

MEMORANDUM

TO: File Nos. 4-606 and S7-07-12

FROM: Division of Trading and Markets

RE: Meeting with a Representative of the Consumer Federation of America

DATE: April 23, 2013

On April 23, 2013, Barbara Roper, Director of Investor Protection for the Consumer Federation of America, met with the following SEC representatives: Mary Jo White, Chair; Cyndi Rodriguez and Erica Williams, Deputy Chiefs of Staff; Lori Schock, Director of the Office of Investor Education and Advocacy; Timothy Henseler, Acting Director of the Office of Legislative and Intergovernmental Affairs; and John Ramsay, Acting Director of the Division of Trading and Markets.

The discussion included, among other things, the Commission's March 1, 2013 request for data and other information relating to alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers and the Commission's August 29, 2012 proposing release titled Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings.

At the meeting, Ms. Roper provided Chair White with a letter from representatives of the Consumer Federation of America, Americans for Financial Reform, and the AFL-CIO. A copy of the letter is attached to this memorandum.

**Consumer Federation of America
Americans for Financial Reform
AFL-CIO**

April 23, 2013

The Honorable Mary Jo White
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

Dear Chairman White:

Congratulations on your confirmation as chairman of the SEC. Our organizations share a common belief in the important role that the Securities and Exchange Commission plays in ensuring the transparency, stability, and integrity of our nation's capital markets. We are convinced, moreover, that investors and capital formation alike benefit when these goals are achieved. We look forward to working with you on a broad range of issues, including the all-important matter of Dodd-Frank implementation.

We are writing today, however, to request an opportunity to meet with you as soon as possible to discuss our concerns with regard to the JOBS Act general solicitation rulemaking, because we believe that decisions on this important matter are being made on a particularly short timeline. We recognize that considerable pressure is being brought to bear on the Commission, and you as its new chairman, to rush ahead with implementation of the general solicitation rule without first addressing the serious concerns raised by investor advocates, including the SEC's Investor Advisory Committee. We urge you to seize this opportunity to send a clear message that the views of investors will be given serious consideration on the issues that are important to them in Commission rulemaking and that procedures designed to ensure that the Commission carefully considers the economic consequences of its actions will be applied just as scrupulously to rules that roll back investor and market protections as they are to rules that are designed to strengthen those protections.

Had the Commission followed these principles from the outset, the general solicitation rules could have been completed months ago. Ironically, it was the Commission's efforts to rush through the implementation process, circumventing the legal requirements of notice and comment, that have resulted in the delays. Now you are faced with a similar dilemma: give in to pressure to move forward quickly based on a clearly legally deficient rule proposal or take the time to get it right by re-proposing a rule that incorporates the reasonable investor protections advocated by the SEC Investor

Advisory Committee, state securities regulators, and a host of other public interest groups.

A decision to move forward quickly would have the following severe adverse consequences:

- It would deny investors much needed protections as it throws open the door to mass marketing of these often risky and illiquid “private” securities. This is a market where abuses are common and SEC oversight is poor. A rushed and ill-considered rulemaking will make those problems worse.
- It would send the message that investors’ concerns carry little weight with the Commission. Investors, including the Commission’s own Investor Advisory Committee, have advocated reasonable additional protections well within the Commission’s authority to adopt, but have so far been shut out of the process. You have an opportunity to reverse that.
- It would send an equally damaging message that agency requirements for economic analysis are applied only when rules are likely to be opposed by industry and can be ignored at will when investors are the ones raising the concerns. The Commission did not follow its own guidelines for economic analysis in issuing this rule proposal, including failing to follow their requirement to request comment on all reasonable alternative regulatory approaches. Ironically, those who have been most critical of the Commission’s failure to move more quickly on JOBS Act rulemakings have also been particularly insistent on extensive economic analysis for Dodd-Frank rulemakings. They are setting a double standard that the Commission must not follow if it is to retain its credibility as an investor protection agency.
- The Commission would risk further delay by issuing a rule that is based on a legally deficient rule proposal that is therefore vulnerable to legal challenge.

Unfortunately, we can see no way to ensure adequate investor protections without re-proposing the rule. Some have suggested that the Commission could implement the general solicitation rule based on the current proposal and pursue comment on the appropriate investor protections separately. Think of the precedent that would set – rushing forward with the aspects of the rule supported by industry while offering the faint possibility that the Commission might one day get around to addressing the concerns raised by investors. A gesture towards acting later is not a meaningful effort to address investor protection.

The good news is that the process to date has resulted in a set of reasonable investor protections that could be incorporated in the rule, as identified in the many comment letters and the recommendations of the SEC Investor Advisory Committee. There is no reason why a re-proposal could not move forward, and rules be finalized

quickly, once that process is set in motion. We urge you to take this approach, which is the right approach for investors and for the integrity of the rulemaking process.

We would welcome the opportunity to discuss these issues with you further.

Respectfully submitted,

Barbara Roper
Director of Investor Protection
Consumer Federation of America

Lisa Donner
Executive Director
Americans for Financial Reform

Brandon Rees
Acting Director, Office of Investment
AFL-CIO