The Reardon Firm
ATTORNEYS-AT-LAW

Patrick A. Reardon
Attorney-at-Law

September 9, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: *File No. S7-06-13; Amendments to Regulation D, Form D and Rule 156*
Release Nos. 33-9416, 34-69960, IC-30595

Dear Ms. Murphy:

I am writing as a member of the State Bar of Texas who has practiced corporate and securities laws for over 35 years. These are my comments, and I do not speak for any other person.

Policy Underlying the JOBS Act

Most of the changes in the release referenced above (the "Release") are proposed in response to the changes to the SEC's Regulation D that Congress directed be made in the Section 201(a)(1) of the Jumpstart Our Business Startups Act (the "JOBS Act"). The JOBS Act was signed into law in April 2012. The law directed the SEC to enact the enabling rules by July 2012, but for the reason discussed below, the Commission did not adopt these rules until a year later on July 10, 2013.

When the JOBS Act was enacted, the United States was in a severe recession and millions of Americans were out of work. At the same time, businesses, in particular small businesses, were having a difficult time raising capital. Lending by banks was down, and other capital seemed difficult to attract.

One has to look no further than this legislation's odd name, "Jumpstart Our Business Startups Act," and the obvious acronym, "the JOBS Act", to see that the Congress and the President felt this legislation would facilitate capital formation and increase employment. This conclusion is borne out by the legislative history. Congress must have been aware that businesses with fewer than 500 employees represent 49.2% of U.S. private-sector employment and 46% of all U.S. private-sector output.[1] When larger private companies are included, these percentages are even higher.

In Section 201(a)(1), the law directed the SEC to enact changes to Regulation D that would allow issuers to sell securities in transactions exempt from the registration requirements of Section 5 of the Securities Act of 1933 by means of a general solicitation and general advertising[2] so long as

[1] Small Business Administration, Office of Advocacy, *Frequently Asked Questions,* September 2012.

[2] Herein called "general solicitation" for brevity.

Lexington Place, Suite 203 • 930 West 1st Street • Fort Worth, Texas 76102
817.348.8801 • Fax 817.348.8804 • patrick.reardon@reardonfirm.com • www.reardonfirm.com

the securities were only sold pursuant to Rule 506 and only to accredited investors, as defined in Rule 501(a) of Regulation D. The SEC was directed to adopt procedures to assure that those who claimed accredited investor status did in fact meet the requirements.

In drafting Section 201(a)(1), Congress acknowledged that the regulatory burden of securities law compliance is a significant burden to small businesses and directed that the burden be lifted if sales by general solicitation are made under Rule 506 only to accredited investors. In lay terms, Congress' message to the SEC was clear:

> *SEC, get off of the backs of legitimate business owners who sell only to accredited investors.*

Congress has taken similar action before. In enacting the National Securities Markets Improvement Act of 1996, our elected leaders determined that, in certain areas, state securities regulation was doing more harm than good. In that legislation, Congress used the interstate commerce powers to preempt those types of state securities regulation that were harmful.

Now, Congress drafted Section 201(a)(1) of the JOBS Act to free capital formation by small businesses from the burden that the general solicitation prohibition imposes on private placements.[3]

As I will discuss further, the changes proposed in the Release would thwart the policy underlying in Section 201(a)(1). If adopted, these changes would be an abuse of the regulatory powers granted to the Commission by law. In addition to discussing the changes, I will first discuss some the dynamics that I believe affect the SEC's decision-making. Then, I will discuss specific proposals.

I. Factors Leading the SEC to Thwart Congressional Policy

Bureaucratic Resistance to Change

I have two degrees in political science. I worked in municipal government for over two years. In addition, I have represented businesses, financial institutions, and their owners in areas of Federal and state regulation for over 35 years.

I have observed that governments, including their bureaucracies, resist change, *especially if the changes result in the diminution of the governmental body's power or jurisdiction.* In considering the matters proposed in the Release, the SEC must force itself to overcome its bureaucratic resistance to the directive to let go of micro-managing private placements to all accredited investors. Congress was clear. Pass rules assuring that investors are accredited, but then let go.

Lack of Experience with Small Business

Attached as <u>Attachment 1</u> is a summary of the education and work backgrounds of the Chair, other four Commissioners, and the SEC's Division heads and other key persons that I have selected. The information shown is all public, with most information being taken from the SEC's website.

