



**CENTER FOR CAPITAL MARKETS**  
**COMPETITIVENESS**

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October 5, 2012

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NW  
Washington, DC 20549

**Re: Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings; Release No. 33-9354; File No. S7-07-12**

Dear Ms. Murphy:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21<sup>st</sup> century economy. The CCMC welcomes this opportunity to comment on the Securities and Exchange Commission’s (“SEC”) proposed rulemaking implementing Section 201(a) of the Jumpstart Our Business Startups Act (“JOBS Act”), which eliminates the prohibition against general solicitation and general advertising in Rule 506 of Regulation D and Rule 144A offerings (“Proposal”).

The CCMC believes that the transparent dissemination of relevant decision useful information for investors is critical for efficient capital markets. Accordingly, the CCMC supports the Proposal, though we believe that monitoring should be implemented to ensure investor protection. Additionally, the CCMC believes that the SEC should use its mandate under the JOBS Act as an opportunity to create mechanisms to periodically review disclosures and remove obsolete information that is creating a clutter of non-relevant information that harms the capital markets.

## **General Provisions of the Proposal**

The Chamber supported the passage of the JOBS Act, though the Chamber believed and suggested several ways to improve the legislation. The CCMC is also supportive of the Proposal which eliminates the prohibition against general solicitation and advertising of securities that are only available to accredited investors. The CCMC believes that the proposing release suggests common sense ways to verify that an investor is in fact an accredited investor and thus eligible to purchase a security advertised in a manner consistent with the proposed rules. As such, the Proposed if adopted is likely to expand businesses' ability to communicate with potential investors, thereby creating more opportunities for capital investment, ultimately allowing investment capital to be put to its highest and best use in creating jobs and stimulating economic recovery. However, since these advertised investment opportunities will be available only to accredited investors, in addition to providing issuers with flexibility in fashioning investor verification measure, we suggest that the SEC monitor offerings to ensure that all issuers are making good faith efforts to remain compliant.

The Proposal creates these prudent measures; nevertheless, the CCMC believes that the SEC must address two issues in order to fulfill the congressional intent of Section 201 (a).

First, investor protection is an important goal that must be kept in the forefront as the Proposal is implemented and enforced. Oversight and monitoring is needed so that the increased scope of advertising does encourage less scrupulous issuers to usher in an influx of unaccredited investors who are ineligible to purchase the securities offered under the proposal. There is a strong need for the SEC to monitor the use of issuer guidelines to prevent misuse for fraudulent or other unlawful purposes. Misuse of the guidelines and investor harm that can undermine confidence in the public markets. The CCMC believes that measures for issuers to verify the status of investors is properly crafted under the Proposal. Nevertheless, the implementation and oversight of these provisions is as important as their drafting. We believe that the Proposal should undergo a periodic review, as will be discussed in more detail, to insure that the rule is meeting its intended purpose and not creating unforeseen adverse consequences to investors. If unintended consequences occur, then either the SEC should take corrective action, or the SEC should refer the matter

to Congress for legislative action if appropriate. We are not suggesting that the SEC respond to this concern by imposing rigid formulae for testing accredited investor status either through formal rules or by de-facto Staff “rules by speech” or other informal guidance, and we appreciate that the agency’s efforts to monitor compliance must be carefully balanced against the goal to permitting issuers acting in good faith to fashion their own compliance mechanisms.

Secondly, while we believe the verification mechanisms and oversight can protect investors, the Proposal should not become a breeding ground for the class action tort bar. The use of class action and mass action lawsuits will frustrate the Congressional intent in passing the JOBS Act and ultimately shut off an important source of capital formation. The use of class action securities litigation in this area could shut down this form of commercial speech and opportunities for investors. The CCMC believes that it is necessary for the SEC to properly oversee investor protections and insure that adherence to the Proposal will protect issuers from needless lawsuits. As noted above, while monitoring compliance with the new rules, the CCMC also believes the SEC needs to make clear in adopting final rules that an issuer’s responsible and good faith exercise of discretion in fashioning a means for confirming accredited investor status of investors will be respected, and will not be subject to second-guessing, or to informally-developed or non-published “fixed” guidelines or standards developed by the Staff. Compliance with the Proposal should create a safe harbor.

### **Periodic Review of Rules**

While much of the JOBS Act focuses on a subset of smaller emerging companies that have not yet undertaken a registered equity offering, we have urged the SEC to review all of its rules with the broader goal of removing rules or disclosures that no longer fulfill their intended purpose or where the costs of the rule outweigh any intended benefit.<sup>1</sup> Such a review should take several forms. For disclosures to investors, does the disclosure provide investors with information useful in making investment decisions, or has the disclosure become obsolete and create

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<sup>1</sup> See Comment Letter to the SEC Regarding Retrospective Review of Existing Regulations (October 6, 2011). Available at <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/SEC-Retrospective-Review-10.6.20111.pdf>

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irrelevant clutter that investors must sift through? Obsolete disclosures deter investors from reviewing disclosures, and may negatively impact the investors' decision making matrix, while also making the investor less productive. Additionally, a retrospective cost benefit analysis will help the SEC and market participants to understand if the new rules are benefiting the marketplace, or heaping unneeded costs upon businesses and ultimately their investors.

We raise this analysis in the context of the Proposal since these circumstances are a perfect opportunity for a pilot program. Commitment to perform such a review will allow the SEC and market participants to know by a date certain if the advertising permitted by the Proposal is assisting capital formation and if the benefits outweigh the costs.

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Once again, the CCMC is thankful for the opportunity to comment on the Proposal and we welcome the opportunity to discuss these issues and concerns in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long, sweeping horizontal stroke extending to the right.

Tom Quadman