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Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090
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By Electronic Mail

SEC Release No. 33-9454, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings

Ladies and Gentlemen:

We are submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission" or "SEC") for comments on SEC Release No. 33-9454, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings. We routinely represent U.S. and non-U.S. companies in connection with international and domestic securities offerings and appreciate the opportunity to provide comments to the Commission on its proposed rulemaking.

To begin, we would like to express our strong support for the Commission's approach to the proposed amendments to Rule 506 and Rule 144A under the Securities Act of 1933 (the "Securities Act"). In the international capital markets, market participants have developed procedures for private placements that are well understood and effectively implemented. A straightforward, focused rule that provides issuers with the flexibility to continue to adapt to market practice is the best way to realize the spirit and intent of the Jumpstart Our Business Startups Act (the "JOBS Act").

Form D Filing Should Not Be A Regulation D Condition

We urge the Commission not to amend Regulation D to make the filing of Form D a condition of relying on the Regulation D safe harbors because of the potential negative effects on the market for private placements, particularly with respect to foreign issuers who we believe are less likely to use the exemption if required to make filings with the Commission. At the very least, we strongly believe that even if the Commission chooses to make the Form D filing a condition of proposed new Rule 506(c), the Form D filing should not be a condition of Rule 506(b). In such case, the current market for private placements can continue unchanged, as long as such issuers continue to refrain from engaging in general solicitation and general advertising.

We believe that it also makes little sense to penalize those who fail to file Form D, as some have suggested. Regulation D is and should remain a non-exclusive safe harbor under Section 4(a)(2). Failure to meet all the Regulation D requirements should not preclude the offering qualifying as a valid Section 4(a)(2) private placement. This is particularly the case, for example, in the underwritten Rule 144A market, where the safe harbor can be relied upon in order to make an initial offer from the issuer to the prospective underwriting bank(s). In such case, the issuer is not attempting to rely on Regulation D in order to preempt state securities laws, since the Regulation D offer and sale is only being made to a defined investor base, namely the underwriting banks. In the Rule 144A market, the Regulation D safe harbor requirements only serve as a guide to ensure that the issuer has made a proper Section 4(a)(2) private placement.

Further Guidance Requested

We appreciate the clarification that is provided in the proposing release regarding the non-integration of concurrent Rule 144A and Regulation S offerings, but we believe there are a few areas where further SEC guidance is desirable. We understand that the Commission may address these issues in the future, but we respectfully request that guidance on such issues be provided sooner rather than later, as the lack of clarity may deter market participants from taking advantage of the rule amendments, undermining the purpose of the JOBS Act.

Our concern is that the concept of general solicitation and general advertising is embedded, directly or indirectly, in a number of SEC rules and guidance, as well as in private placement market practice. Among the most relevant are Rule 135c, Rule 135e, Rule 138 and Rule 139 under the Securities Act, as well as the SEC's 1998 Internet Release.[1] It would make little sense for an issuer or the underwriting bank involved in an offer pursuant to Rule 144A, as proposed to be amended, to comply with the restrictions in such rules and guidance in order to issue press releases, distribute research reports or release other information in the United States, since such "offering" activity would be permitted under amended Rule 144A. However, without further guidance from the Commission that such rules and guidance no longer apply to offers made under Rule 144A, market participants may unnecessarily continue to adhere to the restrictions in such rules and guidance.

We also ask that the Commission further clarify the impact of the proposed rules on the "directed selling efforts" requirement of Regulation S. While the Commission's reiteration of the non-integration language from the Regulation S adopting release is significant, it still leaves open the odd result that a domestic issuer or a foreign private issuer that is SEC reporting or has other ties to the United States (such as a branch office or previous offerings in the United States) that conducts a Regulation S-only offering may be under stricter U.S. publicity restrictions than if it conducts a Regulation S offering with a Rule 144A tranche. Such an issuer would regularly be releasing information in the United States, but, in a side-by-side Rule 144A/Regulation S offer, where the issuer is making an offer to US investors, such information would likely be deemed permissible general solicitation and general advertising. By contrast, in a Regulation S-only offer, where the offer is an offshore transaction and not made to U.S. persons (as these terms are understood under Regulation S), the issuer would likely limit the release of such information to avoid directed selling efforts in the United States. However, it would not have to restrict such information if it decided to include a Rule 144A tranche in its offer, even if the Rule 144A offer did not result in any sales.

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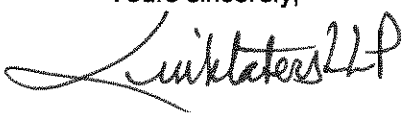
[1] See SEC Release Nos. 33-7516, 34-39779, IA-1710, IC-23071, Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore.

We would be pleased to respond to any enquiries regarding this letter or our views on the Proposals generally. Please contact Jason Manketo (jason.manketo@linklaters.com), Tom Shropshire (tom.shropshire@linklaters.com), Mike Bienenfeld (mike.bienenfeld@linklaters.com), Lorna Bowen (lorna.bowen@linklaters.com) or Thomas N. O'Neill III (tom.oneill@linklaters.com), or any of the above by telephone at (212) 903 9000, if you would like to discuss any of these matters.

We thank the Commission in advance for considering our and others' comments on the proposed amendments.

Yours sincerely,



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