October 5, 2012

Via Email: rule-comments@sec.gov

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

Subject: File Number S7-07012; SEC Proposed Rule Eliminating the Prohibition against General Solicitation and General Advertising in Rule 506

Dear Ms. Murphy:

This letter responds to the request for comments on the proposed Rule 506(c). We agree with the SEC's approach to maintaining the existing Rule 506 exemption (proposed 506(b)) and creating new exemption 506(c). To best implement Rule 506(c) and achieve the goals of Congress, however, changes to the proposed rules are needed. Specifically:

1. Reasonable Belief. The standard for maintaining the 506(c) exemption should be a "reasonable belief" standard. The SEC proposes that if the issuer (1) had a reasonable belief that the purchaser was accredited, and (2) took reasonable steps to verify the purchaser was accredited, then the exemption of 506(c) is not lost. The reasonable steps component changes the analysis from a ***subjective*** test that looks at knowledge to an ***objective*** test of facts and circumstances measured in hindsight. A core concern in the general solicitation context is that the penalty for being wrong is greater than in the non-general solicitation context. Under current Rule 506, issuers can rely on Section 4(a)(2)'s private placement exemption as a backstop if the Rule 506 conditions are not met. In the general solicitation context, by contrast, there is no back stop. If an issuer blows 506(c), it's facing an unregistered public offering under both federal and state law. In addition, a blown 506(c) exemption could undermine a funding platform's broker-dealer exemption because that exemption under the JOBS Act requires the securities "be offered and sold in compliance with Rule 506." Thus, issuers facing an objective standard will naturally act more conservatively and place unnecessary limitations and expense on investors, which subverts Congressional intent to open opportunities and encourage investment. An issuer who reasonably believes it met the 506(c) elements (i.e., accredited purchasers and took reasonable steps to verify), should be entitled to maintain the exemption even if later it is found an element was not met.

2. Safe Harbors. Safe harbors on "reasonable steps to verify" should be implemented so issuers can act with confidence out of the gate. Without safe harbors, issuers won't know when "enough is enough" until bad cases start making bad law. The uncertainty will lead to conservative behavior and additional cost and investor hassle. Safe harbors could include an investment above $25,000, third party verification

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(including verification from a funding platform that has a relationship with the purchaser), and publicly available compensation information. Safe harbors based on annual figures should be presumed until the next cycle so that companies aren't burdened with repeating verification for interim investments.

3. Form D. The SEC should clarify that by *not* checking the 506(c) box on the Form D, an issuer is not precluded from relying on the 506(c) exemption. Issuers that intend to remain under 506(b) but inadvertently trip the general solicitation boundary should be permitted to rely on 506(c) if the conditions are otherwise met.

4. Language in the Rules. Finally, the changes to effect the review standard and safe harbors and should be incorporated into the actual text of the rules, not left to interpretive guidance. Issuers and investors need structure and certainty to proceed with confidence.

Thank you for your consideration.

Very truly yours,

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