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[3] It is important to note that the antifraud provisions still remain applicable in all sales of securities.

Although these persons have a diversity as far as ethnicity and gender, the top leadership is generally a homogenous group otherwise.

The top leadership of the SEC consists almost totally of persons who received their top university degrees in the District of Columbia, the Middle Atlantic States and New England. Of the 11 persons listed on Attachment 1, only three received their top degree outside of this area.[4]

With only two exceptions[5], these same 11 persons have spent most or all of their careers in these same geographic areas, working with large law firms or in government. If you exclude being a partner in a large law firm as being a management position, only three of these leaders has experience running a business, big or small.[6]

Many of these top leaders have held jobs at private large law firms (mostly headquartered in New York City, Washington or Boston) and the SEC. Top attorneys in these law firms are members of a close circle of elite members of the bar whose business contacts include the top financial and business leaders on the East Coast. Clients of these law firms are large companies, investment funds, financial institutions, wealthy families, etc. Private companies that are clients are likely to be large companies owned by wealthy families, hedge funds, or wealth management companies. Within this group, clients are not likely to include small businesses as they exist on Main Street U.S.A.[7]

Virtually all of these 11 persons have extensive experience in government, often at the SEC. Almost none have worked in private sector management. This background means the Commission and the top staff can speak with very little actual experience of small business. Perhaps this lack of experience explains why many of the changes proposed in the Release seem to ignore the limited capital resources of small businesses.

Bias against Small Business at the SEC

Sadly, there is evidence that a recent SEC Chair has exhibited a bias against small business. On December 2, 2012, *The Wall Street Journal* reported that the outgoing SEC Chair Mary Schapiro stated in an internal SEC email that she had indefinitely delayed adoption of the general solicitation change *required* by Section 201(a)(1) of the JOBS Act because of concerns expressed to her by a consumer group and her own concern that, if she allowed the rule change to be adopted, her personal legacy would be seen as anti-investor.[8]

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[4] Commissioner Aguilar and Drs. Ramsay and Lewis.

[5] Commissioner Aguilar and Dr. Lewis.

[6] Commissioners Aguilar and Piwowar and Mr. Champ.

[7] The Chair and the other Commissioners were appointed by the President. Since recent Presidents have been graduates of Ivy League schools, this may explain the geographic concentration amount those persons. However, that explanation does not explain why the top staff members, who are selected by the Chair, have a heavy Northeast concentration. Since these top staffers are in the SEC's national headquarters, one would expect more geographic diversity.

[8] Jean Eaglesham and Telis Demos, "SEC Chief Delayed Rule Over Legacy Concerns," *The Wall Street Journal*, December 2, 2012.

In other words, Ms. Schapiro substituted her own judgment on removing the general solicitation prohibition and the judgment of a consumer advocacy group for the *law* that Congress passed and the President signed. She gave no concern to capital-starved businesses or unemployed citizens; her perspective of the interests of investors and her own reputation were paramount. It was an amazing demonstration of administrative hutzpah, particularly in the face of statements by Congress and the President that the changes would create private sector jobs when U.S. unemployment exceeded 8.0%. Ms. Schapiro left the SEC on December 14, 2012.

For whatever reason, SEC leaders in general do not seem to identify closely with private companies, particularly small business. Perhaps lack of experience makes it difficult to empathize with small business' limited capital resources and the impact of regulatory burdens. Or perhaps the SEC leaders' elite background and experience with corporate giants leaves these leaders uninterested in these business small fry, or even perhaps contemptuous.

Other examples where the SEC has shown bias against small business include the following:

1. <u>Scant Attention to Regulation D and Other Exemptions</u>. In recent years, the SEC has given little attention to the exemptions that small businesses rely upon to raise capital. The three most recent amendments enacted by the SEC were directed by law.[9] The Release is a response to the most recent changes ordered by the JOBS Act. This inattention has persisted despite it being well-known that many of the exemption rules are ineffective.[10]

2. <u>Failure of the SEC to be Proactive during the Recession</u>. It was well-known during the recent severe recession that small businesses were having difficulty in obtaining capital and that private sector employment was down. Despite these facts and the SEC's statement that one of the reasons for its existence is to "facilitate capital formation"[11], I know of no instance where the SEC proposed any rules, spoke with members of Congress or did anything else to promote small business capital formation. Again, speaking only from knowledge, it seems that past Chair Schapiro was only active in opposing change.

