



Mercedes-Benz

Mercedes-Benz  
Financial Services

Brian T. Stevens  
Chief Financial Officer

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Submitted Via Email to [Rule-Comments@SEC.gov](mailto:Rule-Comments@SEC.gov)

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

Re: File No. S7-07-12

Dear Ms. Murphy:

Mercedes-Benz Financial Services USA LLC (MBFS)<sup>1</sup> is writing to respond to the Securities and Exchange Commission's (the "Commission") request for comment on File No. S7-07-12 (the "Proposing Release"), which would eliminate the prohibition against general solicitation and general advertising in certain offerings.

#### Request

MBFS requests that the Commission create a safe harbor within the rules for accredited investor verification. The safe harbor would allow an issuer to use self-certification by an investor together with a third-party database<sup>2</sup> to provide a reasonable verification so long as the database has been tested and provides a reasonably low level of false positives in a statistically significant study comparing the third-party data to verified data on accredited investors in the U.S.

#### Proposed Verification Process

Since the passage of the Jumpstart Our Business Startups Act, MBFS has actively explored options for achieving a highly accurate, third-party verification of accredited investor status.<sup>3</sup> Because there has been some discussion of database verification solutions in a variety of forums, MBFS set out to find a solution. MBFS has identified a third-party private business—whose primary service is data mining for high net worth individuals—that can provide an innovative accredited investor verification service. For the purposes of this comment letter, the third party would like to remain anonymous, but MBFS would be happy to provide its name privately to the staff of the Commission.

The third party serves more than 4,000 entities in financial, non-profit and luxury industries. It gathers data intelligence on wealth, assets, demographics, lifestyle, interests, behavioral and business, as well as philanthropic information from public and private sector sources to build what we understand to be the largest

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<sup>1</sup> MBFS is a single member LLC organized under the laws of the State of Delaware. Daimler AG is the ultimate parent. MBFS is a financial services organization that principally provides automotive financing to Daimler dealers (entities involved in the sale or lease of new or used vehicles manufactured or distributed by Daimler AG and its subsidiaries) and their customers, including retail and lease financing for cars and trucks, dealer inventory, and other financing needs.

<sup>2</sup> We note the Commission has permitted a third-party verification in Rule 144A(d)(1)(iii), which permits a seller to rely upon recognized securities manuals to establish a prospective purchaser's ownership and discretionary investments of securities. See also, <http://www.sec.gov/divisions/corpfin/cf-noaction/communicat092002.htm>

<sup>3</sup> MBFS is interested in increasing private placement issuances in the future.

database of affluent and high net worth individuals in the U.S. The third party has calculated wealth scores on more than 140 million U.S. households, which are derived on the specific household level, not at the zip+4 census tract level. Final scores are developed from more than 60 reliable data sources and analyzed with more than 60 algorithms. Individuals who have a sufficiently high score and meet the then current accredited investor definition are flagged as accredited investors. In addition, the third party calculates net worth based on information from its sources. It can provide a database interface tool that allows an issuer to input the name and address of a potential investor and obtain extensive data about income, net worth, assets, and other financial data.

### Accuracy

The legal standard established by Congress in the JOBS Act is that the Commission's "rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission." The approach described above is clearly "reasonable" in terms of its accuracy. At MBFS' request, the third party completed a statistical analysis comparing the accredited investor indicator in its database to the 6,482 households sampled in the Federal Reserve Board's Survey of Consumer Finances for 2010. MBFS asked the third party to identify the false positive rate, calculated as the percentage of non-accredited investors who were falsely classified as accredited investors. While a 95 percent level of accuracy is frequently used as a statistical and scientific benchmark threshold for accuracy, the third party results were even more accurate. The results of the third-party analysis showed its database only generated a false positive indicator of accredited investor status 2.7 percent of the time. Alternatively, by basing the accredited investor verification on the third party's net worth criteria, an issuer could increase the level of accuracy, although at the cost of generating more false negatives. For example, by setting a testing threshold at \$2 million net worth for verification database testing instead of \$1 million, the false positive rate would drop to 1.6 percent, although with an increase to false negatives<sup>4</sup>. MBFS believes that a 2.7 percent false positive rate is already statistically sound and that incremental gains in false positive accuracy do not merit driving false negatives higher. Applying this standard, even if one aggressively assumes that as high as 10 percent of investors will attempt to commit fraud, only 0.27 percent of the investors in a placement could potentially improperly gain access to a private placement with this verification procedure.

