UNIVERSITY of LOUISVILLE

Manning G. Warren III
H. Edward Harter
Chair of Commercial Law

Louis D. Brandeis School of Law
University of Louisville
Louisville, Kentucky 40292

Office: 502-852-7383
Fax: 502-852-0862
mgw111@louisville.edu

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Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-07-12
Eliminating the Prohibition Against General Solicitation in Rule 506 Offerings

Dear Ms. Murphy:

This is to express my views, as a securities law professor and practitioner for over thirty years, in support of comments expressed by investor advocacy groups and others that the Commission include investor protection measures in any final rule it adopts that would eliminate the long-standing prohibition against general solicitation in Rule 506 offerings to accredited investors.

At a minimum, the Commission's rule should incorporate provisions that (1) require filing of an enhanced Form D as a precondition to claims of exemption, (2) provide a safe harbor for verification of accredited investor status of natural persons by independent third parties, and (3) impose "bad boy" disqualification provisions for issuers that would rely on the exemption.

Form D

First and foremost, the Commission should require issuers to file Form D as a precondition of any claim to an exemption. The Commission earlier was persuaded to provide leniency under Regulation D for inadvertent failures to file the form in private offerings, including entity formations not involving general solicitation of investors. Where issuers make a hopefully well-considered decision to conduct a generally solicited or "public" private offering, failure to file the basic notice with the Commission can hardly be viewed as inadvertent. Indeed, as the Commission's Inspector General has suggested for years, the Commission should actually engage in at least a random review of filings that claim the regulatory exemption, in order to protect investors against the enormous portent for abuse.

This review should be wisely augmented by use of a revised form, perhaps, as some have suggested, designated as Form GS or Form D-GS. A required filing of Form D or Form D-GS thirty days in advance of the offering would provide regulators the opportunity to give additional scrutiny to suspect offerings before investors are subjected to actual losses due to fraudulent conduct.

Second, Form D or Form D-GS should require significantly enhanced disclosures before issuers, in effect, access the nation's public securities markets. These enhanced disclosures should include, at a minimum, identification of the control persons of the issuer (including addresses and contact information), the issuer's counsel, accountants and auditors, if any, as well as the aggregate amount of the offering, a description of the issuer's proposed business, use of proceeds, and plan of distribution, and lastly, information regarding the issuer's plan regarding verification of accredited investors. Required submission of the enhanced form should be achievable online in advance of an offering and would not impose any significant burden on issuers planning to engage in general solicitation.

Verification of Accredited Investor Status

The Commission should provide detailed guidance to issuers in Rule 506 "public" private offerings in determining how to satisfy the statutory requirement that issuers take reasonable steps to verify that purchasers in these offerings are accredited investors, at least with respect to those investors who, as natural persons, are deemed accredited investors solely based on their annual income or net worth. The Commission must already recognize that the thresholds for accreditation of natural person investors are absurdly low in today's dollars, based on the consumer price index, *e.g.*, $420,000 net worth and $84,000 annual income in Regulation D's 1982 context. While I disagree, I understand the Commission's position that it cannot regulate changes in these quantitative thresholds before next year. However, given the absurdity of these numbers, the Commission should either defer the effective date of its final rule until these thresholds are appropriately adjusted or strongly advise issuers to raise these thresholds voluntarily to at least today's equivalent thresholds of roughly $2,500,000 and $500,000, respectively. Issuers who voluntarily satisfy these updated thresholds, based on their reasonable belief and verification by an independent third party, should be presumed to have adequately verified the accredited investor status of their investors.

In any event, the Commission's guidance to issuers in making determinations of the accredited investor status of their natural person investors should include several vital verification standards as a *de minimis* safe harbor:

(1) Issuers must ensure that their natural person investors self-certify that they satisfy the regulatory criteria of the accredited investor category on which their status is based, whether determined by net worth or annual income.

(2) Issuers must ensure that their natural person investors provide documentation to a reliable, independent third party that clearly demonstrates satisfaction of the regulatory criteria of the accredited investor category on which their status is based, whether determined by net worth or annual income.

(3) The documentation submitted to those independent third parties, at a minimum, must include, for net worth determinations, current bank and brokerage house records, and reliable current property appraisals or substantially similar documentation, in addition to a current financial statement signed and certified by the investor. For net income determinations, the documentation must include the last two years federal tax returns, including Forms W-2's and 1099's for those years, as well as a statement signed and certified by the investor, representing that the investor has a reasonable expectation of reaching the same income level in the current year.

(4) The issuer must receive a certification from a reliable, independent third party, dated within three months prior to any investment, that, based on its review of the documentation provided, the investor currently satisfies the applicable quantitative criteria for the appropriate category of accredited investor status.

(5) In order to qualify as an independent third party, the third party verifier must include in its certification to the issuer a statement that it is not an affiliate of the issuer or of any placement agent engaged in the offering, that its certification of an investor has been made objectively, and can be relied upon solely by the issuer and for only three months after its date. The third party verifier must ensure that all documentation provided by the investor is kept confidential and cannot be released to the issuer or any other person without the written consent of the investor.

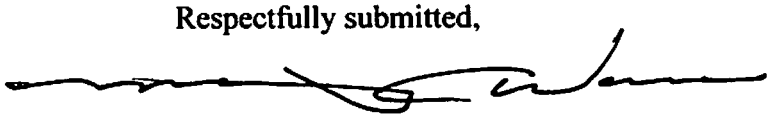
Bad Boy Disqualification

The Commission should include, as immediately operative, a provision that disqualifies felons and other "bad actors" from reliance on Rule 506 in offerings made to accredited investors through general solicitations. This was mandated in Section 926 of the Dodd Frank Act and proposed in the Commission's "bad actors" rule in 2011, but the Commission has not yet complied with its statutory mandate. Over thirty years ago, long before Rule 506 offerings, as *covered securities*, became the almost exclusively used private placement regulatory exemption, the Commission, in promulgating Regulation D, inexplicably applied bad actor disqualification to Rule 505 offerings but not to Rule 506 offerings. Consequently, the Commission has long denied investors protection against known dishonest issuers and their affiliates based not on investors' need for protection but on the issuer's choice of an exemption. It is clearly long overdue that the SEC repair this highly inappropriate regulatory incongruity, especially as it now moves to adopt a

rule that would permit issuers to engage in "public" private offerings free from the protections afforded investors through registration at either the state or federal levels of government.

In these comments, I have proposed only three modest provisions that the Commission should include in its final rule eliminating the general solicitation prohibition on Rule 506 offerings to accredited investors: (1) requiring filing of an enhanced Form D as a precondition of the exemption; (2) providing an issuer safe harbor for verification of individual accredited investor status; and (3) imposing bad actor disqualification for issuers with rap sheets. Many other advocates for investors have provided far more extensive and detailed provisions that should be given the Commission's favorable consideration. The provisions I recommend for inclusion in the final rule represent a *de minimis* regulatory floor to protect investors against fraud and abuse once the Commission implements Congress' JOBS Act mandate allowing issuers to engage in "public" private offerings to accredited investors (regardless of whether they have sufficient knowledge and experience in financial matters to evaluate the merits and risks of their prospective investments). Without these minimum safeguards, investors and our securities markets will be at far greater risk of harm.

Respectfully submitted,



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