   As a member of the securities bar, an interesting exercise is to review the provisions of the JOBS Act and ask how many of these provisions a proactive and attuned SEC could have made administratively without Congressional prodding.[12]

3. <u>Allowing Private Funds to become a Distraction</u>. Although Congress intended for Section 201(a)(1) to benefit small businesses, the SEC has allowed private funds and

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[9] These were the recent changes relating to general solicitation of accredited investors dictated by Section 201(a)(1) of the JOBS Act, the rule prohibiting "felons and other bad actors" from using Rule 506 of Regulation D (mandated by Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")), and the change to the definition of accredited investor made by Section 413(a) of the Dodd-Frank Act.

[10] See, for example, Rutheford B. Campbell, Jr. "The Wreck of Regulation D: The Unintended (and Bad) Outcomes for the SEC's Crown Jewel Exemptions," 66 *Bus.Law.* 919 (Aug. 2011).

[11] http://www.sec.gov/about/whatwedo.shtml.

[12] Of course, the SEC would have wanted to consult with the nation's elected leaders before making any dramatic changes. However, the SEC could have shown some leadership during these difficult times and still have consulted with top elected officials.

hedge funds to be a bogeyman in the rule-making process. While these funds are within the ambit of the modified Rule 506, Congress first was primarily concerned with small businesses. An illustration of this distraction can be seen in a comparison of the number of times the SEC used the words "small business" and either "private fund" or "hedge fund" in the Release and the July 10, 2013 release adopting the general solicitation changes.

	Total uses of phrases	
SEC Release	**"small business"**	**"private fund" or "hedge fund"**
Release adopting changes allowing general solicitation of accredited investors. (Rel. No. 33-9415)	10	98
Proposing release regarding additional restrictions under Regulation D (Rel. No. 33-9416)	13	252

4. Continued Ignoring of SEC's own Programs. Annually, the SEC has hosted the SEC Government-Business Forum on Small Business Capital Formation. The recommendations of these meetings are available on the SEC's website.[13] Many of these ideas are very good, and one would think the SEC would act on them promptly. For example, the recommendation to allow general solicitation to accredited investors appears in the report of the Forum held in June 1993.[14] With a few exceptions, however, the SEC failed to act on these recommendations.

5. Inattention to Unregistered Broker-Dealers. The SEC has failed to devote enforcement resources to pursuing persons who should be registered with the Commission as brokers or dealers under Section 15(b) of the Securities Exchange Act of 1934. A significant portion of these persons are unscrupulous in their activities and prey upon small businesses. At the same time the Commission has failed to respond to calls for developing a small broker-dealer registration system that would help separate the bad actors from those who fail to register because of the difficulty of the current regulatory scheme.[15]

Unfortunately, this anti-small business bias seems to manifest itself in the belief by some, such as Ms. Schapiro, that small business is full of con artists and hucksters waiting to exploit investors. An interesting question is how many bad actors need the general solicitation change to commit securities of fraud.

My own view is that actual malefactors, who are relatively rare, only give lip services to compliance with the rules. They do not need the lifting of the general solicitation prohibition to commit securities fraud. The bad guys were doing fine without the change.

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[13] http://www.sec.gov/info/smallbus/sbforumreps.htm..

[14] http://www.sec.gov/info/smallbus/finrep11.txt

[15] See, Task Force of Private Placement Broker-Dealers, ABA Section of Business Law, "Report of the American Bar Association's Task Force on Private Placement Broker-Dealers," 60 *Bus.Law*. 959 (May 2005).

I urge the Commission to remember two points. First, since the enactment of the Securities Act of 1933, general solicitations without registration have not been allowed under what is now Section 4(a)(2) of the 1933 Act. Therefore, no one truly "knows" what will be the effects of this change. All are only offering predictions. Predictions, mine or yours, inherently reflect some bias, as well as often being wrong. The general solicitation change is too important for blind acceptance of predictions of apocalyptic fraud.

