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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

Review of Selected Comments Submitted to the SEC Regarding Release # 33-9416 (S7-06-13); Part 2

Comment #18
I agree with Thomas E Vass, North Carolina State Registered Investment Advisor, who recommended that a state-registered investment adviser could verify accredited investor status just like SEC-registered advisers.

See: http://www.sec.gov/comments/s7-06-13/s70613-18.htm

Comment #19
On July 25, 2013, Richard Rodman, CEO; Rohan Kusre, COO; and Julie Moroney, Research Analyst; of Crowdentials urged the Commission to add “teeth” to convince issuers to take the “reasonable steps” to verify that investors are accredited when selling shares pursuant to Rule 506(c). The commenters assert that requiring Item 22 of Form D is “not a burden” but in my opinion the addition of Item 22 to Form D does create an undue, worthless burden. Conscientious filers, those issuers who are diligent in their compliance obligations, will employ the best possible verification steps on a case-by-case basis with respect to each investor. It is not feasible to require issuers to report accurately their future verification steps when filing Form D, and it should obviously not be a requirement to file an amended Form D when some non-material item like the method of accredited investor verification changes throughout the course of an Offering. If there is no requirement to amend Form D when the most accurate answer to a question asked by the Form D changes relative to the answer that was provided in a previous filing, then there is truly no reason to ask the question, nor to require an answer to it, in the first place when the Form D filing is elicited from issuers.

See: http://www.sec.gov/comments/s7-06-13/s70613-19.pdf

It is my belief issuers *will* follow through with the “reasonable steps” requirement for investor verification. In any event, non-compliance with Item 22 of Form D is obviously completely irrelevant. In order to take any legal action of any kind against a non-compliant issuer for incorrectly answering Item 22 on Form D, the Commission would have to spend tens of thousands of dollars. In order to respond to any accusations of non-compliance of same, issuers would have to spend tens of thousands of dollars. The Commission needs to adopt a new 'Rule 22' for itself to follow: if something the SEC proposes is not worth $50,000.00 to fight about, PER OCCURRENCE OF INSTANCES OF NON-COMPLIANCE, or when something goes wrong, then the SEC should not propose the thing in the first place. Objectives like stopping fraud and deception **are worth spending $50,000.00 to achieve**, even on a per-occurrence basis, but Form D, Item 22 is not.

Comment #20
On July 25, 2013, Lee Terry of Davis Graham & Stubbs LLP commented that the Commission should take steps to cement the role of registered broker-dealers in Rule 506(c) Offerings. I agree with this sentiment. There is no question that the highest-quality unregistered public Offerings will be those that are managed by registered broker-dealers, not only for the purpose of enhanced regulatory compliance but also in terms of investor protection. The Commission has, since 1934, created regulatory and enforcement burdens and risks that effectively cutoff access to broker-dealer services for most small private issuers, especially for startups. In my opinion, the best source of sales and marketing support for startups is the hundreds of thousands of licensed securities industry professionals, and the broker-dealers in whose name most of these people work. The Commission should revise the Proposed Rules so as to explicitly create new broker-dealer incentives. However I do not agree with Lee Terry's recommendation that broker-dealers should be a legal requirement.

See: http://www.sec.gov/comments/s7-06-13/s70613-20.htm

Comment #25
On July 25, 2013, Mathew Dellorso, Chief Executive Officer, WealthForge Holdings, Inc. observed that the Angel Capital Association suggested that "Angel investors would be less likely to invest if they needed to specifically divulge their net worth and income information." In my opinion, comments like this are absurd and are driven by emotional reactions to certain language included in the Commission's Proposed Rules. It is obviously not necessary for accredited investors to provide issuers with copies of their tax returns, etc., but if investors did do so then would that supposedly verify the investor's accredited status? No. In fact the only thing that a tax return form verifies is that the investor knew how to find the form on the IRS website, print and sign the form, and then supply it to the issuer as proof of accredited status. Will an investor ever be prosecuted, criminally, for misrepresenting that an IRS form provided to an issuer is an authentic copy of the form as-filed with the IRS? No. Such prosecutions against investors will never occur, anywhere. I have never seen, and I do not believe there exists anywhere in case law, any SEC or state regulator enforcement action against investors who misrepresented their status as accredited. The only cases in which investors who are in fact non-accredited but misrepresented themselves to be accredited investors end up with legal problems of their own for having engaged in fraud appear to be when those investors sue their brokers:

http://rrothlaw.com/wp-content/themes/rothlaw/pdf/NYLJ04.22.04.pdf

I agree with Mathew Dellorso when he states the following:

"Furthermore, accredited verification need only occur once annually.

