SCHIFFHARDIN LLP

233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
t 312.258.5500
f 312.258.5600
www.schiffhardin.com

Stephen A. Marcus
312-258-5778
smarcus@schiffhardin.com

July 31, 2013

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

Re: File No. S7-06-13
Amendments to Regulation D, Form D and Rule 156 under the Securities Act (the "Proposal")

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Proposal. My comments below reflect personal opinions only, and do not reflect views of my law firm or any particular client.

While there are innumerable issues in the Proposal on which to comment, I have limited my comments to three.

I.

It occurs to me that the Proposal imposes provisions that literally elevate "Form" over substance, with consequences falling particularly hard on business entities least expected to comply. These include start-up ventures that rely on friends and family, angel investors and appearances at promotional presentations and competitions as their initial funding opportunities.

In registered offerings under Section 5 of the Securities Act, the staff generally reviews and comments on the substance of the offering materials to be used. This process leads to better disclosure and therefore provides a better basis from which investors can make informed investment decisions.

The Proposal, on the other hand, focuses on the mechanics and timing of filing, having nothing to do with substance, but with draconian consequences for any failure, no matter how slight.

Withdrawing the availability of a private offering exemption on the premise that the Commission needs the information to "evaluate the development of market practices" not

only misinterprets the basis for the JOBS Act direction to permit general solicitation and general advertising ("GSGA"), but also imposes an obligation to adhere to mechanical requirements that have little effect on the protection of investors. Regulation D will become unusable by the very entities it was designed to benefit. These are the venture entities that in their exuberance and enthusiasm to present the next great idea to the world, don't particularly keep their eye on the calendar in talking about their fundraising plans. They may overlook a 15-day advance notice period before they can speak to their friends and family (who may later be part of a larger offering involving GSGA). They also may not be cognizant of the concept of a sale occurring before a full "all or nothing" financing plan is achieved. And if they are successful in raising required funds, the need for their attention in putting those funds to use may take their eye off the calendar for a final Form D Report.

The loss of the ability to conduct a next-round private placement under the aegis of Rule 506 for a minimum of a one-year period is the antithesis of a rule designed to make it easier for small businesses to finance themselves to success.

Regulation D and its predecessors were designed to create a safe harbor into which limited offerings could sail, almost on an intuitive basis, without the need for extensive planning, lawyering, etc. Adoption of the rules contained in the Proposal will turn Regulation D into a series of traps for the unwary no matter how much detailed information the issuer has provided to its potential investors and no matter how circumscribed its GSGA activities have been.

Limiting the penalty period in which Regulation D is not to be available to 30 or 45 days following completion and submission of the appropriate Form D would be sufficient encouragement to provide the Commission with the information it requires, while at the same time permitting successful business start-ups to not only raise their first dollars, but to continue to do so, having been appropriately chastised in a way that serves as a wake-up or warning, but not as a financial death sentence.

II.

In response to question #90 of the Proposal, under no circumstances should submitted written general solicitation material be made publicly available. The concept of GSGA may be very broad, but at the narrow end of that spectrum are issuers who choose to use Rule 506(c) because they are uncertain as to whether their activities may constitute GSGA, though their offering addresses only a very limited audience. For instance, a start-up venture may make a presentation at a university-sponsored presentation competition, consider that to

potentially be GSGA, but does not want that information to be otherwise generally available. Rather, it is intended only for the audience gathered.

Similarly, larger more established issuers may wish to use GSGA to expand their profile within a broad category of investors (say, banks and insurance companies), use GSGA to solicit investors in those categories, which could then lead to circumstances under which the investors, being sophisticated and having financial leverage, could participate in back and forth negotiations as to specific terms of the proposed offering. Those investors would not wish to see their exchange of emails become a matter of public record, nor would they participate in an offering where that was a possibility.

Private offerings are conducted privately for many reasons, but privacy itself is often chief among those.

III.

Any box-checking that's made part of this new reporting regime should make it clear (by amendment to Rule 500(c)) that checking the box indicating reliance on Rule 506(c) is not an exclusive election as to reliance on that rule. Because of the many traps and pitfalls along the way, and the potential for loss of future exemption availability, I foresee many potential users of Rule 506(c) defaulting into the surprisingly more forgiving provisions of Section 4(a)(2) if their fund-seeking activities will otherwise permit.

I hope that the Commission can find a less punitive way in which to obtain the information concerning the various private placement markets that it deems necessary, so that Regulation D can return to the safe harbor it was intended to be. Otherwise, its utility will be much diminished and practitioners will have to return to the days of drawing for themselves and their unwary clients the rougher outlines of Section 4(a)(2).

Again, thank you for the opportunity to comment.

Sincerely,

Stephen A. Marcus

SM/lk

CH2\13321997.1