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November 6, 2013

Submitted electronically to rule-comments@sec.gov

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

Subject: Amendments to Regulation D, Form D and Rule 156 under the Securities Act; Release Nos. 33-9416, 34-69960, IC-30595 (File No. S7-06-13)

Dear Ms. Murphy:

I am writing in my position as the Securities Administrator for the State of Washington. We appreciate the opportunity to comment on the recent proposals by the Securities and Exchange Commission (the "Commission") to amend Regulation D, Form D and Rule 156 under the Securities Act of 1933.

We support the amendments proposed by the Commission and appreciate the inclusion of a number of proposals that have been previously advocated by the North American Securities Administrators Association, Inc. ("NASAA"). We believe these proposals must be adopted in order to ensure that investors are provided a minimal level of protection in a new market where issuers may generally solicit investors without the protections that have otherwise been afforded through the registration process for the past 80 years.

We echo the comments made by NASAA in its comment letter on these proposals.[1] As acknowledged by the Commission in its proposing release, the information gathered in the Form D is essential to state efforts to limit fraudulent offerings in their own backyards. We wish to

[1] Letter from A. Heath Abshure, NASAA President and Securities Commissioner for the State of Arkansas, to Elizabeth M. Murphy, Secretary, SEC (Sept. 27, 2013), at http://www.sec.gov/comments/s7-06-13/s70613-430.pdf.

emphasize certain key points made by NASAA in its comment letter and to draw attention to the need for mandated disclosure in public offerings under Rule 506(c).

1. **We strongly support the Commission's proposal to require the advance filing of a Form D in connection with offerings made under Rule 506(c) as an essential tool to protect the investing public.**

We urge the Commission to adopt its proposal to require the filing of a Form D no later than 15 calendar days prior to the first use of general solicitation or general advertising for such an offering. Without an advance filing, it will be virtually impossible to stop obvious frauds before the investing public is harmed or to appropriately respond to inquiries from the investing public regarding such public offerings.

Although the Commission has not had the resources to be able to review the thousands of Form D filings it receives every year, our staff reviews every Form D filing we receive and has done so for more than a decade. Of perhaps greatest importance, our staff searches our own internal enforcement database and the records contained in CRD/IARD to ascertain if the offering involves any companies or individuals that have had prior complaints and/or enforcement action taken against them under securities or related laws. If we find significant complaints and/or prior enforcement actions, we contact the filer to request offering materials. We evaluate whether disclosure of those prior complaints and/or enforcement actions is necessary and the overall adequacy of the disclosure that has been or will be provided to prospective investors. We evaluate any information available on the internet. Based on these evaluations, our staff may suggest the revision of offering materials to ensure they are not misleading or omitting material information. Our staff may suggest a rescission offer is necessary to cure prior misleading statements and omissions. Enforcement action may be necessitated based on our findings. Through these efforts, we aim to prevent or limit fraud directed at investors in our state.

Through our consumer outreach efforts, we encourage prospective investors to contact us to inquire about any investment opportunities they are offered. We respond to every inquiry we receive and provide as much information as we can to enable these investors to make an informed investment decision. This regulatory role of providing information to the public has been a hallmark of state securities regulation for over a century.[2] It has been frustrating for our staff and for prospective investors to not be able to get a clear answer as to whether a prospective offering is legitimate in the context of Rule 506 offerings. If we have not already received a Form D filing for an offering and can find no regulatory history for any names provided by the prospective investor, the best we can advise a prospective investor to do is to ask the issuer how

[2] LOUIS LOSS & EDWARD M. COWETT, BLUE SKY LAW p. 7 (1st ed. 1958); Rick A. Fleming, *100 Years of Securities Law: Examining a Foundation Laid in the Kansas Blue Sky*, 50 WASHBURN L.J. 583, 599 (2011).

it is complying with the securities laws and to watch for red flags, which may include the lack of a regulatory filing and having been contacted through general solicitation. This is in stark contrast to inquiries we receive regarding registered public offerings where we can inform an investor that an offering has been registered and provide the information included in fulsome disclosure documents on file with us.

In order to be able to provide a minimum level of protection to prospective investors in offerings that may be advertised without limitation, it is imperative that an advance Form D filing is required. This will allow for state regulators like ourselves to conduct the limited checks on these offerings necessary to prevent and/or limit obvious frauds and to be able to answer the questions we are asked by the investing public about offerings in this new marketplace. The current post-sale filing requirement contained in Regulation D has been problematic as far as preventing and limiting fraud as well as with respect to answering questions posed by prospective investors. The need to address these weaknesses of the current post-sale filing requirement is magnified by the reality that these offerings are now being made to the public at large. Further, as explained by the Commissioner of Securities for the State of Missouri,[3] we believe the burden of providing the limited information that would be required in an advance Form D filing will be far outweighed by the benefits to prospective investors of having this information readily available and the harm that will be prevented. For these reasons, we urge the Commission to adopt the advance filing requirement as proposed.

2. We strongly support the Commission's proposal to require the filing of a Form D as a condition of the exemption under Rule 506.

As NASAA explained in its comment letter, the fact that a Form D filing has not been a condition of the exemption under Rule 506 has serious repercussions for state regulators. A culture of non-compliance has developed with a significant portion of Form D filings being made late or not at all. The failure of issuers to file a Form D on time or at all seriously inhibits the ability of both federal and state regulators from being able to fulfill their regulatory mission of investor protection. The newly public nature of these offerings will further magnify the disastrous consequences of the lack of regulatory filings. As explained above, these filings are used to root out and limit fraud. With the lifting of the 80-year old ban on general solicitation in private offerings, it is absolutely necessary that the requirement to file a Form D be made a condition of the exemption for which the only cure for failure is to conduct a rescission offer. This is the only mechanism by which issuers will be compelled to make the simple regulatory filing that is necessary to provide the most minimal level of investor protection in these now

[3] Letter from Andrew M. Hartnett, Commissioner of Securities, to Elizabeth M. Murphy, Secretary, SEC (Sept. 23, 2013), at http://www.sec.gov/comments/s7-06-13/s70613-424.pdf.

public offerings. We do not believe any other cure is adequate from an investor protection standpoint.

3. **We strongly urge the Commission to mandate disclosure in offerings under Rule 506(c).**

Given the fact that an offering may now be made under Rule 506(c) directly to prospective investors who may have no prior knowledge of an issuer, its officers and directors, or its business plan or risks thereof, it is imperative that the Commission mandate disclosure that must be included in offering materials used to solicit prospective investors. Our experience has shown that offerings under traditional Rule 506 have often involved little to no disclosure to prospective investors. Traditional Rule 506 did generally require, however, that an issuer or its intermediary have a substantial, pre-existing relationship with the prospective investor and general solicitation was prohibited. As no such relationship is now necessary and offerings may include general solicitation under Rule 506(c), the Commission must mandate disclosure to ensure the investing public has the information available that is necessary in order to make an informed investment decision and to help prevent fraud. We urge the Commission to require as a condition of Rule 506(c), that prior to any sale of a security in reliance on the rule, that the purchaser shall have received an offering document containing the information specified in Rule 502(b) of Regulation D. The costs imposed on issuers by mandating this disclosure will be far outweighed by the potential fraud that would otherwise fleece the investing public of their savings.

In conclusion, we applaud the Commission's proposals to provide a minimal level of investor protection in this new marketplace for unregistered offerings. We urge the Commission to resist calls to weaken its proposals at the expense of the investing public.

If you have any questions regarding these comments or we may otherwise be of assistance, please contact me by phone at (360) 902-8760 or by e-mail at [redacted].

Sincerely,

William M. Beatty
Securities Administrator