We agree that these Legends should be required on all sales PPM's and acknowledged by the investor before closing of the transaction. We also believe that these Legends would be effective, if displayed, in deterring non-qualified investors, such as those that cannot accept the risks or do not meet suitability."

See: http://www.sec.gov/comments/s7-06-13/s70613-25.pdf

Comment #288
On July 29, 2013, Tim Johnson, Chairman of the Senate Committee on Banking, Housing and Urban Affairs commented that "investor protection needs further attention" and suggested that the Proposed Rules requiring pre- and post-offering filings and "submission to the SEC of general solicitation materials" would be "indispensable" as a regulatory enforcement counterpart to the new ability of issuers to engage in general solicitation. I agree with Chairman Johnson. The Commission simply must require at least pre-solicitation filing of at least a Form D and the associated requisite Form ID in order for would-be public Offerings that are not registered with the Commission to be declared formally. However, no 15-day waiting period should apply, and in my opinion a post-Offering closing Form D, and amendments to Form D, should be optional.

Chairman Johnson missed an important opportunity, in his letter, to elaborate upon the practical reality of monitoring to prevent "deceptive schemes that seek to mislead or defraud investors" which the Chairman knows very well to be impossible without the help of the public whose interests the Commission is meant to be protecting. If Rule 510T does not result in the Commission publishing all general solicitation materials submitted to it, in advance of first use publicly, by issuers conducting Rule 506(c) Offerings, then the public will not be able to provide meaningful assistance to the Commission in carrying out its monitoring and fraud prevention responsibility. I note that the category "Unregistered securities offering" is presently still a complaint type that can be submitted via the SEC.GOV website, yet this will soon no longer be an offense!

See: https://denebleo.sec.gov/TCRExternal/questionaire.xhtml

If the Commission does not publish Rule 510T submissions, then in all likelihood the Commission is going to be inundated with tips and complaints from everywhere, including from outside the United States, and the Commission will have an impossible enforcement burden. It is not practical for the public to provide tips and for the Commission to try to filter out the few instances of actual fraud from the background noise of "false positives" that will be submitted as the public evaluates whether certain general solicitations are fraudulent schemes, unless the public is provided with some basic mechanism to search on the SEC.GOV website to see whether a particular general solicitation is already known to the Commission. In every single large-scale general advertising of any Rule 506(c) Offering the Commission is likely to receive a very large number of complaints, as literally hundreds of millions of solicitations are made publicly, even if only a small percentage of the recipients thereof subsequently submit complaints or tips to the Commission. In my opinion, the Commission should review its Tips, Complaints and Referrals intake forms to see for itself that these forms appear to be incompatible presently with the new reality that general solicitation of unregistered securities will no longer be prohibited after September 23, 2013. The existing Tips intake process appears to be more than adequate, but only if the public has a way to determine, before filing a tip, whether there is a probable violation of Rule 506(c) due to an issuer's failure to comply with Proposed Rule 510T or Rule 503.

In my opinion, Chairman Johnson should have taken the opportunity, when submitting his comment, to ask the Commission to fill in a missing piece of practical market monitoring and investor protection by revising the proposed Rule 510T so that all "general solicitation materials" submitted to the Commission by issuers would, by Rule, be published publicly by the Commission, including by way of the SEC.GOV website. In my opinion, the Commission should also commence publication of a periodic "best practices" Spotlight that highlights the real-world general solicitation materials, policies and procedures being employed by issuers and their representatives or affiliates in connection with Rule 506(c) Offerings. The Commission already does this, in the inverse, when it publishes "worst practices" such as when publishing enforcement actions.

This is a particularly good example that illustrates the value of publishing "worst practices" when the SEC takes enforcement actions, but investors and issuers also need to see "best practices" from the Commission:

See: http://www.sec.gov/news/press/2011/2011-120.htm
See: http://www.sec.gov/news/press/2011/2011-120-clyw-promo.pdf
See: http://www.sec.gov/news/press/2011/2011-120-ehsi-promo.pdf
See: http://www.sec.gov/news/press/2011/2011-120-ivvi-promo.pdf

In order for Chairman Johnson's vision that these Proposed Rules will provide "crucial information to the SEC **and investors**" to be realized in practice, the Commission must publish all Rule 510T submissions.

"Overall, the filing and disclosure requirements set forth in the proposed rule provide crucial information to the SEC **and investors** with minimal imposition on issuers." (emphasis added)

See: http://www.sec.gov/comments/s7-06-13/s70613-288.pdf