Second, assuming that many states have two agencies, *e.g.* a securities regulator and a state attorney general, that pursue securities fraud, there are somewhere between 50 and 100 agencies in the United States, including the SEC's Enforcement Division and the U.S. Justice Department's Criminal Division, pursuing and punishing securities fraud. The intent in the JOBS Act is for these agencies to chase down and punish the bad guys while the SEC frees up legitimate business people to raise capital.

Personally, my view is that filings and other regulatory burdens intended to prevent fraud are ineffective because those with impure intentions are not going to bother with those formalities. Instead, these requirements burden legitimate businesses and drain their capital with extra costs.

II. Discussion of Specific Proposals in the Release

While I continue to believe that the preferred method is to follow the intent of Congress and not burden general solicitations with the extra requirements proposed in the Release, as I argued in Part I above, I have commented on some of the specific proposals in the Release in Part II.

Hypothetical Situation

As I noted above, I do believe that the SEC has a weak understanding of small businesses and problems they face. Therefore, I would like to posit a hypothetic situation that I believe illustrates some of the issues a small business would confront in dealing with a few of the changes proposed in the Release.

> *John owns two dry cleaners in Fort Worth that have been very successful. For several years, John has been netting $400,000 to $500,000 annually from these businesses. A real estate broker approaches John about a very attractive location for a third dry cleaner. John assesses that it will cost $2.0 million to build and market the new location. John does not have the $1.0 million of capital he will need to obtain a bank loan for the other $1.0 million.*
>
> *John attends an out-of-state dry cleaning conference. He has a notice printed in the conference materials that he is looking for investors in an attractive deal. John wheels and deals at the conference and arranges for four investors, each who will invest $200,000. Prior to the meeting, John did not know any of these investors. Two of the investors are from out of state, two from Texas. John will invest the other $200,000.*
>
> *John's attorney, who is as clueless about the securities laws as John, draws up an LLC company agreement. John sends it and the past tax returns for his two existing dry cleaners and information on the new site to the investors. The investors, some of whom had their attorney look at the agreement, sign the agreement. They*

> *and John each contribute $200,000 and guarantee one-fifth of the bank debt. John is happy and the four investors are happy. Also, the bank is happy with the new loan. In addition, the new dry cleaner will hire 10 new employees who will be happy to have jobs.*

Should the foregoing set of facts be deemed a sale of unregistered securities? Publication of the notice to possible investors was probably a general solicitation, plus John lined up strangers to invest. However, John has very good reason to think all of the investors were accredited investors, if he were acquainted with the definition. Applying Section 201(a)(1) of the JOBS Act alone, this securities issuance should be exempt under Section 4(a)(2) of the Securities Act of 1933. Also, John gave the investors some information, arguably enough that it might be all material information, assuming John has not been an ax-murder or the like.

Nonetheless, no Forms D were filed with the SEC. John did not send to the SEC a copy of the material he sent to the investors. None of materials the investors received had any legends in bold all caps with the prescribed dire warnings. Nor were investors informed that John should be viewed as a "promoter" under the SEC definition. But looking at these facts, John would ask who has been harmed?

Now modify the facts slightly.

> *Instead of sending out the LLC Company Agreement, a little bird tells John's attorney he had better think about the securities laws. He calls a securities law attorney, and the three meet.*
>
> *The securities law attorney says that he will handle the matter for $60,000 to $100,000 in legal fees. The attorney insists on these minimum fees, particularly if the attorney's name has to appear in the Form D filed with the SEC. He is not going to shine the spotlight on himself without getting paid extra to take on that risk. The price range quoted also includes drafting a quick PPM "just to be safe." The PPM and the other information John sent to the investors will have to be filed with the SEC. John is outraged when the securities attorney says that John's competitors and his ex-wife might be able to obtain copies of the PPM, tax returns and other information under something called the Freedom of Information Act.*
>
> *Further, the securities law attorney says that he does not know what to do about filing the Advance Form D that was due 15 days before the first offer was made. The first offer was made weeks ago. How does he correct that deficiency?*
>
> *John thinks the securities law attorney is a crook. Up to 10% of the invested capital to prepare and file some paperwork that no one on the deal wants? John calls his investors to see if they can pony up their share of these expenses. They too think the new attorney is a crook. The deal starts to crumble apart.*

These hypotheticals are a realistic portrayal of the thin margins and relative lack of financial sophistication often found in small business. I have even seen clients accuse their securities counsel of making up work, simply because the clients cannot understand the need for the myriad of formalities. To many small business owners, the securities laws are a strange, irrational world.

