitation materials used by private funds in Rule 506(c) offerings when performance data is included?

#76. A: I do not have an opinion about performance data other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#77. Q: Are there certain types of private funds that will find it difficult to apply the guidance in Rule 156 to their sales literature? If so, which types of private funds and why? Are there changes to the guidance in Rule 156 that would be appropriate to consider in connection with the extension of the guidance to private funds?

#77. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#78. Q: Are there additional amendments to Rule 156 that would help to clarify the obligations of private funds under the antifraud provisions?

#78. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#79. Q: If the amendments to Rule 156 proposed in the target date fund rulemaking are adopted,149 we anticipate making such amendments also applicable to sales literature of private funds. Is there any reason such guidance should not apply to sales literature of private funds?

#79. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#80. Q: Would antifraud guidance be useful regarding issues that may arise with respect to sales literature disseminated by other types of issuers in connection with offerings pursuant to Rule 506(c), such as non-traded REITs? Would similar guidance be appropriate for other types of issuers, such as statements that sales material should present a balanced discussion of risk and reward, and be consistent with representations in offering documents? What are the expected costs and benefits with respect to any such guidance?

#80. A: I do not have an opinion about REITs other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#81. Q: Commenters have expressed concern about private funds including performance information in general solicitations materials. Should the Commission apply any content restrictions to performance advertising by private funds? Why or why not? Should the Commission apply content standards to specific

types of performance advertising (e.g., model or hypothetical performance)? Why or why not? Are there current practices that would be affected? If the performance information is otherwise truthful and not misleading, what should the Commission consider in deciding whether any content restriction is appropriate or necessary? Does the fact that investors in a private fund engaged in a Rule 506(c) offering must be accredited to purchase securities suggest a level of financial sophistication such that content restrictions in general, or certain content restrictions specifically, should not be required?

#81. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#82. Q: How do the different types of private funds (e.g., hedge funds, private equity funds, venture capital funds, and securitized asset funds) calculate and present performance? Should private funds be subject to standardized performance reporting? If so, what reporting standard(s) should apply? Is there any standard that is widely used by private funds and should we consider requiring the use of such standard? Would one standardized performance reporting methodology be appropriate for different types of private funds?

#82. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#83. Q: Should the use of performance claims by a private fund as part of a general solicitation be conditioned on a requirement that the private fund be subject to an audit by an independent public accountant? Would such a requirement provide some level of protection that the performance claims were at least based on valuations of assets audited by an independent third party? To what extent do private funds typically have such an audit?

#83. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#84. Q: Is there a concern that, without content restrictions, materials used as part of general solicitations may vary depending upon who is selling the product (e.g., a broker-dealer's material subject to FINRA rules may differ from an issuer's materials)?

#84. A: Any intentional modification to an issuer's general solicitation materials by any third-party seller is clearly a new Offering conducted by that third-party, on their own behalf, and is not an Offering being conducted by the issuer who produced general solicitation materials. This is true even if the third-party seller ultimately directs investors to make an investment, or makes an investment in the issuer's securities on behalf of the investors (such as a private fund that raises capital to invest in a given issuer's Offering). Although there is no way to stop such "derivative works" in third-party Offerings, they should comply with Regulation D. Persons who initiate such illegal Offerings should be listed on the SEC's Offender Registry.

#85. Q: Is investor confusion (or confusion by the general public) a concern with respect to a private fund's general solicitation materials? If so, what is the specific nature of that confusion given that ultimately only accredited investors may invest in private funds engaged in a Rule 506(c) offering?

#85. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

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#86. Q: Should the Commission draw a distinction between general solicitation activity engaged in by a private fund relying on Section 3(c)(1) of the Investment Company Act compared to a fund relying on Section 3(c)(7) of the Investment Company Act? If so, how and why? General solicitation can be conducted through a broad array of media, including, but not limited to, print advertisements, billboards, television, the Internet and radio. Which ones will be most likely used in private fund offerings? Are there certain types of media that present heightened investor protection concerns?

#86. A: I do not have an opinion about private funds other than to point out that every single penny that the Commission causes such issuers to spend on any enhanced compliance obligations is a penny that will not go to the intended investments. Compounded annually at just ten percent every penny wasted today would have become $0.41 over just forty years! Perhaps this should be a required minimum disclosure:

Compounded annually at 10% a penny wasted today would have become $0.40 after 40 years!

