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**Via E-mail** (Rule-Comments@sec.gov)

Elizabeth M. Murphy, Secretary
Securities & Exchange Commission
100 F. Street Northeast
Washington, DC 20549-1090

Re: SEC File No. S-7-07-12
Comments on Proposed Regulations Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings

Dear Ms. Murphy:

We are submitting this comment letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") with respect to the Proposed Amendments to Rule 506 of Regulation D and Rule 144A under the Securities Exchange Act of 1933 which will implement Section 201(a) of the Jumpstart Our Business Startups Act ("JOBS Act").

We respectfully submit the following as potential safe harbors for verification of "accredited investor" status under the proposed rule. As we had suggested in our comment to the Commission on S7-25-06 (March 9, 2007), we believe the relaxation of the general solicitation prohibition will encourage, if not require, a more robust public discussion of the merits and risks of each investment strategy and investment. Any rule that is adopted to implement the JOBS Act's directives should not undercut the ability of the market place to assess risk and evaluate investment opportunity through the use of information that will become available on a public basis. Disclosure should be clear, complete and readily available, allowing all investors the tools to do their due diligence.

With that background, it is our view that the proposed amendments to Rule 506 should rely, to the extent feasible and consistent with the Congressional mandate, on readily available procedures and investor representations to answer the question of whether a given investor is accredited. The SEC (and FINRA where a registered broker dealer has acted as a private placement agent) retain jurisdiction and can police all sales activity through the examination and enforcement process.

In Release No. 33-9354 in Section II G, the SEC specifically asked for comments concerning various aspects of the subscription process, and the process for verifying compliance with the accredited investor requirements.

In this letter, we use the term "Issuer" to refer to any issuer of securities, including a private fund or an operating or holding company. References to a "Verifier" with respect to an Issuer refer (i) in the case of an operating or holding company issuing its own securities, to the operating or holding company, (ii) in the case of a private fund issuing interests in the fund, to the general partner or manager of the private fund which is issuing its interests, and (iii) in the case of a placement or similar agent acting on behalf of an Issuer, to the placement or similar agent, provided such placement or similar agent is properly licensed.

This letter suggests the adoption of nine (9) different safe harbors in the context of an Issuer's sales of securities so that compliance with any of the safe harbors will provide the Issuer -- and Verifier -- with certainty that the Issuer will be deemed to have verified the accredited status of the investor, and not be subject later to challenge and/or be required to offer rescission.

**Safe Harbor No. 1** – An investor that (a) represents in a signed writing to the Issuer that it is an accredited investor (as defined in Rule 501(a)) and (b) has made a firm commitment to the Issuer to invest $1 million or more in the Issuer, provided such amount has not been financed by the Issuer or Verifier, or any related party of the Issuer or Verifier.

Rationale -- A $1 million investment, under any circumstances, is a significant investment. Any investor making such an investment, without financing it with the Issuer or Verifier, is presumed to have significant wherewithal. The U.S. securities laws have always deferred to allowing investors holding significant assets leeway because such investors are assumed not to need the protections that a general retail investor would need (i.e., institutional investors under Rule 144A, qualified purchasers under Sections 2(a)(51) of the Investment Company Act of 1940, investors who have $1 million under management of the investment adviser under Investment Adviser Act of 1940 Rule 205-3(d)(1)(i)[the definition of "qualified

client"]). It would be incongruous to impose a standard that is more rigid or stringent than the qualified client standard under the Investment Advisers Act in the case of a private fund.

**Safe Harbor No. 2** -- An investor that has been certified to be an accredited investor (as defined in Rule 501(a)) by a Verifier that is a registered broker/dealer or a registered representative of a registered broker/dealer in good standing.

Rationale -- The fabric of the federal securities laws is such that reliance by one participant on the due diligence of another participant, especially when that second participant has a regulatorily-imposed burden to assess suitability, is not only appropriate but necessary in light of the regulatory scheme. For example, requiring managers or investment advisers/general partners of pooled investment vehicles to make subsequent determinations of accredited investor status when that status has already been determined by a licensed person associated with the registered broker/dealer that is acting as placement agent to the Issuer, is an extra step that does not substantially increase investor protection. The regulatory framework established by the SEC and FINRA governing licensed placement agents is already robust and more than equal to the task of policing suitability requirements. If an investor is presented to an Issuer by a licensed broker/dealer and one of its registered representatives, and if the licensed broker-dealer represents that such investor is an accredited investor, the Issuer and its manager/general partner should be entitled to rely on such representation without further inquiry.

**Safe Harbor No. 3** -- Any investor that both invested in a private fund and represented in a signed subscription agreement to the Issuer prior to making the investment that the investor was an accredited investor prior to the effective date of the proposed change to Rule 506 should be grandfathered and deemed to be an accredited investor of that fund.

Rationale -- Assuming the original subscription package contained sufficient information for the Issuer and Verifiers to have made a determination based on the answers provided that the investor was in fact accredited at the time the investment was made, this subsequent rule change should not affect that status even for subsequent investments. This is a practical response to a practical problem. Many liquid private funds (such as hedge funds) allow periodic investments to promote "dollar cost averaging," a method of making a series of investments over time to avoid the need to time market swings. An Issuer should be able to rely on an initial determination and verification of accredited investor status coupled with a reaffirmation representation of accredited investor status from the investor received shortly before or simultaneously with any subsequent investment.

**Safe Harbor No. 4** -- Family members that make an investment in the Issuer and who are direct ancestors and descendants -- by up to two generations -- and who are related by

blood or marriage to a principal of the Issuer or a related Verifier, and who otherwise represent that they are accredited investors, should be deemed to meet this safe harbor without further verification.

