CFIRA
CrowdFund Intermediary Regulatory Advocates

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September 23, 2013

U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

RE: The JOBS Act, Title II – 506(c), Comments on the Proposed Amendments to Regulation D, Form D, Rules 503, 507, 509 and 510T, (File No. S7-06-13)

Dear Ladies and Gentlemen:

I am writing you on behalf of the Crowdfund Intermediary Regulatory Advocates ("CFIRA"), a crowdfunding trade organization that lobbies and advocates for regulations that will support the crowdfunding industry in connection with Title II and Title III of the Jumpstart Our Business Startups Act of 2012. CFIRA's role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members are comprised of intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in or who intend to engage in business under Titles II and III.

CFIRA recognizes that the elimination of the prohibition against general solicitation in Rule 506(c) offerings will increase the amount and types of information about issuers and offerings that are communicated to investors, and the anticipated forum could also lead to more efficient pricing for the offered securities. In addition, accredited investors who previously have found it difficult to find investment opportunities in Rule 506 offerings may be able to find and potentially invest in a larger and more diverse pool of investment opportunities, which would result in a broader allocation of investments by those investors.

The proposed amendments to Regulation D would require the filing of a Form D in Rule 506(c) offerings before the issuer engages in general solicitation; require the filing of a closing amendment to Form D after the termination of any Rule 506 offering; require written general solicitation materials used in Rule 506(c) offerings to include certain legends and other disclosures; require the submission to the Commission, on a temporary basis, of written general solicitation materials used in Rule 506(c) offerings; and disqualify an issuer from relying on Rule 506 for one year for future offerings if the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five years, with Form D filing requirements in a Rule 506 offering. The proposed amendments to Form D would require an issuer to include additional information about offerings conducted in reliance on Regulation D. Finally, the proposed amendments to Rule 156 would extend the antifraud guidance contained in the rule to the sales literature of private funds.

CFIRA respectfully submits the following comments and recommendations on each of the aforementioned proposals.

Overview – Small Businesses

There has been much written in the media about hedge funds using the new General Solicitation exemption, and the Commission and others are right to be concerned about that. However, the rules as proposed seem to miss the intent of the JOBS Act, which was created to spur economic growth and job creation through providing capital formation to small and emerging companies marketing issues publicly to investors. While it is imperative to consider and adopt rules and business processes regarding investor protection, these must be weighed against real-world practicalities for small businesses seeking capital formation.

CFIRA's Comments and Recommendations with Respect to the Proposed Rules

CFIRA recognizes that the amendments are intended, among other things, to enhance the Commission's understanding of the Rule 506 market by improving compliance with the Form D filing requirements. Further, we believe that the proposed changes to the filing and information requirements of Form D could assist the enforcement efforts of both federal and state regulators, which rely on Form D as an important source of information about the private offering market. In addition, in light of the ability of issuers to publicly advertise Rule 506(c) offerings, we understand the concerns of the Commission that prospective investors may not be sufficiently informed as to whether they are qualified to participate in these offerings, the type of offerings being conducted and certain potential risks associated with such offerings. Notwithstanding these legitimate concerns, we believe that the proposals will not work in the form they have been proposed.

I. Proposed Amendments to Rule 503 of Regulation D, Form D Advance Filing

Amending Rule 503 of Regulation D to require: (1) The filing of a Form D no later than 15 calendar days in advance of the first use of general solicitation in a Rule 506(c) offering; and (2) the filing of a closing Form D amendment within 30 calendar days after the termination of a Rule 506 offering will burden smaller issuers seeking to rely on the new Rule.

This advance filing of the form would be inconsistent with the principles of the JOBS Act for general solicitation and advertising. Currently, Rule 503 requires an issuer to file a Form D not later than 15 calendar days after the first sale of securities in Regulation D offerings; the proposed amendment would impose a 15 day cooling off period before the issuer could commence marketing activities involving general solicitation and advertising. Further, for small issuers, this additional/pre-filing will increase the cost of raising capital because there will be two Form D submissions to the Commission and legal fees would be incurred before an actual sale of a security is made.

> *Recommendation 1:* Retain the current rules relating to timing of filing a Form D. In the alternative, requiring an issuer to file a Form D just prior to commencement of marketing. This allows small issuers to begin the process of raising capital immediately once all requirements are in place with the intermediary, which is the original intent of the JOBS Act.

II. Proposed New Rule 509 of Regulation D

We acknowledge the importance of legends in Rule 506(c) offerings. However, we note that requiring issuers to include prescribed legends in any written communication disseminated for a general solicitation will have value so long as the media used by the issuer supports such legending. For example, conducting general solicitation and advertising in a limited 140-character tweet on the social media site Twitter will preclude the use of prescribed legends.

In addition, this requirement will increase the cost of compliance because issuers will have to ensure that processes are built into their day-to-day operations.

Recommendation 2: Require prescribed legends on documentation such as pitch decks, business plans, PowerPoint presentations, sales brochures, and marketing websites that are used to sell an offering. Where there are limitations in the number of characters that can be used, such as in the example of Twitter, the legending requirements of Rule 509 should not apply.

III. Proposed Rule 510T

CFIRA understands that the Commission will need to gather information about the implementation of the Rule 506 market after the effectiveness of Rule 506(c). However, we are concerned that Proposed Rule 510T, which requires issuers, on a temporary basis, to submit any written general solicitation materials used in their Rule 506(c) offerings to the Commission no later than the date of the first use of these materials into a dropbox-like mechanism, is simply not practical for the Commission to manage or issuers to comply with.

Even with the best of intentions on the part of issuers, it is not reasonable to expect that small issuers will comply with the rule given their operational and financial capacity. And even if they did, the millions of submissions would likely overwhelm any database that the Commission creates for such a purpose.

Recommendations 3: If adopted, Rule 510T should exempt a ‘‘small business’’ or ‘‘small organization’’ if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million. This should include Funds that have net assets of $50 million or less as of the end of their most recent fiscal year.

IV. Proposed Amendment to Rule 507 of Regulation D

Amending Rule 507 of Regulation D to disqualify an issuer from relying on Rule 506 for one year for future offerings if the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five years, with all of the Form D filing requirements in a Rule 506 offering is a draconian measure that will severely impede access to capital for small issuers. Penalizing an issuer for one year for future offerings appears excessive at the outset of implementation. We agree that repeat offenders should be penalized from conducting offerings using Rule 506.

Recommendation 4: Until the marketplace for Rule 506(c) matures (reasonably 2 years from implementation), the Commission should consider implementing a “3 strikes policy” before an issuer is disqualified approach. The penalties at each stage could be: 1) A written warning for a first offense; 2) A fine (perhaps $5,000) for the second offense payable within 60 days; 3) Disqualification from relying on Rule 506 for one year for future offerings if the issuer, or any predecessor or affiliate of the issuer, did not comply within the past two years. We encourage you to maintain the provisions for a cure period and

waiver for good cause.

The members of CFIRA remain available to further discuss the proposals and the recommendations set out in this letter. We look forward to continued dialog between all parties as the rulemaking process progresses.

Respectfully submitted,

CFIRA Board of Directors

By: Kim Wales, Founder and CEO, Wales Capital
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