### Benefits

The process described above provides a number of important benefits:

1. Verification through a third party unaffiliated with the investor or the issuer will result in completely unbiased verification results.<sup>5</sup> This method also removes any opportunity for joint or collusive misrepresentation by an investor and a verifying attorney, CPA, or broker.
2. The method proposed by MBFS is relatively comprehensive in its inclusion of a complete picture of an individual's finances from a variety of sources (more than 100 national and state databases), which is a better control on investor misrepresentations than alternatives that may focus on a single document.
3. The third-party, data-driven process proposed by MBFS can potentially resolve accuracy challenges with other approaches under consideration. For example, the Proposing Release suggests that an investment of \$1 million may be sufficient to verify accredited investor status. However, a \$1 million investment does not

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<sup>4</sup> These false negatives are not a problem because an issuer can use an alternative approach to verify accredited investor status anytime a negative indicator is returned. If the third-party database indicates that the investor is not an accredited investor, the issuer can simply use whatever other alternatives means of verification are available under the final rules.

<sup>5</sup> MBFS does not believe that attorneys, brokers, or CPAs will make representations as to the income or net worth of a client because: 1) many do not have a complete picture of the potential investor's net worth or income, and 2) these professionals generally do not carry insurance for this sort of representation. Even if they do, these professionals are in the employ of potential investors and thus may be unduly influenced by the investor.

necessarily confirm “net worth,” but rather liquidity only, and thus potentially could be subject to error. In addition, using attorneys, CPAs, or brokers subjects the verification process to potential risks of human error, bias or dishonesty. To address these possible problems, an issuer could use a third party database to quickly and easily check the investor’s status either alone or in addition to using these other approaches to corroborate verification to further reduce errors.

4. Because verification can be achieved immediately through database check, there is no delay of communications with investors, review by verification sources, U.S. mail, etc. In an industry as large as the private placement industry, the ability to complete verification immediately, as opposed to waiting days or weeks, will allow investment to reach businesses sooner, driving U.S. economic gains.
5. The proposed method is also favorable because it is investor friendly. The proposed method does not require investors to share highly personal information that is not already publicly available, expend time and/or money in search of a professional to testify to their status, invest large sums of money they might not otherwise invest, or take other undesirable actions to support their self-certification. Because accredited investors are typically highly concerned with privacy and time, this method’s removal of additional costs, delay, or intrusive disclosures should facilitate and encourage investment, thus retaining the economic benefits of a general solicitation envisioned by the JOBS Act.
6. This verification method can be combined with other verification processes. For example, the issuer can check the third-party database and if the result is negative, still allow the investor to “prove” their status through alternative documentation.
7. By allowing this method, the SEC leaves the door open for these data mining services to further develop and improve their accuracy so that the errors can be further reduced through technology and experience in the future.

#### Conclusion

We believe that the proposed process for verification of accredited investor status meets the reasonable verification standard established by the JOBS Act. MBFS feels confident that this investor-friendly economic analysis approach will result in unbiased objectivity, a reduction in fraud, improved accuracy, greater efficiency and higher investor participation. MBFS respectfully requests that the Commission consider creating a safe harbor for issuers who use third-party databases that have been validated to a statistically appropriate level of false positives for accredited investor verification.

If you would like to discuss this process further, please feel free to contact Daniel Skidmore at [REDACTED] or [REDACTED]. We look forward to hearing from you.

Sincerely,



cc: The Honorable Mary Jo White, Chairman, Securities and Exchange Commission  
 The Honorable Luis A. Aguilar, Commissioner, Securities and Exchange Commission  
 The Honorable Daniel M. Gallagher, Commissioner, Securities and Exchange Commission  
 The Honorable Troy A. Paredes, Commissioner, Securities and Exchange Commission  
 The Honorable Elisse B. Walter, Commissioner, Securities and Exchange Commission