At the small end of business sizes, securities compliance costs are disproportionately high. These costs are about the same for $100,000 private placement as for one of $5,000,000. Unfortunately, the proposed changes in the Release will only increase the costs of compliance, so much that I fear that some companies will simply elect to ignore the securities laws in selling their securities.

While I do not support non-compliance, I strongly feel that compliance with the securities laws should have some relationship to the size of the transaction. Remember, a goal of the SEC is to promote capital formation, not to deter it.

In an analogous situation, existing widespread non-compliance by small private placement broker-dealers can be attributed in part to the failure of the SEC to modify the broker-dealer registration rules so that the requirements are not so daunting for the smaller broker-dealers.

Validation of Additional Requirements

In reviewing the new requirements proposed in the Release, the SEC should seek the assistance of professional survey takers or social scientists to determine the correlation between the additional requirements proposed and the actual benefits achieved.

Several examples where validation analysis seems appropriate include the following:

- With respect to the required disclosure legends on offering documents, what empirical evidence is there that these legends influence investor behavior? What percent of investors even recall reading those legends?

- Although the Release states that the Form D is to be filed to allow the SEC to monitor the private placement markets, the Release states that state regulators can use the filings, particularly the first filing at least 15 days in advance of the first offering to ferret out possible violations. Now that is over 30 years of experience with Regulation D, it would be worthwhile to examine the violation of the private placement enforcement cases, federal and possibly state, to see in what percent of those cases did the alleged violator make a Form D filing. If the percentage is low, the case for early and multiple Form D filings would be diminished.

- The Release calls for a wide range of information that might be included in the Forms D filed in connection with the offering. The SEC should ask what is the benefit of including the additional information, and how does this disclosure make matters better for the SEC or investors? For example, what is the anticipated benefit of requiring an issuer to disclose the names of its legal counsel and accounting firm used in connection with the offering?

- The SEC's desire for market information about the private placement markets could be satisfied by an undertaking in each Form D to provide more detailed information upon written request from the SEC. Then the SEC could request the desired information from a statistically valid sample of issuers. In this manner, less than all issuers would be burdened by providing the detailed information.

Rule 503—Initial Filing For General Solicitation

The Release contains proposed Rule 503 calling for the filing of a Form D with relatively detailed information at least 15 calendar days before the first offer is made. There are two problems with this proposed requirement. First, as illustrated in the hypothetical above, business people may make offers of securities without considering that the SEC has arbitrarily imposed filing requirements as conditions precedent to the right to make offers of securities.

Second, because things move faster in the private sector than in government, the SEC may not realize that filing 15 days before making an offer will delay business unreasonably. Also, the information requested in the filing may not be known with certainty 15 days before the first offer is planned.

If the SEC insists on this filing requirement, it should be two to three business days <u>before the first sale of securities occurs</u>. This is sufficient advance notice.

Rule 507—Failure to File Form D

The Release contains a proposed Rule 507 that would provide sanctions for an issuer failing to make required filing of a Form D. I agree that loss of the exemption in the current offering is too draconian to be a remedy. I personally remember the days when Regulation D was conditioned on timely filing of the Form D. Issuers and their counsel were constantly worried about making the filings on time. It seems to create unnecessary worry over this one detail.

Another discussed "remedy" is an issuer's automatic loss of the right to use Regulation D for a year or other period if an issuer fails to comply with the Rule 507 filing requirement. Although the SEC did not advocate this remedy in the Release, I think it is worth noting my opinion that this would be an enforcement action taken without benefit of notice, a hearing and other appropriate legal process. Therefore, the remedy as discussed would be unlawful.

