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November 4, 2013 -

Via E-mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: *Amendments to Regulation D, Form D and Rule 156: File No. S7-06-13*

Dear Ms. Murphy:

Pursuant to the Commission's general request for comment on matters that may have an effect on the proposed rules referenced above, I am hoping to direct your attention to my draft article, *Crowdfunding: The Real and the Illusory Exemption*, 4 HARV. BUS. L. REV ___ (forthcoming Spring 2014). I am attaching a copy of the article to this transmission and updates will be available at *http://ssrn.com/abstract=2279711* until the article is published.

The article claims, among other things, that internet-based Rule 506(c) offerings – when compared to traditional private placements under Rule 506(b) – may face collective action and lemons problems on account of the elimination of the ban on general solicitation and advertising. Unlike traditional private placements, which, in 2012, had an average of 8 and a median of 4 investors per deal, the new ability to broadly advertise under Rule 506(c) encourages a much larger investor base (potentially thousands per deal). Less skin-in-the-game will undermine the incentives of such investors to perform due diligence, to negotiate, and to monitor. To minimize the potential problems that may arise when investors lack the proper incentives to fend for themselves, the article recommends strengthening the bargaining incentives of accredited investors in Rule 506(c) offerings and encouraging retail investors in crowdfunding offerings to piggyback off of their work. The following is a brief summary of the analysis and targeted recommendations relevant to Regulation D that the article makes in Parts IV and V.

- Encourage certain pooled investments managed by a lead investor in Rule 506(c) offerings to concentrate collective action. The article predicts that the "Angel-Advised Deals" model, approved in a Commission no-action letter, is poised to produce better results than other approved compensation models, including those allowed in the case of broker-dealers, funding portals (in crowdfunding only), and Section 201(c) platforms. To test this theory, it suggests collecting and later comparing empirical data about the performance of startups and small businesses who receive funding through platforms using different compensation models. This could help shape future policy on which models the Commission should encourage.

- Impose a hard-beneficial ownership look-through under the anti-evasion rule in 12g5-1(b)(3) and/or mandate minimum investment amounts in Rule 506(c) offerings. The article discusses certain flaws in the Section 12(g) record holder trigger and the application, to date, of the anti-evasion rule. It suggests that, where general solicitation and advertising is used, all individual beneficial owners should count toward the threshold. It distinguishes this recommendation from a similar, but broader, proposal that was raised and rejected by Congress. The theory behind this recommendation is that the threat of '34 Act reporting obligations will encourage companies who use general solicitation and advertising to limit their investor base to less than 2,000 individuals. Fewer investors, in turn, are more likely to take larger stakes and will therefore have greater incentives to fend for themselves. Mandating minimum investment amounts is another way to increase skin-in-the-game.

- Encourage back-to-back (but not concurrent) Rule 506(c) and crowdfunding offerings by adopting an integration safe harbor. In the Regulation Crowdfunding proposal, the Commission indicates that crowdfunding could be accomplished before, after, or concurrently with another exempt offering, subject to an important proviso: "that each offering complies with the requirements of the applicable exemption that is being relied upon for the particular offering." This proposal, which does not provide a safe harbor from the five factor common law integration test, will make it very difficult for a crowdfunding offering to follow a Rule 506(c) offering within less than six months. Various characteristics of crowdfunding offerings, including, but not limited to, the ability to include non-accredited and non-sophisticated investors, would foil one of the main conditions of Rule 506(c). The article suggests that Rule 502(a) of Regulation D be amended to allow crowdfunding to immediately follow Regulation D offerings limited to accredited investors. In conjunction with other recommendations, this would permit retail investors in crowdfunding to residually benefit from the work of more sophisticated investors in Rule 506(c) offerings.

The article also explains in Part IV.G why it may not be necessary to alter the accredited investor definition at this time. I expect to submit a separate letter at a later time with respect to the balance of the article's recommendations, which concern Regulation Crowdfunding. I hope this letter and my article help the Commission with its difficult task of implementing this rulemaking. If you have any questions, or if I can otherwise be of assistance, please do not hesitate to contact me.

Very Truly Yours,
Jason W. Parsont[1]

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[1] Lecturer-in-Law and Post-Doctoral Research Scholar, Columbia Law School; Member of the New York City Bar Association's Securities Regulation Committee (the "NYCBA Committee"). The views expressed in this letter are solely my own and do not reflect the views of my current employer or the NYCBA Committee.

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