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September 13, 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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CC: rule-comments@sec.gov

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

Review of Selected Comments Submitted to the SEC Regarding Release # 33-9416 (S7-06-13); Part 1

Comment #1
I fully support the following, and I believe it is very important that the forensic identity verification procedures for the prerequisite filing of Form ID should also be enhanced immediately, as part of the present Proposed Rules, because the current method that the Commission employs to verify Form ID filings is forensically-invalid and insecure:

US Senators Martin Heinrich, Tom Harkin, Jeff Merkley, Carl Levin, Mark Pryor, and Angus King on June 28, 2013 requested that the SEC impose an advance filing requirement for Form D to assist state securities regulators in determining whether a public solicitation conducted in their state is being conducted lawfully in compliance with Rule 506(c) and to ensure that members of the public can obtain at least some information from state regulators when questions arise about a given Offering.

See: http://www.sec.gov/comments/s7-06-13/s70613-1.pdf

To emphasize how forensically-invalid and insecure the Commission's Form D verification methods are presently, there is no difference between the methods employed today to verify the true identity of human natural persons who file with the Commission compared to the methods that existed during the prior decades of time during which Irwin Boock hijacked dozens of corporations, some of them being registered with the Commission and all of them publicly-traded in the United States, and fraudulently issued billions of shares of stock purporting to be shares of those publicly-traded companies.

http://www.sec.gov/litigation/litreleases/2012/lr22499.htm
http://www.sec.gov/litigation/litreleases/2009/lr21243.htm
http://www.sec.gov/litigation/complaints/2009/comp21243.pdf

These “corporate hijackings” were possible because neither the Commission nor transfer agents nor secretaries of state have yet implemented a forensically-secure method to verify people's identities and to verify that people are, and corporations are, the same authentic people and corporations from whom the Commission has previously received past filings. Reliance on notarized signatures is not sufficient.

Comment #2

I believe the following request is reasonable, but I do not believe it is necessary for the SEC to modify the definition of accredited investor in order to achieve the desired result, provided that it is formally acknowledged that an issuer is free to appoint new directors and executive officers who then become accredited investors with respect to an issuer's Offering – in the scenario posited by the commenter, the hypothetical Professor of Finance who is not yet a millionaire could and would be instantly accepted on any legitimate company's Board or appointed as an executive officer thereof, and such person could then invest as much of their life savings as they believe is wise while also helping to increase the likelihood of success for all other investors:

Daniel H. Kolber, President/CEO, Intellivest Securities, Inc. on July 10, 2013 requested an alternate method be established for qualifying as an accredited investor that does not rely on a wealth test.

See: http://www.sec.gov/comments/s7-06-13/s70613-2.htm

Mr. Kolber also requested the repeal of FINRA Rule 5123 because the issuer will henceforth, under the new Rule 506(c), be filing general solicitation materials with the Commission itself. I think this request misconstrues the proposed Rule 510T which specifically requires "general solicitation materials" to be filed with the Commission but Rule 510T does not require filing of the Private Placement Memorandum or other offering documents, which are the subject of FINRA Rule 5123, usually communicated to prospective investors privately (or via broker-dealer) and often with express written confidentiality provisions attached thereto. To harmonize the private placement FINRA filing Rules with the new Rule 506(c) and to expressly permit broker-dealers to engage in general solicitation and advertising of Rule 506(c) Offerings on behalf of private issuers, it is my opinion that the Commission should notify broker-dealers that they can utilize FINRA Rule 5122 in connection with any Rule 506(c) Offering in which offering documents (other than the issuer's own general solicitation materials) are first provided to any prospective investor:

"FINRA Rule 5122 (Member Private Offerings) requires member firms that offer or sell their own securities or those of a control entity to file with the Corporate Financing Department a private placement memorandum, term sheet or other offering document at or prior to the first time the documents are provided to any prospective investor."