#87. Q: Should we require the submission of written general solicitation materials used in Rule 506(c) offerings, as proposed? Should oral communications that constitute general solicitation be required to be submitted in some form? If so, how should a requirement to submit general solicitation materials be applied to telephone solicitations, solicitations through broadcast media or oral communications?

#87. A: All general solicitation materials should be uploaded for publication via EDGAR in binary format.

#88. Q: What are the appropriate ramifications for an issuer that fails to submit written general solicitation materials? Should failure to submit general solicitation materials disqualify an issuer from using Rule 506 for future offerings without court action? Should a cure period be provided? Should submission of written general solicitation materials be a condition to the Rule 506(c) exemption?

#88. A: Failure to submit general solicitation materials before sales of unregistered securities occur to any member of the general public should result in a law enforcement investigation against the offender. When no securities are sold by an issuer to any member of the general public, but the issuer fails to submit general solicitation materials to the Commission prior to first use in commerce, the offender should be listed in the SEC's Offender Registry but should not lose any privileges for having done so. Rather than threatening to "disqualify" the offender from Rule 506 (private placement and public general solicitations) in the future, the Commission should revoke, for a period of two years, certain privileges such as Rule 144 and Form S-8 so the offender and investors who choose to invest with the offender will have temporary reduced liquidity.

#89. Q: What are the benefits and costs of requiring the submission of written general solicitation materials in Rule 506(c) offerings? If the staff were able to conduct only limited review of a small portion of the materials submitted, how does that impact an assessment of costs and benefits?

#89. A: The Commission should publish all materials without review. The public should do all review itself.

#90. Q: Should the submitted written general solicitation materials be made publicly available on the Commission's website? Would the availability of such materials on the Commission's website give undue credibility to the materials and create the impression that submitted materials have been reviewed and/or approved by the Commission?

#90. A: Yes, the Commission's website should contain a comprehensive searchable forensic database record of all general solicitation materials and all issuers who use Rule 506(c) such as via the CIK of each EDGAR filer. The existence of materials on-file with the SEC will not create the impression that the materials have been reviewed and/or approved by the Commission unless the Commission or FINRA create the appearance themselves by, among other bad ideas, creating a 15-day waiting period between the time of filing (such as with the proposed Advance Form D filing window) and the time that the filing becomes effective. This has been a problem in the past for the Commission with respect to Form 10 information and other initial filings such as registration statements – because the Commission's past behavior created the appearance that there was a review period, people were led to believe that faulty or fraudulent filings would reliably be detected and rejected by the Commission when in fact in many cases nobody at the Commission ever even looked at the filings. It is important that the Commission conduct its operations in such a way that the general public is aware that the information published through its forensic databases including EDGAR is not reviewed for content or quality, and its presence in the SEC databases does not imply that material has been reviewed or approved by the Commission. Accordingly there should not be a delay between submission and publication.

#91. Q: Should written general solicitation materials be required to be submitted as an exhibit to Form D? Why or why not? Could submission of these materials publicly, through EDGAR or another means, have the effect of encouraging broadened investor interest in these offerings, beyond what the offerors would achieve by engaging in their own general solicitation efforts? Would this be in the interests of investors?

#91. A: Yes. Smaller issuers are going to be substantially disadvantaged compared to larger issuers in the budget limitations for advertising and marketing of Rule 506(c) offerings. The Commission should do everything in its power to provide issuers with forensic social media and social media marketing tools to reduce the cost of locating prospective investors. This is critical to the protection of investors because the lower the cost of Rule 506(c) Offerings the more likely issuers will be to raise only the amount of capital they need for operations and the more likely each investor will be to realize a good financial outcome from their decision to invest. Large issuers should not have the exclusive advantage of scale for advertising of their Offerings, or smaller issuers will likely find that a large percentage of the capital they raise must be spent on Offering-related expenses, which only serve to attract capital, instead of being invested in the issuer's operations which serve to create value for the investors, customers, and other stakeholders.

#92. Q: Should the written general solicitation materials be submitted at a time other than the date of first use of such materials? For example, currently, free writing prospectuses in the form of media publications or broadcasts that include information about the issuer, its securities, or the offering provided, authorized, or approved by or on behalf of the issuer or an offering participant and that are published or disseminated by unaffiliated media must be filed within four business days after the issuer or offering participant becomes aware of its publication or first broadcast. Should a similar deadline be considered for the submission of written general solicitation materials that are in the form of media publications or broadcasts and that include information provided or authorized by the issuer or an offering participant?