Rule 510T—Filing Written Solicitation Materials

A colleague has suggested that written solicitation materials filed with the Commission will be subject to being obtained by any person pursuant to the Federal Open Information Act ("FOIA"). <u>If that is the case, Rule 510T will be a significant deterrent to the use of Rule 506(c) by private companies.</u> These companies are not willing to make material information about trade secrets, business strategy, intellectual property, sales, profits, executive compensation and other proprietary information available to anyone willing to go to the trouble of filing a FOIA request. The SEC should clarify this question immediately. <u>If material filed is subject to FOIA requests, the idea of filing written disclosure materials for private companies should be dropped!</u>

Proposed Rule 510T would require issuers using Rule 506(c) to file with the SEC "any written communication that constitutes a general solicitation or general advertising" used in the offering. My question is, "Who at the SEC has time to review these filings?" The SEC has been chronically late in proposing and adopting the rules required by the Dodd-Frank Act and the JOBS Act, blaming an overworked staff. If the SEC lacks the staff to review these filings, then why burden the businesses with the costs of making these filings and why burden the taxpayers with all of these digital or paper storage costs? Instead, substitute an undertaking in the Form D to make submit the written disclosure materials upon written request from the SEC. Also, if fraud is such a concern, drop the filing requirement and use the cost-savings to add staff in the Division of Enforcement.

Finally, the SEC should specifically define the materials it is looking to have filed. I foresee much confusion. For example, I foresee that mid-size issuers will prepare a term sheet that contains some non-confidential information. The term sheet is then distributed by a general solicitation to potential investors. After some negotiations, the issuer will select one or two investors to negotiate the terms of an investment. Each side will be represented by competent securities counsel. The issuer gives or makes available bankers' boxes of documents and contracts for review by the investors and their counsel. After this process, a contract is signed for the purchase of the securities.

In this situation, what does the issuer file with the SEC pursuant to Rule 510T? Just the term sheet? The term sheet and the bankers' boxes? Keep in mind that that the bankers' boxes will likely contain confidential documents and contracts.

Graduated Requirements for Rule 506(c)

As currently written, an issuer could comply with the requirements of the exemption in Rule 506(c) without or limited involvement by legal counsel. For small issuers, this is an important consideration, as legal costs can be a prohibitively high percentage of the offering amount. However, if a fraction of the requirements discussed in the Release are enacted, all issuers intending to avail themselves of the Rule 506(c) exemption will have to involve securities counsel in the entire offering process.

This does not appear to have been a goal of Congress. Unless it is the SEC's intent to subject much of the general solicitation exemption to death by a thousand cuts, the myriad of proposals in the Release would kill this exemption for many small issuers.

Instead, I would urge the SEC to follow the lead of Congress and balance the compliance requirements for general solicitation more evenly between issuers and investors. The Release seems to reverse the balancing the Congress made in Section 201(a)(1) of the JOBS Act.

Therefore, if the SEC feels compelled to adopt some of the requirements contained in the Release, I would suggest a graduated scale for compliance with any provisions in the Release. This table might be starting point for discussion:

Issuer Size*	Applicable Requirements Contained in the Release
Startup or Annual Sales or Total Assets $\leq$\$10MM	Only require filing of a single condensed Form D at completion of the offering, but failure to file would not be subject to penalty if filing is promptly made upon request by the SEC. No duty to make specific disclosures or to file any written disclosures with the SEC.

Issuer Size*	**Applicable Requirements Contained in the Release**
Annual Sales or Total Assets >$10MM, but ≤$100MM	Filing of condensed Form D at least 2 business days before first sale is made and upon completion of the offering. Abbreviated written disclosure requirements adopted from the Release. Form D has an undertaking to file written solicitation materials with the SEC upon request.
Annual Sales or Total Assets >$100MM	All requirements

* Issuer size would consider size of the directly controlling persons. *E.g.*, a joint venture between two multibillion dollar companies would not qualify as a "startup", but would be subject to all requirements. However, if a small promoter starts a company with a multibillion dollar limited partner that is a passive investor, the company is a "startup".

As shown above, private funds and hedge funds seem a particular concern to the SEC and certain special interest groups. Rather than throw the baby out with the bath water, the SEC should adopt special requirements for those funds to the extent the Commission feel compelled to act.

III. Adjustments to the Definition of Accredited Investor

The definition of "accredited investor" in Regulation D, Rule 501(a) is due for some adjustments to reflect the effects of inflation. Also, the application of the SEC's *Plain English Rules* would be appropriate as well.

Any effort to increase the standards beyond adjustments for inflation would be an attempt to thwart the intent of Congress in enacting Section 201(a)(1) of the JOBS Act.