See: http://www.finra.org/Industry/Compliance/RegulatoryFilings/PrivatePlacements/

Furthermore, to additionally enhance and support the robust and streamlined use of Rule 506(c) by broker-dealers on a large scale on behalf of issuers, some mechanism is needed through which broker-dealers can verify that particular general solicitation materials have indeed been filed by issuers in compliance with Rule 510T. In my opinion, the best way for this to be achieved in practice is for the Commission to make available, publicly, all general solicitation materials filed with it by issuers. This way, broker-dealers will be able to click to download these materials from the SEC website (ideally from an EDGAR filing submitted either by the issuer under the issuer's own CIK or by a future registered crowdfunding portal under its CIK) rather than receiving arbitrary materials (which may be different from those on-file with the SEC) from the issuer (or from a party purporting to be the issuer) and then redistributing these materials publicly. The SEC should become the sole and final authority on what is legally allowed to be distributed publicly by broker-dealers.

Comment #5

I cannot understand why self-described "angel investors" are such a cranky bunch of whiners. In my

opinion the Commission should ignore people who self-identify as "angels" especially when they attempt to use this title to assert special privileges such as to declare themselves to be millionaires without being required to prove it with something as trivial and inexpensive as a letter from a third-party such as an accountant or an attorney. Please disregard comments such as the following, or explicitly push back on the so-called "angels" for threatening to stop investing in America if America requires them to tell the truth in order to continue to have the privilege of investing in competition with the MILLIONS OF FAMILIES IN AMERICA THAT QUALIFY AS ACCREDITED INVESTORS AND ARE WILLING AND ABLE TO PROVE IT!

Jason A Crawford, Former co-founder CTO, Kima Labs, Inc. on July 17, 2013 asserted the following: "I don't know about you, but there is NO WAY I am going to give an entrepreneur any of these documents. Every angel I've talked with about the rules feels the same way....These requirements could kill angel investment."

See: http://www.sec.gov/comments/s7-06-13/s70613-5.htm

In my opinion, and from my experience, so-called "angel investors" do not like following rules and regulations, and they don't value people who do, until they are ready to exit their investments with enormous profits by reselling their securities to members of the general public. The sooner Rule 506(c) puts an end to the outrageous standard practices of the "angel investor" business model, the better.

Comment #6

Sara Hanks, CEO, CrowdCheck, Inc. wrote on July 18, 2013 that Rule 510T was going to be very difficult for issuers and would prompt compliance avoidance, while also being effectively impossible for the Commission to implement, technically. I agree with the following, although in my opinion there will not be any technical difficulty for the Commission, nor for issuers, if EDGAR filing procedures are required for submissions in accordance with Rule 510T because, as the Commission knows, its own intake form will EDGARize the submissions just as it does now for Form D (obviously, Rule 510T compliance procedures will be similar if not identical to the current Form D filing process, which I note neither CrowdCheck nor Sara Hanks appear to have filed recently, themselves, based on searches for existing Form D filings. One hopes they have at least seen the computerized Form D filing process!):

See: http://www.formds.com/filings/search?search=CrowdCheck

"Additionally, since it would be unconscionable to force issuers to use specified file formats or to force them to undergo any form of “EDGARization” of their files, the Commission’s system would have to accept every format in which files can be created, in every version, including proprietary software. (We note in passing that this comment is being uploaded via a system that accepts files in only four formats.)"

See: http://www.sec.gov/comments/s7-06-13/s70613-6.pdf

In my opinion, until such time as the SEC's Rule 510T intake process has been enhanced to allow any binary data upload, in a secure fashion for users (which is a non-trivial but achievable objective), the Commission should accept URL submissions. It is very easy for any issuer to upload videos to YouTube, slideshows to SlideShare, or to post anything they wish to their own websites. The minimum Rule 510T compliance requirement could be, and perhaps could remain indefinitely, the submission to the Commission of a definitive list of websites, social media profiles, and other URLs where general solicitation and advertising materials (including interactive blogs and discussion forums) can be found

pertaining to the issuer's Rule 506(c) Offering. My own efforts to comply voluntarily with Regulation FD prompted me to file an 8-K report with the SEC to disclose such websites and social media profiles so investors and anyone else who needs to know this information can find such a definitive list.

