



October 19, 2012

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

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

Dear Ms. Murphy

BetterInvesting was originally founded to help ordinary Americans participate in the growth of the American economy through long-term ownership in the public companies that fueled the growth. BetterInvesting is believed to be the oldest and largest non-profit investor education organization in the nation. BetterInvesting has enabled millions of individuals to become successful lifetime investors and to enjoy the benefits of America's economic growth. Over a 60-year span, BetterInvesting has provided investment education to more than five million people.

We are BetterInvesting's Individual Investor Advocacy Committee, chartered to educate and to guide and support BetterInvesting's public policy advocacy role in a manner that befits BetterInvesting's role as the largest non-profit membership organization for individual and club investors in the US.

BetterInvesting supports the recommendations in the attached letter, recently made by the SEC's Investor Advisory Committee (IAC) on the topic of Rule 506 offerings.

However, BetterInvesting has some additional recommendations and amplifications to the SEC Investor Advisory Committee letter, as noted below:

With regard to Recommendation 2:

- We recommend that the SEC go further than establishing a "drop box" into which issuers under Rule 506 must deposit all general solicitation material. Our concern is that this requirement, while intended to protect investors, has a high chance of the opposite effect by enabling unscrupulous issuers to claim that they "registered with the SEC", giving investors a false sense of protection. Instead, BetterInvesting recommends that the SEC require all public solicitation materials under Rule 506 to be independently reviewed for compliance (perhaps by an independent authority such as FINRA, which already reviews broker-dealer advertising) before or after the public solicitation. A fee could be required to make this review process self-funding.

With regard to Recommendation 3:


- We recommend that the verification process by “reliable third parties” be optional by either party in a Rule 506 offering, rather than required, in case this is not already the intent of the IAC’s recommendations.

With regard to Recommendation 6:

- We support refining the definition of an accredited investor. In particular, we see among BetterInvesting’s membership (and at large) many individuals who qualify as accredited investors but are not (yet) experienced or knowledgeable about investing. By making Rule 506 offerings more widespread as allowed under the JOBS Act, we fear that such individuals will be more vulnerable to making investment decisions that are contrary to their best interests. A possible remedy is recommending or requiring some form of investor education to become an accredited investor. For example, it may be worth exploring an online accreditation course for a minimal or no charge provided by the SEC or an educational non-profit like BetterInvesting, as a condition to qualifying as an accredited investor.
- We recommend mandatory risk disclosure language in all Rule 506 offerings. The language should be in language understandable by a layperson, not lengthy, and appear at the beginning of all solicitations to increase the likelihood that prospective investors will read it. To remove ambiguity, the SEC may wish to specify the required risk disclosure language.
- We recommend a required maximum amount (for example, as a percentage of net worth or some similar formula) that any investor can invest in a single Rule 506 offering.

We appreciate the Commission’s consideration of our comments. Please feel free to contact us if we can provide any additional information to assist the Commission.

Best Regards



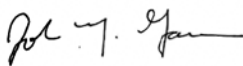
Kamie Zaracki
Chief Executive Officer



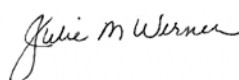
Roger Ganser
Chairman



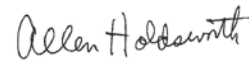
Robert Brooker
Committee Chair



John Gannon
Committee Member



Julie Werner
Committee Member



Allen Holdsworth
Committee Member

Exhibit: SEC's IAC Recommendations

Recommendations Regarding SEC Rulemaking to Lift the Ban on General Solicitation and Advertising in Rule 506 Offerings: Efficiently Balancing Investor Protection, Capital Formation and Market Integrity

Preliminary Observations:

- The IAC recognizes the importance of Regulation D Rule 506 as a capital formation tool. In 2011, Rule 506 offerings accounted for \$895 billion, as compared to \$984 billion raised in registered offerings.
- The Jumpstart our Business Startups Act (JOBS Act) requires that the Securities and Exchange Commission lift the ban on general solicitation and advertising in Rule 506 private placements.
- Keeping in mind the risks to investors, lifting the solicitation ban can and should be done in a manner that simultaneously promotes investor protection, facilitates efficient capital formation, and provides regulators with the tools they need to police the market effectively.¹
- The Commission retains both the authority and the responsibility to ensure that investors are adequately protected as the ban on general solicitation is lifted.
- The rule proposal recently released by the Commission should more effectively address the risk of potential harm to investors, which we believe can be done without imposing a material burden on the capital formation process.
- A number of concrete proposals have been put forward to improve investor protections and enhance regulators' ability to police this market.