IV. Economic Analysis

As suggested above, I believe that the SEC lacks a basis understanding of small business. This can be seen in Part IX. Economic Analysis of the Release. The discussion there assumes that issuers will continue with offerings regardless of the extra costs of the new requirements proposed by the Release. There is no acknowledgement that the smallest businesses may be unable to pursue offering because of dramatically increased legal and other compliance costs. How does the SEC measure the economic impact of the offerings that are never begun? Or what is the impact of those offerings that begin but do not close because the high transaction costs skew the economics of the deals?

The Release will force even the smallest issuers to involve experienced securities counsel in all aspects of the offering. Also, can an issuer make a broad offering with a simple term sheet, then single out one to five offerees and then handle disclosure by access to all material information? Is there a negative inference if a formal offering memorandum is not filed with the SEC? Will this procedure invite an SEC investigation?

How much will it cost to compile prior results information at the smallest companies? You will note my suggestions above regarding scaling the compliance requirements.

With respect to all private businesses seeking to avail themselves of Rule 506(c), the Release seems to have lost sight or never understood the policy underlying Section 201(a)(1) of the JOBS Act, as I noted above:

> *SEC, get off of the backs of legitimate business owners who sell only to accredited investors.*

The purpose of the JOBS Act is to allow businesses to raise capital without a lot of expense. The Release does much to defeat that purpose. Like former Chair Mary Schapiro, the Commission is exhibiting, at worst, an anti-private business bias or at least a lack of empathy. The result is that the SEC has gotten the balance skewed away from private business toward investors. It is time to come back to center. Where the SEC is heading is so unrealistic and so expensive that it will not benefit business or investors.

The economic costs of the Release will be completely out of line. Congress has spoken clearly. The SEC needs to listen to what was said, not to what the SEC wants to hear!

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Please do not misunderstand my direct comments. I support the difficult work of the SEC. Please let me know if I can help you in any way.

Sincerely yours,

Patrick A. Reardon

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ATTACHMENT 1[i]		
Name & SEC Position	**Education**	**Prior Experience & Other Information**
Mary Jo White Chair*	-Columbia Univ. Law School -New School for Social Research, M. A. -Coll. of Wm. & Mary, undergraduate	U.S. Attorney for Southern District of New York, previously a federal prosecutor on that staff and in other U.S. Attorneys' offices in New York State. She was employed during three stints at the Debevoise & Plimpton LLP law firm in NYC—the last as head of the litigation section. Also, she was a director of The NASDAQ Stock Exchange. Law Clerk, Judge Marvin E. Frankel, U.S. District Court, Southern District of N.Y. *The Wall St. Journal* reports that individuals who have worked with Chairman White attend an annual Mary Jo White Alumni Dinner to which over 350 people are invited.[ii] Currently, she is a member of the Council on Foreign Relations.
Luis A. Aguilar Commissioner*	-Emory Univ. Law School, LLM in tax -Univ. of Georgia Law School -Georgia Southern Univ., undergraduate	Partner, McKenna Long & Aldridge LLP law firm, Atlanta. Gen. Counsel, Exec. Vice Pres. to INVESCO, an independent global investment manager, and the firm's managing director for Latin America. He also worked at other law firms and at the SEC.
Daniel M. Gallagher Commissioner*	-Catholic Univ. Law School -Georgetown Univ., undergraduate	WilmerHale law firm, Washington. Counsel to prior commissioners of the SEC; Co-Acting Director and Deputy Director of the SEC Division of Trading and Markets. General Counsel, Sr. Vice Pres., Fiserv Secur., Inc., financial firm. He also worked at other law firms.
Kara B. Stein Commissioner*	-Yale Univ. Law School - Yale Univ., undergraduate	Staff Director, U.S. Senate Banking, Housing and Urban Affairs Committee's Subcommittee on Securities, Insurance and Investment. Legal counsel and Senior Policy Advisor the Sen. Jack Reed. Previously, she had been a Legislative Assistant to Sen. Chris Dodd. Associate attorney at the law firm Wilmer, Cutler & Pickering, Washington, D.C. Ms. Stein held two fellowships after being a visiting lecturer at the Univ. of Nigeria Faculty of Law.