See: http://www.otcmarkets.com/edgar/GetFilingPdf?FilingID=9407294

Although in my opinion it would be superior disclosure that is far more useful to the Commission, to state and local law enforcement agencies, and to the public, for each individual item that constitutes "general solicitation material" to be cited (at least by reference using a URL) in a filing with the Commission that becomes part of the EDGAR forensic database, perhaps Rule 510T should initially, during the proposed two-year temporary observation period, minimally require the publication of a URL or a set of URLs before those URLs and/or the materials accessible to the public thereby are first used in public communications in connection with an issuer's Rule 506(c) Offering.

If the Commission deems it appropriate to require such URL disclosures, the URLs submitted to the Commission should become part of the public forensic record via EDGAR in connection with the issuer's CIK, or the CIK of a future registered crowdfunding portal that facilitates such regulatory compliance on behalf of multiple issuers. Short-lived or transient URLs that the issuer cannot reasonably assure will remain available and functional for use by the public for an indefinite period of time should be automatically rejected by the Rule 510T intake process. The Commission's technical staff will know how to determine which types of URL are appropriate as persistent references to Internet resources that are likely to be under the control of the issuer at least for the lifetime of the issuer and which URLs do not fit this description and therefore should be rejected. Requiring issuers to publish general solicitation materials online such as on their own website where issuers can reasonably exercise control to keep alive past URLs without undue cost or difficulty is not unreasonable burden.

Over time, the Commission will be able to reduce this burden by the steps it will soon be taking to make the EDGAR forensic database compatible with new multimedia publications and data formats that do require persistent existence but that do not require any additional effort or investment on the part of filers in order to EDGARize them, such as by XBRL preprocessing and metadata tagging or transcoding to an XBRL-compliant XML taxonomy and linkbase.

See: http://xbrl.sec.gov/

"The proposed 2014 updates to SEC taxonomies is available at http://www.sec.gov/info/edgar/edgartaxonomies_d.shtml Please provide comments on 2014 draft SEC taxonomies via http://www.sec.gov/cgi-bin/contact_risk_fin using "Draft 2014 SEC Taxonomies" in the "General subject matter" section no later than October 31, 2013."

See: http://www.sec.gov/info/edgar/drafttaxonomies.shtml

Comment #7
On July 18, 2013, Don Jones, CEO - VentureDeal, commented:

"We agree that consequences for failing to timely file an Advance Form D should be the immediate loss of Rule 506(c) as an exemption."

This statement by Don Jones is an incorrect misrepresentation of the Commission's proposed one-year "disqualification" period. The Commission clearly never suggested that any loss of exemption would

result from non-compliance with the revised Regulation D filing requirements. The proposed "disqualification" period of one-year from the date that a non-compliant Offering becomes fully-compliant is clearly only related to the potential future Offerings that might be initiated by the people who were responsible for a previous failure to comply with the proposed regulation. The apparent disqualification impact, in practice, will not prevent issuers from conducting future Rule 506 Offerings, nor will the disqualification render any securities issued to investors to be invalid and "non-exempt" merely because one or more of the people involved in the future "disqualified" Offering happen to be violating Regulation D, personally, by participating in the future Offering while they are disqualified.

In practice, the Commission has made it perfectly clear that the loss of an exemption under Rule 506 is not a reasonable consequence of non-compliance with the Commission's Rules. It is apparently the Commission's true intent to take enforcement action against individual human persons, but never against non-human corporate persons (issuers), for future statutory offenses relating to Regulation D non-compliance. This should be made more clear by the Commission, because most observers have already failed to understand the complex wording, the intended impact, and the anticipated future scope of enforcement actions relating to these Proposed Rules.

In my opinion, the Commission should focus on modifications to the Proposed Rules that will strengthen compliance requirements imposed on human persons, rather than focus on making false threats against issuers which will only harm investors if the threats are acted upon for political reasons, rather than for reasons of fraud. Actual fraud requires a law enforcement action, not the actions of a political commission that only has the authority to file civil lawsuits. The Commission's priority here must be improving clarity and legal power for potential enforcement actions that are envisioned against the SEC's Offenders. The heart of all future enforcement actions against human persons is being able to reliably establish the known true identity of Offenders and establishing definitive legal standing for the Commission and others to take civil legal action against anyone who violates the Commission's Rules or who attempts to defraud or to deceive investors.

