National Asian American Coalition

July 3, 2013

Chairman Mary Jo White
Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Troy Paredes
Commissioner Elisse Walter
Secretary Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Grave Concern by Asian American Community Relating to Lifting the Ban on Hedge Fund Advertising (File Number S7-07-12)

Dear Chairman White and Commissioners Aguilar, Gallagher, Paredes and Walter, and Secretary Murphy,

This filing by the National Asian American Coalition, which has a Washington, DC regulatory and congressional liaison office, seeks to raise grave concerns regarding modifications of Rule 506 and Rule 144A in the context of the Jumpstart Our Business Startups Act of 2012.

As the Pew Research Center study of June 2012, "Rise of Asian Americans," clearly demonstrates, our nation's 20 million Asian Americans are increasingly affluent with median family incomes exceeding that for whites. This (combined with the escalating financial interests of unprotected Asians, primarily from China and Singapore, seeking to invest in U.S.) could put at risk first- and second-generation new wealth that is for the most part, still quite modest.

Our organization's concern on behalf of 20 million Asian Americans is that a rule that fails to protect investors from the harms of inaccurate promotional advertising has not been subject to any comprehensive studies or public hearings, much less studies of its impact on our nation's 20 million Asian Americans and potential unsophisticated foreign investors from Asia.

Specific Concerns

The vast majority of Asian Americans who could be subject to a barrage of advertising and promotion of hedge funds will be those that are not considered by any reasonable definition to be wealthy and/or could bear significant losses. The vast majority will be professionals, those with incomes between $200,000 and $350,000, and those whose wealth will generally be well under $3 million, not including the value of their home.

1701 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006
Telephone (202) 450 9855 | Fax (202) 204 5843 | www.naacoalition.org

If there is to be any modifications on the ban of hedge fund advertising, there should be further hearings on raising the limits for hedge fund investments. Perhaps the number should be $3 million and above and with incomes of $350,000 and above. This is especially important because there is no evidence over the last few years that hedge funds are safer or more profitable investments relative to a blend of off the shelf bond and equity products. These products have readily outperformed the average hedge fund in recent years.

Remedies

The concerns expressed on behalf of Asian American investors could as readily be expressed on behalf of new immigrants and new members of the so-called “nouveau riche,” whose limited earnings and investments fail to ensure that they can withstand sizeable hedge fund losses. (We are presently examining Europe’s pending proposal that is far stricter than the SEC’s proposal, but has lots of loopholes.)

If hedge funds are to be allowed to advertise, we would urge that it not occur until investment funds are subject to the same type of regulatory scrutiny imposed, for example, on the banking and insurance industries.

Similarly, we would urge that before advertising be allowed, clear rules should be developed as to:

- Comprehensive verifying of investors’ income and assets;

- Requiring that in prominent language, the hedge fund compare the hedge fund industry’s net returns to investors over the last year and the last three years as compared to that for what the SEC determines each year to be the net returns for off the shelf bond and equity products; and

- Prominent information on liquidity (since most funds have lockup periods) and a comparison with the liquidity, for example, of mutual funds.

Next Steps

Given the lack of emergency of perhaps a so-called unwritten political bargain, the SEC should make no modifications relating to the right to advertise until:

- Since the hedge fund industry is far less responsive to the needs of the public than, for example, the banking industry (in part influenced by the Community Reinvestment Act), changes in advertising should not be made until the 50 largest hedge funds or those with $1.5 billion or more in assets submit to the SEC major financial education programs aimed at potential new investors, such as the Asian American community and Asians from abroad seeking to invest in the U.S.

National Asian American Coalition

- The SEC should hold public hearings in at least eight regions of the nation, including California (home to six million Asian Americans) and New York and Texas (two states with very large Asian American populations).

- During the course of the public hearings, we would urge that the SEC interview and secure informed input from at least 50 Asian American nonprofit organizations that advocate for the pan-Asian American communities, including all major Asian American groups that have a significant regulatory presence in Washington, DC.

Conclusion

The National Asian American Coalition has been in the forefront in objecting to a broad range of regulatory rulemaking that has little or no effective public input and tends to be dominated by powerful financial interests.[1]

Respectfully submitted,

Faith Bautista
President and CEO

Mia Martinez
Chief Deputy

Robert Gnaizda
Of Counsel

[1] The National Asian American Coalition is best known as a leader in urging regulatory reform of the banking industry with an emphasis on protecting underserved communities and urging that the government itself be leaders in financial education, literacy and promoting such from the industry it regulates. The National Asian American Coalition has five offices in California, including a Bay Area headquarters. For further information, please see the organization's broad range of regulatory filings before the SEC, FTC, FDA and Department of Justice. Also see our recent newsletters available at http://naacoalition.org/dev/newsletter-spring-edition/ and http://naacoalition.org/dev/spring-newsletter-update-april-2013/.

1701 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006
Telephone (202) 450 9855 | Fax (202) 204 5843 | www.naacoalition.org