Rationale -- The practical rationale here is that most people understand the financial circumstances of their ancestors and children and grandchildren to a fair degree, based on their lifestyle, family presentation, etc. If an investor is within a direct familial relationship to a principal of the Issuer or Verifier, the Issuer or Verifier should be able to rely on the knowledge that comes from that familial relationship to accept a representation that someone is an accredited investor without further verification.

**Safe Harbor No. 5** – An investor in an SBIC (defined below) or in a fund that has been authorized to apply to be an SBIC by SBA (defined below) that has represented in writing that it is an accredited investor and an Institutional Investor as defined in 13 CFR §107.50 under the SBA, and has made a commitment to invest $100,000 or more.

Rationale – The U.S. Small Business Administration ("SBA") licenses under the Small Business Investment Act of 1958, as amended, private funds that meet its stringent qualification standards as small business investment companies ("SBICs"). Prior to granting a fund and its managers the right to file an SBIC license application, the managers file a management assessment questionnaire setting forth in detail, among other things, the qualifications of the management team and each of its members (including track record) and, the business plan for the fund. Permission to file a license is not granted until there has been an in-person interview of fund managers by members of the SBA's SBIC investment committee.

In addition, SBICs are required to operate in accordance with regulations promulgated by the SBA and to file detailed reports with SBA, and are subject to an annual SBA inspection. Importantly, SBICs are required to file, on an ongoing basis, a Capital Certificate in which the fund certifies under penalty of prosecution for false statements whether or not an investor is an "Institutional Investor." The standard for an "Institutional Investor" is set forth at 13 CFR §107.50 and is higher than that for an accredited investor. SBA also requires an SBIC to incorporate into the fund's organization documents a number of provisions with respect to the commitments of the investors in the fund. Among these requirements are that (a) the commitment of the investor cannot be forgiven, withdrawn or reduced without prior SBA written approval; and that (b) there are stringent restrictions on any right to withdraw. In addition, for SBICs that draw funds from the SBA that are not repaid, SBA has the right to enforce the commitment of an investor that remains unfunded, and has done so in the past. Generally, SBICs have a minimum life of 10 years. An SBIC can only make profit distributions to its investors if the SBIC has "Retained Earnings Available for Distribution", that is, cumulative net

realized earnings less any unrealized depreciation on investments. The capital of investors ordinarily can only be returned if the SBIC has filed a wind-up plan with SBA that SBA has approved. Only investors willing to invest for the long term invest in SBICs. In short, given the regulatory framework applicable to SBICs and the requirements for investors to meet the higher Institutional Investors standard of 13 CFR §107.50, further verification of accredited investor status under Reg D should not be required. This safe harbor is consistent with the purposes of both the JOBS Act revisions to Reg D and the SBA.

**Safe Harbor No. 6** – Written certifications from third party verification agencies made to Verifiers, which statements attest that the investor is an accredited investor, should be able to be relied upon by the Issuer and Verifiers.

Rationale -- We anticipate, as market participants, that verification agencies will be established in response to the promulgation of these rules. We expect them to be an adjunct service of either transfer agency or administration-type firms (such firms already, in certain instances, have assumed AML and KYC verification duties). Such firms would be in a unique position not only to verify residence, and comply with both anti-money laundering and know your customer requirements, but could simply add to their laundry list verification of accredited investor status for purposes of proposed Rule 506(c). Where such a service provider has completed its review and made a verification certificate to the Issuer and its Verifiers, the Issuer and Verifiers should be entitled to rely on such certification without further verification.

**Safe Harbor No. 7 –** Certification in the form of a notarized letter from an accounting firm subject to PCAOB oversight and regular inspection that, based on review of income tax returns of the investor, the individual meets the income tests to be considered an accredited investor, so long as the certification is dated within 1 year of the date of commitment to or investment in the Issuer.

Rationale -- This safe harbor is self-explanatory. If an investor's accountant certifies the accredited investor status of the accountant's client, the Issuer and Verifier should be entitled to rely on the certificate of this licensed professional.

**Safe Harbor No. 8** – Certification in the form of a notarized letter by an unrelated registered investment adviser ("RIA") in good standing with the SEC under the Investment Advisers Act of 1940,or with an appropriate state regulator, that the investor meets the qualified client criteria and has at least $1 million under management with the unrelated RIA.

Rationale -- If an unrelated adviser knows that a client has $1 million under its management, its certification to the Issuer or its Verifiers should be able to be relied upon. There

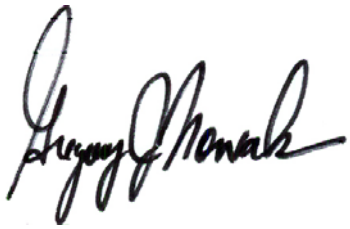
is little risk that this RIA will overstate the matter given the natural desire of the RIA to keep such assets under the RIA's management. This is also an item easily reviewed during the RIA examination process (i.e., "show me your third party certifications file, etc., if any").

**Safe Harbor No. 9** – Certification in the form of a notarized letter from a current employer (or partnership or S Corp) that on the W-2s (or K-1s) provided by the entity to the investor in the past two calendar years, the investor had income in excess of the Rule 501(a) test amounts for accredited investor status, where the certification is executed within 12 months prior to the date of investment and covers the years required by Rule 501(a).

Rationale -- This safe harbor is also self-explanatory. If an employer or partnership or s-corporation certifies to this level of income payable to the investor, that is a pure indication of income, untainted by "above or below the line" tax deductions or adjustments. Since such reports are already filed with the IRS under penalties of perjury, a certification in reliance on such reports should be sufficient verification of accredited investor status for the purposes of these rules.

Should you have any questions or wish further elaboration, please do not hesitate to contact the undersigned.

Very truly yours,



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