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By Email: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Eliminating the Prohibition Against General Solicitation and General
Advertising in Rule 506 and Rule 144A Offerings
(Rel. No. 33-9354; File No. S7-07-12)

This letter comments on the Commission's proposed amendment of Rule 506 of Regulation D under the Securities Act of 1933 to implement Title II of the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") by eliminating the prohibition against general solicitation and general advertising in certain Rule 506 offerings as set forth in the above-referenced Release. I participated in the comment letter of the Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association on the Release as a member of the Drafting Committee, and fully subscribe to that letter's support of the Commission's proposal. I wish to separately discuss one issue raised by the proposal that I believe is important – namely, the provision establishing as a condition to the exemption that the issuer take reasonable steps to verify the status of a purchaser even if that purchaser is in fact an accredited investor because the investor comes within one of the eight categories listed in the definition of accredited investor in Rule 501(a).

The definition of accredited investor for purposes of Rule 506 includes a purchaser who an issuer reasonably believes is accredited, as well as a purchaser who in fact is accredited because it falls within one of eight listed categories without regard to whether the issuer's belief is reasonable or even whether the issuer has any belief.¹ This formulation of accredited investor contributes to the certainty necessary for an issuer to rely on the exemption.

I believe that the Commission should follow a similar approach in the requirement that the issuer take reasonable steps to verify a purchaser's status as an accredited investor if the issuer engages in general solicitation. Under this approach, the condition for engaging in general solicitation would be satisfied if (i) all purchasers are accredited investors, either because they fall within one of the listed categories or the issuer reasonably believes they do and (ii) the issuer takes reasonable steps to verify a purchaser's status or the purchaser in fact is accredited because it falls within a listed category.²

¹ A similar concept is used in the numerical limitation under Rule 506.

² I support the Commission's making it a condition of the exemption that the issuer have taken reasonable steps to verify the purchaser's status as an accredited investor when relying on the reasonable belief prong of the definition for a purchaser who is otherwise a non-accredited investor.

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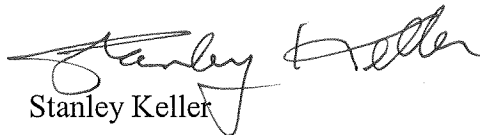
Certainty of the exemption is critically important to promote capital formation. This is especially so in view of the trend toward plaintiffs challenging the availability of the Rule 506 exemption in order to avoid preemption mandated by Congress so that they can assert state securities law claims. It can be a challenge for an issuer to establish the exemption because the burden of doing so is on the issuer. Moreover, the determination whether the conditions of the federal exemption are satisfied often will be determined by a state court hearing the state securities law claim. Therefore, it is desirable to reduce conditions to the exemption that can be subject to after-the-fact challenge when that can be done consistent with investor protection. This is especially true for conditions whose satisfaction is uncertain because they are based on a facts and circumstances analysis. The requirement to take reasonable verification steps, in the absence of a safe harbor, is such a condition and it is not one required for investor protection if the purchaser is in fact an accredited investor.³

I believe the approach I suggest is permitted by section 201(a)(1) of the JOBS Act, which directs the SEC to require reasonable verification steps without specifying that such steps be a condition of the exemption. This statutory mandate can be satisfied by separately requiring the issuer to take reasonable steps to verify the purchaser's status without making that a condition of the exemption when the purchaser is actually an accredited investor. This approach would comply with the Congressional intent to avoid non-accredited investors being obtained through general solicitation for exempt offerings for which they may not be suited. By definition, if an investor is in fact accredited, this concern would not exist.

This modest adjustment to the Commission's rule proposal, which I otherwise fully support, would increase the ability of issuers to use the exemption by providing greater certainty as to its availability and, accordingly, promote capital formation without any loss of investor protection.

Please note that this letter represents my personal views and not those of anyone else.

Very truly yours,



Stanley Keller

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³ I note that Rule 508 might apply to an issuer's failure to take reasonable steps to verify the status of a purchaser who in fact is an accredited investor, both as to other purchasers and possibly the particular accredited purchaser. However, Rule 508 is subject to "a good faith and reasonable attempt to comply" requirement that introduces a similar potential for uncertainty. If the Commission does not accept my suggestion, I believe it would be desirable for it to indicate its view regarding the availability of Rule 508 to preserve the exemption in the situation I describe.