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JEFFREY E. CAPLAN  
(ADMITTED IN CALIFORNIA, DISTRICT OF  
COLUMBIA, AND NEW YORK)

October 5, 2012

## **BY ELECTRONIC DELIVERY**

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Eliminating the Prohibition against General Solicitation and  
General Advertising in Rule 506 and Rule 144A Offerings  
Release No. 33-9354, File No. S7-07-12**

Dear SEC:

I am a business attorney who conducts private placements for start-ups and microfunds. I appreciate this opportunity to comment on your proposed Rule 506(c).

The blanket prohibition of sales to non-accredited investors ("AI") is too broad, at least for smaller issuers. Rule 506(c)(2) would prohibit the likely fundraising scenario of privately soliciting non-AI first, then advertising for AI. This would reduce access to capital, contrary to the intent of the JOBS Act.

Thus, Rule 506(c) should allow sales of non-advertised securities to two categories of non-AI: (i) investors with pre-existing relationships to the founders; and (ii) "sophisticated" investors.

Apparently, Congress wanted to eliminate the risk of inadvertent sales of advertised securities to non-AI. Investors known to the founders present no such risk because those investors respond to personal contacts, not advertising. Therefore, Rule 506(c) should allow sales to them at any time during the offering.

"Sophisticated" investors present a greater risk. They may or may not respond to advertising. Therefore, Rule 506(c) should restrict their purchases to the initial, pre-advertising phase of the offering. In that case, the subsequent advertising would have no impact on their investment decisions.

Together, these two solutions would increase access to capital while preventing non-AI from purchasing advertised securities. My proposals seem consistent with the JOBS Act, which merely prohibits sales of advertised securities to non-AI.

To implement these solutions, you may amend Regulation D to prevent the integration of Rule 506(c) offerings with Rule 506(b) offerings, at least for consecutive offerings. Otherwise, integration would require a six-month "cooling off" period between the two phases of the offering (non-advertising and advertising).

Thank you for your attention. If you have any questions, please contact me.

Sincerely,

**LAW OFFICES OF JEFFREY E. CAPLAN**

(signature on file)

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Jeffrey E. Caplan, Esq.