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September 23, 2013

Filed via e-mail to rule-comments@sec.gov
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 f Street, NE
Washington, DC 20549-1090

Re: SEC File Number S7-06-13

Dear Ms. Murphy:
The Real Estate Investment Securities Association ("REISA")[1] submits this letter in response to the Securities and Exchange Commission's ("SEC") request for comments to its proposed amendments to Regulation D, Form D and Rule 156 under the Securities Act of 1933, as amended (the "Securities Act"). Our comments will focus on the following issues:

1. *Advance Form D Filing*. REISA does not believe that the Advance Form D filing requirements would be helpful in enforcing the anti-fraud provisions of the Securities Act and that it will simply be a trap for issuers. Requiring an advance filing will place a burden on issuers who use general solicitation in a Rule 506 offering without providing a corresponding benefits to investors or the SEC.

2. *Form D Amendments*. REISA believes that limiting the requirement to amend the Form D for specified items will clarify the filing requirements for issuers. In addition, REISA

[1] REISA is a national trade association that influences over 20,000 real estate securities professionals who offer and manage alternative investments. These alternative investments typically include, but are not limited to, non-traded REITs, real estate partnerships, real estate income and development funds, tenant in common interests, interests in Delaware statutory trusts, oil and gas interests, equipment leasing, business development companies and other securitized real estate investments. REISA has more than 1,600 active members, which include broker-dealers, sponsors/issuers, registered investment advisors, registered representatives and other alternative investment professionals. REISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and by providing education, legislative and regulatory advocacy, and networking opportunities. REISA connects members directly to key industry experts, providing important education on developing trends and practices to best serve investors.

supports a closing amendment filing for Form D but such filing should be required to be made on only or before the later of (i) the one year anniversary of the initial Form D filing and (ii) 30 days after the final sale.

3. *Changes to Form D.* REISA generally supports the changes to Form D except for proposed Items 17 and 22 which REISA believes will be administratively impractical for issuers to comply with.

4. *Penalties for Failure to Comply with Form D Filings.* REISA does not believe that it is appropriate for issuers to be disqualified from future Rule 506 offerings if there is a failure to file Form D, the Advance Form D or any amendment thereto. Disqualification from the private placement market should be reserved for significant violations and not inadvertent failures to file. REISA believes that monetary penalties are more appropriate for late filings.

5. *Accredited Investor Standard.* REISA does not believe that the income and net worth standards for determination of accredited investor standards should be increased at this time.

These issues are discussed in more detail below.

In order to implement the requirements of Section 201 of the Jumpstart Our Business Startups Act, the SEC has amended Rule 506 of Regulation D to allow for the use of general solicitation in connection with the offer and sale of securities made pursuant to Rule 506 so long as all of the purchasers of the securities are accredited investors. In connection with this amendment, the SEC must also revise Form D to accommodate offerings made under new Rule 506(c).

1. ***Advance Form D Filing.*** REISA does not believe that a pre-filing requirement is warranted for offerings where general solicitation is used. As the SEC notes, the current Form D is required to be filed within 15 days after the first sale of securities in a Regulation D offering.

(A) Requiring the filing of an Advance Form D 15 days prior to the offering will simply create a trap for issuers. The information contained in the Advance Form D will not provide any particular protection against the concern that the SEC and many in the industry have with respect to the revised Rule 506; namely, an increase in fraudulent activities by issuers. First, the Advance Form D only provides basic information about the offering such as the name of the issuer and the size of the offering. None of this information provides any material disclosure to the SEC or any potential purchasers and investors do not review Form D filings.

Second, it is highly unlikely that, based on the information provided in the Advance Form D, any state or federal agency will have sufficient information to take action against any issuer prior to the time the current Form D would be filed. The 15 day time frame is too short for a practical review by any such agency and the information provided in the Advance Form D does not provide any basis for a substantive review of the offering.

Third, if the required Form D filing takes place within 15 days of the first sale of the securities, it would eliminate the concern about an inadvertent use of the general solicitation material.

Fourth, so long as a Form D is filed with respect to the offering, the SEC will be able to track the use of the new Rule 506(c), just as it does with respect to current Rule 506 offerings. The information contained in the Advance Form D does not provide any meaningful benefit to tracking of Rule 506(c) transactions.

Fifth, eliminating the Advance Form D would alleviate the need to file in anticipation of an offering that had not been fully developed. This would reduce the number of filings made with the SEC because of changes to the Advance Form D as the terms of the offering are revised prior to the offering's launch.

(B) It may not be practical for many issuers to have final information regarding the proposed offering 2 weeks prior to the desired launch of the offering, particularly with respect to the final use of offering proceeds. Thus, issuers that are using general solicitation will have a waiting period of 15 days during which they will have the need for capital, but will be unable to access the market to raise that capital. This waiting period could significantly impair the ability of issuers to implement their business plan. Because many sponsors have to pay carrying costs for transactions, the delay in being able to get into the market will increase the overall cost of the transaction and ultimately be paid by investors. In addition, issuers will be required to provide information in a public format with respect to transactions that may not yet be closed. Thus, the issuer would be open to predatory actions of others that could potentially interfere with the issuer's business.

REISA believes that issuers taking advantage of Rule 506(c) should not have an Advance Form D filing requirement but should only have to comply with the current Form D filing provisions which require a filing after the offering has been commenced. This will provide a more efficient, less procedural and less problematic process while still providing the SEC with the desired disclosures and tracking mechanisms.