Comment #11

The following comment letter, submitted on July 22, 2013 by Scott Purcell, Arctic Island and FundAmerica, is exactly right on every point, provided that "microcap" issuers are required to conduct their Offerings through a broker-dealer so that semi-automated, low-cost and efficient regulatory compliance for issuers who do not wish to manage compliance themselves can be achieved by the broker-dealer on behalf of the issuer. However, I find it troubling, and instructive to help the Commission to recognize its failure to communicate clearly about these Proposed Rules, that even Scott Purcell has ridiculously exaggerated the intent and the scope of the "general solicitation materials" that issuers will be required to submit in accordance with Rule 510T. The Commission must address its chronic miscommunications, and attempt to adopt a more reasonable internal method for how it chooses the words that will be used when proposing and finalizing future Rules.

"To require them to 'pre-file' every Facebook like, every Tweet, every Pinterest, every mention in a post or comment on a LinkedIn forum, or every handwritten sign they may place in the reception area of their businesses is simply not practical."

See: http://www.sec.gov/comments/s7-06-13/s70613-11.pdf

Because of instances like this one, and my own experiences complying with the Commission's Rules and Regulations, I strongly support the "negotiated approach to rulemaking" advocated by the US Chamber of Commerce which would, at least initially, supply the Commission with sanity-checked

language and ideas for Proposed Rules that make rational sense to normal people, so that the Commission's attorneys and whomever else is typically responsible behind-the-scenes for the often-defective rulemaking process, won't be as likely to put forth so many bizarre Rules that have uncertain legal effects or that frighten reasonable people into unreasonable thinking!

See: http://www.sec.gov/comments/s7-06-13/s70613-337.pdf

Comment #72
In a letter dated July 22, 2013, Patrick McHenry and Scott Garrett, Subcommittee Chairmen, writing on behalf of the US House of Representatives Committee on Financial Services presented eight very detailed requests to the Commission seeking explanations and legal justifications for SEC actions. Importantly the Subcommittee Chairmen rightfully assert **the Commission must comply with the law**. They rightfully assert the SEC cannot arbitrarily impose 15-day **unconstitutional bans on free speech**.

"Proposed Rule 503 requires filings of Form D to be made fifteen days in advance of the first general solicitation. As described above, Congress specifically acted to remove a broad constraint on free speech by lifting the ban on general solicitation in the case of accredited investors. Congress did not authorize the Commission to impose a fifteen day ban on general solicitation."

See: http://www.sec.gov/comments/s7-06-13/s70613-72.pdf

It is encouraging to see this forward progress! I previously responded to US House of Representatives Committee on Financial Services' Ranking Member Maxine Waters' Comment to the Commission:

See: http://www.sec.gov/comments/s7-07-12/s70712-207.htm

Maxine Waters said:
"if we are allowing companies to circumvent registration with the relevant state, or the SEC, then we should ensure that only sophisticated individuals have access to these securities."

See: http://www.sec.gov/comments/s7-07-12/s70712-186.pdf

This misrepresentation of the JOBS Act legislation as "allowing companies to circumvent registration" plus Representative Waters' contribution to the political delay in the JOBS Act rulemaking at the SEC gave rise to serious concerns about the legitimacy, and basic constitutionality, of this entire process. It was not clear whether, under Representative Waters' leadership, the US House of Representatives Committee on Financial Services was a part of the solution or whether it was another part of the systemic problem and corruption. It now appears Maxine Waters has adjusted the focus of the Committee on Financial Services to the reality of the U.S. Constitution. This is somewhat ironic, given past rhetoric of "kerosene Maxine" – it is also ironic that the Subcommittee Chairmen complained about JOBS Act rulemaking delays that Maxine helped cause!

See:
https://twitter.com/MaxineWaters
https://www.facebook.com/MaxineWaters
http://www.nytimes.com/2013/05/12/business/in-house-maxine-waters-takes-new-tack-on-banks.html
"You've softened," Paul C. Hudson, the chairman of Broadway Federal Bank, teased Ms. Waters.
"I love the new Maxine."
"The New Maxine was born in part from Ms. Waters's ascension, in January, on the House Financial Services Committee. Exonerated in September at the end of a three-year ethics investigation, she replaced Barney Frank, Democrat of Massachusetts, for whom the banking overhaul bill was named."