October 9, 2012

Via Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Notice of Proposed Rulemaking
File No. S7-07-12

Dear Ms. Murphy:

Thank you for the opportunity to comment on the above-referenced rulemaking which implements Section 201(a)(1) of the Jumpstart Our Business Startups Act of 2012 ("JOBS Act") to permit offerings made in reliance on Rule 506 of SEC Regulation D to use general solicitation and general advertising (collectively, "General Solicitation") in connection with such offering if all sales of securities in the offering will be made only to accredited investors as that term is defined in Rule 501 of SEC Regulation D ("Accredited Investors"). The views expressed herein are my own and do not represent the views of my law firm, members of the law firm or any client of the law firm.

My comments are twofold and I will be brief. From the text of the proposed rulemaking, it appears that the SEC intends to implement Section 201(a)(1) of the JOBS Act as simply as possible without any embellishing details. Indeed, I believe that was the intent of Congress. However, the SEC may be doing investors a disservice without requiring a legend indicating that all sales in the offering to which the General Solicitation relates will be sold only to Accredited Investors. Although the SEC will be modifying Form D wherein issuers must indicate that they are engaging in General Solicitation, the timing of filing of Form D appears to be unchanged from the requirement to file 15 days after the first sale.

This may result in the use of General Solicitation by issuers well before they must comply with the Form D notification requirement. Both SEC and state investor education programs exhort investors to "investigate before they invest." If a conscientious investor who receives a General Solicitation contacts the SEC prior to the filing of a Form D by the issuer (because the first sale has yet to be made or the issuer is within the 15 day window), the SEC has no way of knowing whether the issuer is relying on new Rule 506(c).

Requiring the use of a simple disclosure that all sales must be made to Accredited Investors not only could inform investors in a cost-effect manner but could save a lot of investor calls to the SEC where the investor will not receive a satisfactory answer. This is not a novel proposal in that the SEC has incorporated a similar provision into Rule 504(b)(iii) which permits use of General Solicitation in an offering made in reliance on state exemptions based on the NASAA Model Accredited Investor Exemption which contains such a legend requirement.

My second comment is that I concur with the SEC's conclusion that the "reasonable steps to verify" standard in the JOBS Act constitutes only a different manner of expressing the "reasonable belief" standard currently set forth in SEC Regulation D and that Congress did not intend a different result. In this area, the SEC and state securities regulators are agreed.

When the states, acting through the North American Securities Administrators Association (NASAA) adopted its Model Accredited Investor exemption in 1997 which allows for use of General Solicitation if sales were made only to Accredited Investors, it required the issuer to sell securities only to person who are or who the issuer "reasonably believes" are Accredited Investors. To date, NASAA has not changed its Model Accredited Investor Exemption to create a different standard. For the sake of uniformity among state and federal laws, the SEC should retain its "reasonable" belief standard for offerings under new Rule 506(c).

Very truly yours,

G. Philip Rutledge