IAC Recommendations:

As the Commission fulfills its JOBS Act mandate to lift the ban on general solicitation and advertising in private offerings, it must carefully consider the potential harm to investors resulting from that action and the alternatives available to minimize that harm. In keeping with its own guidelines for economic

analysis and its investor protection mandate, the Commission should give strong consideration to the following recommendations as part of the rulemaking process:

Recommendation 1

Require all issuers intending to rely on the new JOBS Act general solicitation exemption to file with the Commission either a new “Form GS” or a revised version of Form D. Filing the Form should be a precondition for claiming the exemption. To reduce compliance costs, the form should be available for on-line completion. The form should request simple information regarding the identity of the entity seeking to rely on the exemption, the control persons of that entity (together with their addresses, telephone and contact information), counsel representing the entity (if any), the entity’s accountants or auditors (if any), the amount sought to be raised, a brief description of the entity’s general solicitation plans, and a brief description of the entity’s proposed business and use of proceeds.

Supporting Rationale: These data would be used both for basic statistical purposes to help judge the effectiveness of the exemption and to help the SEC and state regulators monitor the market. Indeed, absent this form of information, the Commission will be unable to determine the extent to which the capital formation process is relying on the new JOBS Act exemption. This information may also be valuable in the event that enforcement issues arise in connection with an offering.

Recommendation 2

Require that all solicitation material prepared or disseminated by or on behalf of the issuer that is being disseminated to the public through a general solicitation or advertising campaign in reliance on the new exemption be furnished to the Commission. This requirement can be satisfied at very low cost to the capital formation process by having the Commission create an online electronic “drop box” into which all general solicitation material can be deposited, together with a cover form identifying the issuer using the general solicitation material and the circumstances under which the material is to be used. The drop box should be designed to be able to accept print, audio and video forms of general solicitation. A condition of the exemption should be that the copy of the solicitation materials be furnished either prior to first use or promptly after first use. The materials furnished to the Commission should be made available for prompt public view. The Commission should consider appropriate measures to ensure compliance with this requirement. The Commission should consider the degree of dissemination that would trigger this requirement.

Supporting Rationale: Again, absent access to information of this sort, the Commission will be unable, as a practical matter, to monitor the types of solicitations being used in practice. The

Commission will therefore be unable to assess the potential benefits and risks of the solicitations. The Commission should keep the process of filing these materials as simple and as inexpensive as possible (it can and should be as easy as filing a comment to a Commission proposed rule and as simple as posting a video to YouTube). Further, Commission access to this database will allow it better to identify instances of potential fraud in an efficient manner, and the simple knowledge that general solicitation material must be provided to the Commission may act as a deterrent against some potential forms of fraud. The Committee observes that by making these materials available to the public on a timely basis, the Commission would be simultaneously facilitating the retransmission of these general solicitation materials to a broader audience and “crowdsourcing” the public’s ability to inform the Commission of potential fraud in this marketplace.

Recommendation 3

Adopt a safe harbor that provides clear and enforceable standards for verification, as opposed to reasonable belief, of accredited investor status, including standards to promote reliance on reliable third parties, such as broker-dealers, banks, and licensed accountants.