#92. A: There should not be a requirement for issuers or other participants to submit general solicitation materials to the Commission at any time other than prior to the first use of such materials in commerce.

However, the Commission should create a forensic social media infrastructure through which members of the general public can submit any specimens of general solicitation materials that they observe or receive. This crowd sourcing of public information and analysis of real-world "in-the-wild" general solicitations

being conducted by or on behalf of Rule 506(c) issuers will become instrumental to the Commission's review of the manner, quality and amount of general solicitation that occurs in the United States and will be one of the only viable and economical methods for the Commission to discover unreported, illegal general solicitation Offerings that are not in compliance with Rule 506(c) or JOBS Act crowdfunding portal rules.

#93. Q: Should a requirement to submit written general solicitation materials be applied to all Rule 506(c) offerings, or should certain issuers or certain Rule 506(c) offerings be excluded or exempted from such a requirement? If yes, what issuers or offerings should be excluded or exempted? Should smaller issuers or smaller offerings be excluded or exempted?

#93. A: No issuers and no Rule 506(c) Offerings should be excluded or exempted from the requirement to submit to the Commission the general solicitation materials prior to their first use in commerce. The requirement should be expanded to include all forms of general solicitation, not just written materials. The Commission should adapt the EDGAR forensic database to accommodate binary data submissions and all issuers should be required to submit for publication in EDGAR whatever multimedia electronic files they must submit in order for the general public and the Commission to review the issuer's various forms of general solicitation, including any that are achieved by way of computer software and program code.

#94. Q: As proposed, only the issuer relying on Rule 506(c) would have an obligation under Rule 510T to submit written general solicitation materials to the Commission, even if the materials were prepared and disseminated by an offering participant on behalf of the issuer. Should this requirement extend to the submission of all written general solicitation materials used by other offering participants in the same offering? Would this requirement further the Commission’s assessment of the market practices used by issuers in Rule 506(c) offerings?

#94. A: The requirement to submit general solicitation materials to the Commission should extend to all participants in a Rule 506(c) Offering, and the requirement should further be extended to any form of general solicitation utilized by participants, not be limited to written materials only. Where issuers and other participants in a Rule 506(c) Offering use live events to make general solicitations those live events should be required to be video recorded and a digital video of those presentations should be submitted to the SEC.

#95. Q: How would a requirement that written general solicitation materials be submitted to the Commission affect the amount or quality of information in such materials? How would it affect the use of Rule 506(c)?

#95. A: Requiring written general solicitation materials to be submitted to the Commission would only impact the amount or quality of information in such materials in the case of honest issuers. Dishonest issuers will continue to be dishonest, even if they comply with the filing requirements of Rule 510T since everyone knows the Commission does not have the resources required to conduct meaningful review of the materials it will be receiving from Rule 510T filers. Honest issuers will likely be even more careful about not making exaggerated or false claims about their investment offerings because their general solicitation materials will be on-file with the SEC. However, what the Commission should be targeting is regulations that better govern the ungovernable dishonest issuers. The only way to accomplish this objective in the real world is to help investors evaluate the general solicitation materials, and to understand their rights, so that investors can impose governance on issuers prior to, and after, supplying issuers with new capital.

The Commission should publish all materials that are submitted to it in Rule 510T filings and make it easy for investors to compare the quality and amount of submissions from high-quality issuers against the quality and amount of submissions from other issuers so that a standard of practice can become quickly discovered.

#96. Q: Should the proposed requirement for issuers to submit written general solicitation materials be in

the form of a temporary rule? Should this requirement be made a permanent one? If it is in the form of a temporary rule, is the proposed two-year period sufficient for purpose of understanding the market practices used by issuers to solicit potential purchasers in Rule 506(c) offerings?

#96. A: A rule such as Rule 510T should be made permanent, and all general solicitation materials in every form should be published via the SEC's EDGAR forensic database for the public to review in perpetuity. The Rule should apply to all forms of general solicitation, not merely to written solicitation materials. If it is necessary for the Commission to update the EDGAR forensic database to be compatible with digital audio and digital video or other forms of communications that issuers may use to advertise and solicit investors then the Commission should undertake to enhance EDGAR to be capable of serving this important purpose.

