

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.
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October 5, 2012

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

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Attention: Elizabeth M. Murphy,
Secretary, Securities and Exchange Commission

Re: Eliminating the Prohibition Against General Solicitation
and General Advertising in Rule 506 and Rule 144A
Offerings, File No. S7-07-12

Ladies and Gentlemen:

We appreciate the opportunity to provide comments on the Securities and Exchange Commission's proposed amendments¹ to Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933 (the "Securities Act") to eliminate the prohibition against general solicitation and general advertising (which we refer to collectively as "general solicitation") in transactions effected under those rules, in accordance with Section 201(a) of the Jumpstart Our Business Startups Act (the "JOBS Act").

We think the proposed rule changes represent a thoughtful implementation of the JOBS Act requirements to amend Rule 506 and Rule 144A. In particular, we agree with the approach of preserving the exemption under existing Rule 506(b) for offerings that do not involve general solicitation, and of applying an objective standard to determine the reasonableness of the steps taken to verify the accredited investor status of the purchasers in offerings conducted pursuant to the proposed Rule 506(c). We also think that adding a check box in Form D to indicate reliance on the

¹ Release No. 33-9354, 77 FR 54464, File No. S7-07-12 (Aug. 29, 2012) (the "proposing release").

Rule 506(c) exemption appropriately separates the collection of information from the conditions to the exemption, in a way that will maximize issuers' ability to use the new JOBS Act flexibility in Rule 506 offerings. Finally, we have a suggestion for transitional guidance to include in the final rule or release, to permit use of Rule 506(c) by issuers currently engaged in continuous offerings.

Preserving the existing Rule 506(b) exemption for offerings not involving general solicitation is appropriate.

We agree with the Commission's proposal to preserve the exemption under existing Rule 506(b) and thus leave unaffected the ability of issuers to conduct Rule 506 offerings without the use of general solicitation under currently existing procedures. We agree with the Commission's view that Section 201(a) of the JOBS Act is intended to expand the utility of Rule 506 by providing a new and separate exemption for issuers wishing to use general solicitation to offer securities, and that it should not result in importation of additional requirements (such as the new requirement to take reasonable steps to verify the accredited investor status of purchasers in the context of Rule 506(c) offerings) into the existing Rule 506 safe harbor.

Applying an objective standard to determine the reasonableness of the methods used to verify accredited investor status, rather than prescribing specific verification methods, is also appropriate.

We agree with the Commission's approach of applying an objective standard to determine the reasonableness of the steps taken by an issuer to verify the accredited investor status of the purchasers in a Rule 506(c) offering, based on the particular facts and circumstances of each offering and investor. The proposing release's discussion of relevant factors, including the nature of the purchaser, information about the purchaser available to the issuer and the nature and terms of the offering, and of the interconnectivity of these factors, provides a flexible and practical framework for issuers to assess the reasonableness of their verification processes. As the Commission notes, Rule 506 offerings are used by many different types of issuers in a wide variety of circumstances, and a purchaser can qualify as an accredited investor in a number of different ways. Any set of prescribed verification methods would be overly burdensome in some cases, while ineffective in others. We also agree with the Commission that many practices currently used by issuers in connection with existing Rule 506 offerings should satisfy the verification requirement. We believe the requirement for the issuer to employ a verification method that is reasonable based on the particular facts and circumstances of each offering and investor, taken with the guidance provided in the proposing release, is sufficient to satisfy the requirements of Section 201(a) of the JOBS Act, and that the Commission's proposed approach would facilitate meaningful compliance with the verification requirement.

We also agree with the Commission's determination not to provide a non-exclusive list of specified methods for satisfying the verification requirement. As the Commission noted, a verification method that is reasonable under one set of circumstances may not be reasonable under a different set of circumstances. And a non-exclusive list of specified verification methods may, over time, come to be viewed by market participants as the effectively required verification methods, undermining the flexibility intended by proposed Rule 506(c).

We agree with the approach of adding a check box in Form D to indicate an issuer's reliance on the Rule 506(c) exemption, for informational purposes.

Revising Form D to add a separate check box for issuers to indicate whether they are claiming an exemption under Rule 506(c) will permit the Commission to monitor the use of general solicitation in Rule 506(c) offerings and the size of this offering market. At the same time, as we read the proposed rule, making a Form D filing would not be a condition to the Rule 506(c) exemption (just as making a Form D filing is not a condition to the currently existing Rule 506 exemption). As a result, under the proposed rule, an issuer that initially intended to conduct an offering pursuant to Rule 506(b), without the use of general solicitation, should be able to change its approach, and engage in general solicitation, provided that the issuer satisfies the requirements of Rule 506(c) (including as to verification). Separately (but once again, not as a condition to the exemption), the issuer would then be required under Rule 503 to file an amended Form D to check the box to indicate its reliance on the Rule 506(c) exemption. It would be extremely helpful for issuers if the Commission confirmed the foregoing understanding in the adopting release.

The final rule or release should include transitional guidance for issuers conducting Rule 506 offerings that were commenced prior to effectiveness of the rule change.

We note that at the time of effectiveness of the final rule amending Rule 506, there will undoubtedly be issuers conducting securities offerings in reliance on the existing Rule 506(b). Many of these issuers will be conducting continuous or other extended offerings. We believe that such issuers should be allowed, upon effectiveness of the final rule, to use the new Rule 506(c) exemption and use general solicitation for the remaining portion of their offerings, provided that they satisfy the requirements of Rule 506(c) going forward. One way to do this – and which would maximize the flexibility available to all issuers from that point forward – would be to provide that the conditions of Rule 506(c)(i) and (ii) apply in respect of any purchasers in an offering that purchase at or after the first time when the subject securities are offered by means of general solicitation. Alternatively, such guidance could be formulated in a more limited manner, applicable only to offerings that commenced before, and continue after, the effective date of the rule change. Such transitional guidance from the Commission in the final rule or

release would be extremely helpful in reducing the uncertainty for issuers conducting (or contemplating) a Rule 506 offering in the coming months, and would facilitate a seamless transition.

* * *

We wish to thank the Commission for the opportunity to submit our comments on the proposing release. Any questions in relation to our comments may be directed to Robert E. Buckholz or David B. Harms in our New York office at (212) 558-4000.

Sincerely,

A handwritten signature in black ink that reads "Sullivan & Cromwell LLP". The signature is written in a cursive, flowing style.

SULLIVAN & CROMWELL LLP