Supporting Rationale: The JOBS Act requires the Commission to adopt standards to ensure that issuers take reasonable steps to ensure that only accredited investors invest in these offerings. The “facts and circumstances” based approach proposed by the Commission does not do enough either to ensure this outcome or to provide issuers with the certainty they need to develop appropriate procedures. On the one hand, investors may be unwilling (and unwise) to provide sensitive financial information to issuers with whom they have no relationship in order to provide proof of their accredited investor status. As a result, reliable third parties, such as brokers, accountants, and attorneys, may play a central role in providing that verification. Without clear guidelines for such third-party verification, however, these professionals may be reluctant to provide these services on terms that are beneficial to investors and issuers alike. In addition, Section 5 of the Securities Act creates strict liability for the sale of unregistered securities. Prudent counsel and issuers seeking to assure compliance with the law will, in many circumstance, be unwilling to take the risk associated with a “facts and circumstances” test, particularly when there is no precedent that offers meaningful guidance as to facts and circumstances likely to qualify for the safe harbor. Non-exclusive safe-harbor guidelines will therefore help promote reliance on the new statutory provisions by issuers who are risk averse and seek responsibly to comply with the federal securities laws. Indeed, the Committee observes that an equivalent rationale supported the Commission’s initial decision to adopt Regulation D.

Recommendation 4

The filing of Form D should be made a condition for relying on the Reg. D exemption. In implementing this recommendation, which is intended to encourage broad compliance with the filing requirement, the Committee encourages the Commission also to consider incorporating measures to ensure that it does not impose undue penalties for inadvertent violations by small, unsophisticated issuers.

Supporting Rationale: While Form D is required to be filed, its filing is not a condition of relying on the Reg. D exemption. It is generally acknowledged that a significant number of issuers do not currently file Form D, depriving the Commission of important information and inhibiting its ability to provide effective market oversight. Moreover, absent reliable data from Form D it will be difficult for the Commission to compare the performance of private placements that rely on the new JOBS Act exemptions with the performance of private placements that do not rely on those exemptions. These data will be valuable to the Commission and to Congress in assessing the performance of these new exemptions. Again, a variety of mechanisms are available to minimize the costs of compliance, and the Commission should adopt these mechanisms.

Recommendation 5

The Commission should take steps to ensure that any performance claims in materials used as part of general solicitations are based on appropriate performance reporting standards.

Supporting Rationale: Investors need the assurance that performance claims they rely on as a part of a general solicitation campaign are based on a clear, well-defined, and auditable standard. The Committee observes that there are several private sector standards that can be applied to govern the presentation of such data and that the Commission should be able to designate the appropriate standards in a manner that imposes little if any marginal cost to market participants complying with industry norms.

Recommendation 6

The Commission should amend the natural persons prong of the definition of accredited investor to better reflect a population that has the financial sophistication to analyze the risks in private offerings and/or the wealth to withstand potential losses. The Committee believes this is essential in the absence of the procedural protections afforded by the general solicitation and advertising ban.

Supporting Rationale: The Committee observes that there has long been a debate regarding the adequacy of the definition of “accredited investor” which currently relies exclusively on asset and income tests, and is invariant to the investor’s actual investment sophistication (with the exception of situations requiring reliance on a purchaser representative). To the extent that the

JOBS Act places greater reliance on the ability of investors to “fend for themselves” under the Federal securities laws, it seems prudent to explore alternative formulations of the accredited investment standard that might be more suitable to the new regulatory environment. It is the view of the Committee that the Commission has clear authority to amend the accredited investor definition at this time, except with regard to the net worth component of the definition where the Commission is precluded from acting until 2014.

Recommendation 7

SEC rulemaking mandated pursuant to Dodd-Frank Act Section 926 has not concluded. Section 926 mandates rulemaking disqualifying felons and other “bad actors” from reliance on the safe harbor from Securities Act registration provided by Rule 506 of Regulation D. This provision is particularly relevant to bolstering investor protection in connection with Rule 506 offerings. In conjunction with the rulemaking to lift the ban on general solicitation and advertising, we recommend adoption of the “bad actors” rule proposed in May, 2011, and already past the statutory deadline for adoption.

Supporting Rationale: As the Commission moves forward to implement the regulations mandated by the JOBS Act, it is sensible that all related regulations be adopted on a simultaneous basis, unless there is substantial reason to phase in certain regulations. There appears to be no reason to phase in the “bad actor” provision. Accordingly, it is appropriate that this provision be operative at the same time that the other rules and regulations relating to the general solicitation and private placement process take effect.