#97. Q: Are the net worth test and the income test currently provided in Rule 501(a)(5) and Rule 501(a)(6), respectively, the appropriate tests for determining whether a natural person is an accredited investor? Do such tests indicate whether an investor has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of a prospective investment? If not, what other criteria should be considered as an appropriate test for investment sophistication?

#97. A: There are two different ways for any investor to qualify as accredited under Rule 501(a) – either the investor can be willing *and able to survive* a complete loss on the investment, by being a high net worth or a consistently-highly-compensated professional and hopefully such high net worth investor or affluent earner will not risk more than they are willing to lose on any single investment, or the investor can be willing to undertake the risk of the business and the control, personally, by becoming a director, executive officer, or general partner of the issuer, or becoming a director or executive officer of a general partner of the issuer.

These two different types of accredited investor can be summarized as “passive investors” who are seeking to put their money to work for them but who want no liability and no responsibility for the outcome other than being willing to accept that their investment may produce a complete financial loss for them, and “co-founder directors” who become part of the business by investing and accepting risk beyond financial loss.

Any natural person who is willing to accept liability and responsibility for the outcome of the business is automatically accredited. This is an extremely important aspect of the use of Rule 506(c) in practice – when issuers commence general solicitation and advertising, they start a recruiting effort that will attract the best and the brightest people who are qualified to help with the business and who are interested in doing so. The existing Rule 501(a) already allows issuers to sell securities to any investor regardless of net worth provided that the investor is willing to accept a position as a director or executive officer of the issuer, and pay for the opportunity to accept that responsibility. This form of accredited investor sale during a Rule 506(c) Offering should not be deemed improper in the future, nor should it be viewed by the Commission, or anyone else, as an attempt to circumvent the Rules. People should be free to work for equity, and to risk any amount of their own money that they choose, because barring such decision-making by natural persons would violate the basic principle that represents what it means to be a member of American society. Hardship that people create in their own lives through their own choices is not the responsibility of the Federal government. To the extent that the Federal government does need the Commission's expertise to design reasonable steps for such “co-founder directors” who join risky business ventures as new investors in response to a Rule 506(c) general solicitation to be able to contribute to social welfare programs or pay taxes for government services it would be useful for the Commission to monitor and decide how to regulate this new type of investment relationship that will occur more frequently from now on thanks to general solicitation and advertising.

The government has no appropriate role restricting under-qualified people from becoming responsible for the outcome of business activities for which they lack qualifications, unless there is a health and safety risk associated with the work being done and in those professions there are already other requirements for the workers to be properly-trained and certified. For any investor who wishes to buy in to a business and learn

how to operate it on-the-job, the Commission should not prohibit that decision-making by the investor, nor attempt to limit this type of investing behavior to high net worth individuals only. The only rationale that can justify government controls over who can invest in themselves, and how the government allows them to make such self-investments, leads to a nanny state where people are meant to be protected from themselves. In such a system, government control over the entire economy would be more efficient for everyone – why shouldn't the government assign jobs to people at birth, and restrict them to those jobs throughout their lives and attempt to compel employers to hire every worker created in this way by the government, if there are going to be such absurd controls over what people are allowed to do with their own money and their lives?

Since there is already no prohibition on less-sophisticated investors, including non-accredited investors, from becoming issuers or becoming "co-founder directors" without the prerequisite "sophistication" and because there are obviously no reasonable regulations that the Federal government or the Commission could ever enact that would prohibit less-sophisticated, less-affluent people from investing in themselves, it is clearly wrongful to restrict investing to only those persons who are already independently-wealthy. Any person who legitimately qualifies as an accredited investor according to Rule 501(a)(5) already has all the money they will need for the rest of their natural lives. Any person who has $1,000,000.00 of net worth today already has the ability to spend $12,500.00 every year for the next 80 years, even if they earn zero interest on their money. This is more than enough money to survive comfortably, even without employment of any kind, so the question must be asked: what reason do such people have to invest in the first place? It is irrational for accredited investors to undertake any investment risk, except where they personally care about trying to achieve something meaningful with the rest of their lives. Since this is the same motivation that drives "co-founder directors" to join and invest their time and capital in a business venture, I have trouble understanding on whose behalf the Commission and commenters like the AARP and AFL-CIO claim to be advocating. Any retired investor who has a net worth, excluding the value of their primary residence, of $1,000,000.00 should not be investing as "passive investors" in the first place! Retiring at age 50 as an accredited investor and living for another 50 years allows the retiree to spend $20,000.00 each year, even if they earn zero interest on their assets during this entire term of retirement, without ever being at risk of running out of money to finance their retirement even with 3% annual inflation. This amount of spending would require a full-time job earning at least $15.00 per hour to sustain from after-tax income that is left over after minimum expenses for transportation and other costs associated with that employment are paid.