ATTACHMENT 1[i]		
Name & SEC Position	**Education**	**Prior Experience & Other Information**
Michael S. Piwowar Commissioner*	-Penn State Univ., Ph.D. in Finance -Georgetown Univ., M.B.A. -Penn State Univ., undergraduate	Served as Republican Chief Economist, U.S. Senate Committee on Banking, Housing and Urban Affairs. Also, he was the lead Republican economist on the SEC-related titles of the Dodd-Frank Act and the JOBS Act. One-year term as a senior economist to the President's Council of Economic Advisors. Principal, Securities Litigation and Consulting Group, a firm consulting law firms on complex litigation. Visiting academic scholar to the SEC's Office of Economic Analysis. Assistant Professor of Finance, Iowa State Univ.
Keith F. Higgins, Director, Corporation Finance**	-Boston Univ. Law School -Univ. of Va., M.A. -Florida State Univ., undergraduate	Partner, Ropes & Gray LLP, Corporate, securities and mergers & acquisitions law. Law clerk to Hon. Herbert P. Wilkins, Supreme Jud. Court of Mass.
George Canellos Co-Director, Enforcement**	-Columbia Univ. Law School -Harvard College, undergraduate	Acting Director of Enforcement, SEC. Deputy Director of Enforcement, SEC; Director of SEC NY Regional Office. Assistant U.S. Attorney, Southern District of NY. Litigation Partner, Milbank, Tweed, Hadley & McCloy, LLP. Associate at Wachtell, Lipton, Rosen & Katz.
Andrew Ceresney Co-Director, Enforcement**	-Yale Univ. Law School -Columbia College, undergraduate	Partner, Litigation & White Collar Crime, Debevoise & Plimpton LLP Deputy Chief Appellate Attorney, and Member of Securities and Commodities Fraud Task Force & Major Crimes Unit, both in U.S. Attorney Office, Southern District of NY Law Clerk to Judge Dennis Jacobs, Chief Judge, U.S. Court of Appeals, 2nd Circuit, and Judge Michael Mukasey, Chief Judge, U.S. District Court for Southern District of NY.

ATTACHMENT 1[i]		
Name & SEC Position	**Education**	**Prior Experience & Other Information**
Norm Champ, Director, Investment Management**	-Harvard Univ. Law School -King's College Univ. of London, M.A. -Princeton Univ., undergraduate	Deputy Director, SEC Office of Compliance, Inspections & Examinations. General Counsel, Executive Committee Member and Partner, Chilton Investment Company. Attorney, Davis, Polk & Wardwell. Law Clerk, Charles S. Haight, Jr., U.S. District Court, Southern District of N.Y.
John Ramsay, Acting Director, Trading and Markets**	-Univ. of Michigan Law School -Univ. of Texas, Austin, undergraduate	Deputy Director of Division of Trading and Markets. Partner, Morgan, Lewis and Bockius. Senior Vice Pres. of Bond Market Association (now Securities Industry and Financial Markets Association). Staff, Commodities Futures Trading Commission. Managing Director and Deputy General Counsel at Citigroup Global Markets. Also, worked at the SEC from 1989 to 1994, including counsel to Commissioner Schapiro.
Craig M. Lewis, SEC Chief Economist and Director of the Division of Risk, Strategy and Financial Innovation	Univ. of Wisconsin, Madison, M.A., Ph.D. Ohio State Univ., undergraduate	Professor of Finance, Vanderbilt Univ., Nashville, TN Visiting academic fellow at SEC. Visiting professor at other universities. Certified public accountant.

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Name & SEC Position	**Education**	**Prior Experience & Other Information**
Anne K. Small, General Counsel**	-Harvard Univ. Law School -Yale University, undergraduate	White House Counsel's Office, Special Assistant to the President and Associate Counsel to the President. Deputy General Counsel for Litigation and Adjudication, SEC. Partner, WilmerHale LLP. Law Clerk, Judge Guido Calabresi, U.S. Court of Appeals, Second Circuit, and Justice Stephen G. Breyer, U.S. Supreme Court.

* Appointed by the President.

**Staff or employee position appointed by the Chair of the SEC.

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[i] Information shown here is taken from various SEC press releases, unless otherwise indicated.

[ii] Jean Eaglesham and Liz Rappaport, "The Six Degrees of Mary Jo White," *The Wall Street Journal*, January 25, 2013.