2. ***Form D Amendments***. REISA supports some changes to the amendment filing requirements for Form D but believes that some of the proposed changes may create administrative burdens to issuers that are not warranted.

First, with respect to amendments for changes in the offering, REISA supports a change to Rule 503 that would clarify the requirements under which an amendment to Form D would be required to be filed for Rule 506 offerings. We believe an amendment should only be required for certain material changes as set forth in Rule 503(a)(3)(ii). By setting specific requirements for amendments, issuers will have more certainty thereby reducing the likelihood of an inadvertent failure to comply with the rule.

Second, other than with respect to amendments to the Form D which are required pursuant to Rule 503(a)(3)(ii), REISA does not believe that filings more often than annually should be imposed on issuers. We believe that, while having access to information about offerings is important, it is also important that issuers are not faced with overly burdensome filing requirements. Issuers that conduct many offerings during the year would be faced with an increasing number of filing dates, leading to more opportunities for inadvertent failures to comply. By requiring an annual amendment, issuers are required to provide updated information with respect to their offerings which should be sufficient for information gathering by the SEC.

Third, REISA would support the requirement of filing a closing amendment to Form D. However, REISA believes that the filing should be required on or before the later of (i) the first anniversary of the initial Form D filing or (ii) 30 days after the last sale. We believe this would limit the administrative burden to issuers while providing the SEC with final information regarding the offering. The closing amendment to Form D could be on the same form as the initial Form D filing by simply adding a check-box indicating that the filing is the closing amendment.

4. ***Changes to Form D***. REISA supports nearly all of the proposed changes to the Form D and believe that all Regulation D issuers, not just those relying on Rule 506(c) should provide the information. However, some of the information requested will create an unwarranted administrative burden on issuers.

First, new Item 17, which requests the number of investors whose accreditation was verified by each of the applicable tests, will be nearly impossible for issuers to track, particularly when an offering has a significant number of investors. The Form D currently requires issuers to indicate the number of accredited and non-accredited investors. The important distinction is that the investors are accredited, not what method was used to determine such status. The method of determining accredited status will be very difficult for issuers to track and the information does not provide useful information related to the offering, which offering continues to remain exempt from registration with the SEC.

Second, Item 22, which requests the methods of determining accredited investor status in Rule 506(c) offerings, will also be very difficult for issuers to track and will create an administrative burden that does not provide a cost benefit to such burden nor does it provide any relevant information about the offering.

Finally, Item 21, which requests the means of general solicitation to be used, will not likely produce any practical information because issuers are not likely to know all of the methods of general solicitation that will be used and will therefore check all possible methods so that they will have maximum flexibility. As a result, the question is not likely to yield any meaningful information about Rule 506(c) offerings.

5. ***Penalties for Failure to Comply with Form D Filings***. REISA does not support an automatic disqualification of an issuer and its affiliates from conducting Rule 506 offerings if there has been a failure by an issuer or its representatives to make timely Form D, Advance Form D or amendment Form D filings. The penalty of disqualification should be reserved only for egregious violations of law such as committing fraud and bad actors. The failure to file a Form D, Advance Form D or any amendment Form D filing is typically inadvertent rather than an attempt to commit a fraud. Issuers who are attempting to commit a fraud through a Rule 506 offering are not likely to file a Form D in any event. The loss of the right to use the exemption provided by Rule 506 is an overly harsh punishment to issuers. This penalty would chill private capital raising if an issuer is disqualified simply for failure to timely file a Form D, Advance Form D or amendment Form D filing. If penalties are to be assessed for such failures, REISA believes that there are much less punitive alternatives available that will incentivize issuers to make the required filings, but which are more consistent with the level of the violation.

First, we believe that a monetary penalty would be the appropriate penalty but we believe that a monetary penalty is appropriate only for failure to file the initial Form D filing rather than an amendment Form D or a closing Form D filing. The likelihood of inadvertent or administrative errors with respect to amendments or closing Form D filings is significantly higher than with respect to the initial filing.

Second, we believe that an automatic monetary penalty would be the more appropriate mechanism. An automatic monetary penalty would provide the SEC an enforcement method without disrupting the private capital raising activities of sponsors by taking them out of the market for failing to file a Form D. The SEC would provide notice of the failure to the issuer and the issuer would have 30 days to make such filing. If the issuer failed to make such filing within such period of time, then the penalty of disqualification from further private capital raising may be appropriate. In conjunction with such penalties, the SEC should establish an appeal process that would allow issuers to demonstrate that the failure was inadvertent and therefore disqualification is not appropriate. Other than a situation where the issuer has been provided notice of the failure to file, REISA does not believe that disqualifying issuers because of the failure to complete an administrative task is appropriate particularly given that the information is being gathered for information purposes rather than substantive review purposes. In addition, the SEC could mandate that the payment of any fines would have to be borne by the sponsors and cannot come from investor funds.

6. ***Accredited Investor Standards***. REISA does not believe that it is necessary to adjust the current standards for determining accredited investor status. REISA believes that the current standards for income and net worth are sufficient to ensure that persons who invest in accredited investor only transactions have the financial sophistication to make a determination regarding the investment and the ability to absorb a loss of their investment.

REISA appreciates the opportunity to provide its perspective and comments regarding the above items. REISA looks forward to a continued dialogue with the SEC on these and other important issues for the protection of investors and the capital markets.

Respectively submitted,

Michael Weil

Michael Weil
President
Real Estate Investment Securities Association

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