I want to emphasize how wrongful this is, how biased in favor of the rich and how economically unjust, for retirees to be advocating for the right not to work in America, while receiving special privileges reserved for "accredited" investors that are meant to help them continue not to work, when the Federal minimum wage is less than $15.00 per hour so that these retired accredited investors are able to live comfortably for the rest of their lives with a standard of living that is far above the minimum that we guarantee to full-time workers.

It makes no sense at all for the AFL-CIO and the AARP to be in political agreement about this issue!

If an accredited investor wants to do something irrational, and make a passive investment when they should not be doing so and have no true need to do so, why do the Commission, the AARP, and the AFL-CIO each conspire together and cooperate publicly to present a political narrative that encourages such investors to do such a thing, while prohibiting and discouraging less-affluent people who need to invest in order to become affluent? The only answers that make any rational sense look a lot like class warfare and systemic fraud. In deeply studying this problem and these bizarre politically-driven market regulations, in seeing that people who clearly know better continue to say things that are obviously-wrong in order to advance theories of wealth creation that only work for the wealthy, and knowing in detail how most wealth in the world has actually been produced, it is impossible to avoid the conclusion that the Commission's political purpose is to ensure that there is a very substantial barrier to entry for new competitors in every industry in America.

The Commission needs to change its politics, and replacing Rule 501(a) with an apology to all those who

were wrongfully excluded from the opportunities in the economy because of politics in the past 79 years would be a good start. Every natural person should automatically be deemed accredited, while there should remain asset tests and other minimum standards for companies and other organizations to qualify as such.

The Commission should also explicitly affirm, with language in its final rulemaking procedures, that any natural person who becomes a director, executive officer, or a general partner of any issuer who engages in general solicitation in accordance with Rule 506(c) is in fact accredited by virtue of their personal choice.

The Commission noted: *"Another commenter suggested having the Commission offer investor education classes whereby investors who meet a lower financial threshold but pass a qualifying test could be granted accredited investor status. See letter from Cambridge Innovation Center (June 13, 2012)."*

If the Commission deems it appropriate to expand the Rule 501(a) definition of "accredited investor" to include any natural person who has been certified as sophisticated, this would be a very positive change in my opinion. If such certification of sophistication were only allowed to extend "accredited investor" status to knowledgeable employees of an issuer, then that would also seem appropriate. Any loosening of the old, absurd restrictions on investing by the very people (non-accredited investors) who have no choice but to invest in order to attempt to grow wealthy during their lives would be better than revisions that may make investing in unregistered securities even more limited exclusively to wealthy natural persons in America. Furthermore, any foreign resident should automatically be deemed "accredited" under revised Rule 501(a). There is no viable public policy reason to block foreign direct investment in American securities offerings.

#98. Q: Are the current financial thresholds in the net worth test and the income test still the appropriate thresholds for determining whether a natural person is an accredited investor? Should any revised thresholds be indexed for inflation?

#98. A: No, the financial thresholds in the net worth test and the income test should be eliminated entirely. It is not appropriate for the Federal government, nor the Commission, to prohibit natural persons from engaging in lawful investing activities, either as "passive investors" or "co-founder directors" of issuers.

#99. Q: Currently, the financial thresholds in the income test and net worth test are based on fixed dollar amounts (such as having an individual income in excess of $200,000 for a natural person to qualify as an accredited investor). Should the net worth test and the income test be changed to use thresholds that are not tied to fixed dollar amounts (for example, thresholds based on a certain formula or percentage)?

#99. A: Yes, there should not be any financial thresholds. There should not be any income test or net worth test for natural persons. Natural persons have a constitutionally-guaranteed right to freedom of association and freedom of self-governance in their lives. Neither the Commission nor the Federal government has the authority to infringe this right. The only reason, in my opinion, the Commission's financial thresholds have never been challenged in court as unconstitutional is that people who can afford to litigate are all accredited.

