

BLACKROCK

October 5, 2012

VIA ELECTRONIC MAIL

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

Re: Comments to Proposed Rule on Eliminating the Prohibition Against
General Solicitation and General Advertising in Rule 506 and Rule
144A Offerings; File Number S7-07-12

Dear Ms. Murphy:

BlackRock is pleased to provide comments on the recently proposed rule on Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings (the “Proposed Rule”).¹ We agree with the approach the Securities and Exchange Commission (the “Commission”) has taken in adopting proposed Rule 506(c) and related amendments to Regulation D² to provide that issuers using general solicitation take “reasonable steps to verify” that purchasers are accredited investors, without requiring issuers to use specific methods to verify that status. We also applaud the Commission for not adopting any additional rules regarding private fund advertising, which we believe is adequately addressed under existing regulatory requirements. Overall, we believe that the Proposed Rule is in accordance with the intent of Congress and will facilitate the formation of capital.

BlackRock is one of the world’s leading asset management firms. We manage \$3.56 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, mutual funds, exchange-traded and private funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world. BlackRock manages over \$110 billion of alternative assets globally, including through offerings of private funds such as hedge funds, private equity funds and funds of funds. BlackRock distributes its private funds through affiliated and third-party broker-dealers and other intermediaries.

¹ Release No. 33-9354

² 17 CFR § 230.506.

As we noted in our pre-rulemaking comment letter filed with the Commission on May 3, 2012, BlackRock supports the removal of the prohibition on “general solicitation” and “general advertising” under Regulation D provided for in the Jumpstart Our Business Startups (“JOBS”) Act, as we believe that this prohibition has unnecessarily limited the methods by which issuers can reach sophisticated investors. In particular, we believe that private funds such as hedge funds and private equity funds, which often rely on Regulation D for offerings in the United States, offer investors an important source of portfolio diversification. The removal of the prohibitions on “general solicitation” and “general advertising” will give fund sponsors greater flexibility to reach qualified investors without sacrificing investor protection.

The Commission has proposed three conditions under proposed Rule 506(c):

- the issuer must take reasonable steps to verify that the purchasers of the securities are accredited investors;
- all purchasers of securities must be accredited investors, either because they come within one of the enumerated categories of persons that qualify as accredited investors or the issuer reasonably believes that they do, at the time of the sale of the securities; and
- all terms and conditions of Rule 501 and Rules 502(a) and 502(d) must be satisfied.

We agree with the Commission that a flexible, “facts and circumstances” approach in determining the appropriate method by which to verify an investor’s status is the most appropriate way to implement the requirements of Section 201(a) of the JOBS Act. The myriad of types of issuers and purchasers of securities requires a flexible approach that could vary significantly across different offerings, but still provide reasonable assurance that investors are qualified. As proposed, issuers will have the ability to implement procedures based on the specific circumstances of their business and proposed investor base. A prescriptive, “one size fits all” approach likely would have created additional compliance burdens that would not have been appropriate or necessary for many types of offerings, thereby undermining the congressional mandate to promote capital formation.

We also concur with the Commission’s decision not to include a specific list of requirements that the Commission approves. In response to the Commission’s specific question, we do believe that including such a list could result in an assumption or practice that the listed methods are “de facto” requirements, particularly in connection with obtaining opinions of counsel for private offerings. This could clearly undermine the effectiveness of the rule and hinder capital formation. The Commission provided a significant amount of guidance in the Proposed Rule regarding the types of factors issuers should consider in determining the reasonableness of the steps used to verify an investor’s accreditation status. We believe this is more than enough direction to allow issuers to begin constructing appropriate compliance programs to comply with the new requirements of Regulation D.

Finally, we were pleased to see that the Commission determined not to mandate additional, specific requirements for private fund advertising. As we noted in our pre-rulemaking comment letter, there are numerous protections under existing regulatory regimes for distributing private funds, including investor qualification requirements, the anti-fraud provisions of the federal securities laws and applicable FINRA rules and regulations related to the preparation of marketing materials. Together, they form a robust, mature investor protection framework that will continue to be effective once general solicitations of private funds are permitted.³ Most significantly, we believe that the requirement that only sophisticated institutions and individuals may ultimately purchase interests in these funds - regardless of who is solicited or exposed to advertising materials - eliminates the risk that investors could be harmed as a result of a manager engaging in general advertising or solicitation.⁴

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³ We also appreciate that the Commission confirmed, consistent with the requirements of the JOBS Act, that private funds offered pursuant to Sections 3(c)(1) and 3(c)(7) of the Investment Company Act are permitted to make a general solicitation under the amended Rule 506 without losing the benefits of those exclusions.

⁴ The SEC staff has, for many years, acknowledged that the ban on general solicitation is unnecessary for offers and sales made to “qualified purchasers” that are able to purchase interests in private funds that rely on Section 3(c)(7), most recently in its September 2003 report entitled *Implications of the Growth of Hedge Funds*. We believe this is equally true for funds in which all purchasers meet the new, heightened qualification thresholds in the definition of “accredited investor.”

We thank the Commission for providing BlackRock the opportunity to provide comments and suggestions regarding the Proposed Rule. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Barbara Novick
Vice Chairman