(iii) Penalizes all valid accredited investors who have purchased the securities of an issuer by putting the offering at risk of rescission.

In real industry terms, the resulting uncertainty injected into each offering by this suggestion will chill, impede, and impair the ability to access private capital through private offerings conducted pursuant to Regulation D, Rule 506(B) ('***Rule 506***"). This result is directly contrary to stated Congressional intent.

We respectfully recommend that a more appropriate solution to the investor misrepresentation circumstance is for the rule to provide that a valid Rule 506 offering must either demonstrate that:

(a) The issuer has complied with the law [i.e., the issuer took reasonable steps to verify], or

(b) All investors in the offering are, by definition, accredited investors.

This solves two problems: First, an issuer is compliant if it can demonstrate that it took reasonable steps to verify, even though one or more investor(s) misrepresented their status. Second, even if the steps taken by an issuer, broker-dealer, or investment adviser are determined, in retrospect, to have been non-compliant (i.e., reasonable steps to verify were not undertaken), then the offering nevertheless will not be tainted so long as all investors are, in fact, accredited.

Further Guidance

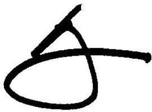
The IPA highlights for the SEC that an additional verification process in Rule 506 offerings can be accomplished by adding a new category to the definition of accredited investor - knowledgeable employees. Knowledgeable employees are uniquely situated so as to have access to sufficient information regarding the issuer and its securities to a degree, if not better than, all other accredited investors. To exclude them appears to be an oversight.

The "bad actor" disqualifiers of Section 926 of the Dodd-Frank Act are currently pending SEC action. In that matter, the IPA proposes an issuer carve-out such that the failure of an issuer to take reasonable steps to verify would not, in and of itself, constitute a disqualifying "bad act" under Section 926. Additionally, in circumstances in which the issuer is the victim of investor misrepresentation (intentionally or negligent) as to accredited status, "bad actor" disqualification status should not be ascribed to the issuer

(or sponsor). In summary, an issuer (or sponsor) should not be subject to "bad actor" disqualification resulting from the unforeseen acts of others.

In conclusion, the IPA appreciates the opportunity to comment upon the proposing release, and we thank the SEC staff for its hard work and dedication to investor protection while simultaneously advancing Congress' intent in the arenas of access to private capital and job growth in America.

Respectfully submitted,



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