#100. Q: Should it be a condition of Rule 506(c) that, prior to any sale of a security in reliance on the Rule, the purchaser shall have received an offering document containing specified information? If so, should such information requirements be the same as, or more or less inclusive than, the information requirements set forth in Rule 502(b) of Regulation D (which apply only when an issuer sells securities under Rule 505 or Rule 506 to a purchaser that is not an accredited investor)?

#100. A: No, there should not be any minimum information requirements for offering documents containing specified information, such as Rule 502(b) of Regulation D because the buyers in Rule 506(c) Offerings all will be accredited investors. However, when the accredited investor's status is established by way of Rule 501(a)(4), which I have described as "co-founder directors" previously, then in these instances the sales of

unregistered securities should be permitted only after recently-audited financial statement information is provided to the buyer/insider such as would apply in Rule 502(b)(2)(i)(B) which requires for offerings up to $2,000,000.00, the information required in Article 8 of Regulation S-X except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. In my opinion, the Regulation D, Rule 506(c) Offering exemption does apply, and should apply, to sales to non-accredited investors who respond to the issuer's general solicitation and create a legitimate opportunity for themselves personally to become a director, executive officer, or general partner of the issuer, thus being "accredited" by virtue of Rule 501(a)(4), however to prevent abuses of Rule 506(c) in such "co-founder director" cases there should be this additional requirement of minimum audited financial statement disclosure to insiders.

#101. Q: Should an issuer subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act be permitted to use Rule 506(c) if it is not current in its reporting obligations?

#101. A: Yes. It is not practical to require a reporting issuer who is subject to the Exchange Act reporting requirements to cancel Rule 506(c) advertising campaigns, most of which will have been paid for in full in advance of the issuer becoming delinquent in their reporting requirements, merely because the issuer has become delinquent. The investors and prospective investors in the issuer will know, if they merely bother to look to see for themselves that the issuer is delinquent, that there might be operational issues or risk factors of concern to the investors because of the issuer's inability to file reports in a timely manner with the SEC.

I recommend that the Commission explicitly require any reporting issuer that is utilizing Rule 506(c) to solicit investors publicly to at least timely file NT-10Q or NT-10K reports (as applicable) in the event that the issuer is unable to remain compliant with reporting obligations, as a condition of being allowed to continue to sell securities in connection with the Rule 506(c) Offering. Any sales of securities by a reporting issuer who is delinquent in their reporting requirements should be a violation of Rule 506(c) and should result, at least, in the issuer and the issuer's control persons and directors being added to the SEC's Offender Registry (losing privileges such as Rule 144 for a period of two years, as I recommended previously) unless the issuer has at least timely filed NT-10Q or NT-10K reports, so that the public is adequately informed that the issuer is currently not in compliance with the 1934 Exchange Act. There is no reason that any reporting issuer would ever be unable to file an NT-10Q or NT-10K report as-required by the 1934 Exchange Act if the issuer is actively engaged in business and is actively seeking new investor capital via Rule 506(c).

In summary, there should be no restrictions at all on the continuation of Rule 506(c) Offerings in terms of general solicitation and advertising, but delinquent issuers should not be concluding sales to investors until and unless the issuers have filed their required NT-10Q or NT-10K report.

On a related topic, all former shell companies should be permitted to use Rule 506(c) whether reporting or non-reporting, publicly-traded (such as Over The Counter) or privately-held, and if 1934 Exchange Act reporting the former shell companies should be treated the same as any other company when they become delinquent in their reporting requirements. It is not appropriate for the Commission to be punishing and singling out with "scarlet letters" any particular class of company because of its corporate genealogy or its corporate history. Who your parents are and what neighborhood you grew up in, to extend the analogy, must not ever become stigmas attached by the Commission to a public or private issuer of securities in America. In cases where corporate hijackings and other fraudulent activity set in motion lawful investments and the lawful work efforts of people in the past, those frauds and deceptions must not be allowed to disqualify the "former shell company" issuer from the opportunity to conduct lawful business in the present and to form capital in compliance with the Commission's rules and regulations. Any special concerns that legitimately exist surrounding "former shell company" issuers must be resolved and administered by the Commission in a manner that does not adversely impact the legitimate investors of those issuers, because, obviously, new investors have no way to comprehend what a corporation's genetic composition or origin might be, but all investors would need to do so if the Commission were to declare certain corporate persons as illegitimate.