Lee D. Neumann

Member of the New York and Paris Bars

September 6, 2012

Via E-mail

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

Re: File S7-07-12: Request for Public Comments on SEC Proposed Rules regarding Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings

Dear Ms. Murphy:

Thank you for this opportunity to comment on the proposed rules published by the SEC on August 29, 2012, in connection with Title II: Access to Capital for Job Creators under the JOBS Act.

As further set forth below, I believe that both investors and issuers would benefit by an objective standard in Rule 506(c) as to what measures constitute reasonable steps to verify that the purchasers of the offered securities are accredited investors.

1. Background

Section 201(a)(1) of the JOBS Act directs the SEC to amend Rule 506 of Regulation D under the Securities Act to permit general solicitation or general advertising in offerings made under Rule 506, provided that all purchasers of the securities are accredited investors. Section 201(a)(1) also states that "[s]uch 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."

In its proposed amendment of Rule 506 issued on August 29, 2012, the SEC requires issuers to take reasonable steps to verify that the purchasers are accredited investors, but does not specify the methods that an issuer should use. In the release accompanying the proposed rules, the SEC explains that such approach "would provide issuers with flexibility to use methods that are appropriate, given the facts and circumstances of each offering and each purchaser", and avoids "requiring them to follow uniform verification methods that may be ill-suited or unnecessary to a particular offering or purchaser, given the facts and circumstances."

Providing issuers the flexibility to determine on their own what constitutes reasonable steps is often desirable. However, in the context of the new regulatory context for private placements under the JOBS Act, the lack of a minimum objective standard in proposed Rule 506(c) as to what constitutes reasonable verification measures creates significant risks for both investors and issuers, as described below.

Tél : +33.1.30.71.69.74 Mobile : +33.6.20.26.38.76 Fax : +33.9.72.33.78.40

E-mail : lee.neumann@uslaw.fr 12, av Paul Doumer, 78400 Chatou, France

2. Risks to Investors

The absence of a clear standard in the proposed rule as to the methods for ensuring that only accredited investors purchase the offered securities creates several important risks for investors.

(a) the measures adopted by issuers may not be effective

As stated in the release accompanying the proposed rules, the purpose of the verification measures is to "reduce the risk that the use of general solicitation under Rule 506 may result in sales to investors who are not, in fact, accredited investors." By leaving the determination of verification methods up to each issuer, the proposed rules do not establish a minimum objective level of assurance, thereby increasing the risk that the measures adopted, and which could evolve into generalized practice, are inadequate to screen out persons who are not accredited investors. The investor protection sought by the JOBS Act, and acknowledged by the SEC, may thus not be provided. As a result, there would be a greater chance that persons who lack the qualifications necessary to be considered accredited investors may nonetheless participate in the private placements and thereby become exposed to inappropriate levels of investment risk.

(b) the process for confirming accredited investor status may become confusing and inefficient and result in inappropriate exclusions

The lack of a clear standard as to appropriate verification methods is likely to lead to different issuers adopting a broad variety of measures. Investors may thus face requests for information which are unpredictable, inconsistent, and perhaps inappropriate. In light of the numerous categories of accredited investors, issuer requests for information regarding investors' status may be incomplete. Furthermore, in the absence of a clear regulatory standard, some investors may question the appropriateness of measures adopted by certain issuers and propose alternative information, which could slow and complicate investor verification. As a result, the process for confirming accredited investor status may become confusing and inefficient, and bona fide accredited investors may be excluded from some offerings.

(c) all investors face an increased risk of loss if methods used are found not to be reasonable

Following successful private placements under proposed Rule 506(c), if the methods adopted by certain issuers to ensure that only accredited investors purchase the offered securities are subsequently judged *not* to be reasonable, such issuers may be exposed to substantial financial damages. As a result, all investors participating in the private placements, whether accredited or non-accredited, may experience a greatly increased risk of loss in the value of their investments.

3. Risks to issuers: the lack of regulatory guidance creates uncertainty which increases costs and risks

It should be kept in mind that the principal businesses intended to benefit from the JOBS Act are small and medium size companies. Such companies generally have limited budgets for raising capital. The more the new rules require such issuers to make potentially complex legal judgments which must take into account a broad mix of facts and circumstances, the more such rules will increase both such issuers' legal expenses and the potential for misjudgement and financial harm. Uncertainty in the standards also increases the risk of failed capital raising operations: Issuers adopting overly conservative methods might discourage some investors from participating, while those adopting methods which may subsequently be judged too "light" may face substantial financial damages.

As emphasized on numerous occasions, the purpose of the JOBS Act is to facilitate capital raising, which in part involves reducing legal risk. To the extent possible, therefore, the new rules should make the offering roadmap as simple and straight-forward as possible, rather than require issuers to

navigate uncertainties which could be avoided through clear regulations. From this perspective, the lack of a clear regulatory standard creates a level of legal uncertainty which largely outweighs the advantages of flexibility.

4. Reasonable measures to ensure that only accredited investors purchase the offered securities

The definition of "accredited investor" in Rule 501(a) includes eight specific categories, each of which sets forth clear factual criteria for meeting the definition. It should be sufficient, for the purposes of investor protection sought by the JOBS Act and SEC regulations, that issuers obtain from investors wishing to purchase the offered securities reliable documentation which establishes that the factual conditions exist for them to be considered accredited investors according to at least one of the categories. As recognized in the release accompanying the proposed rules, however, for some accredited investors (in particular, natural persons) the desire for personal privacy may be inconsistent with furnishing the necessary information to an issuer. For that reason, it is both important and necessary for the SEC rules to provide that, in appropriate circumstances, issuers may rely on confirmations by qualified third parties that the factual circumstances exist for the investor to be considered an accredited investor.

Based on the principles above, I would propose that the new rules confirm that the following measures would be "reasonable" for purposes of issuer confirmation that an investor qualifies as an accredited investor:

> Issuers should require each investor seeking to purchase the offered securities to provide two documents, an "Investor Statement" and a "Supporting Document":
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> (i) Investor Statement: a statement by the investor in which it confirms that it is an accredited investor as defined under Rule 501(a) and indicaties the specific category of accredited investor to which it belongs; and
>
> (ii) Supporting Document: a document provided by the investor which is either (1) a copy of a document which has been filed with a federal or state regulatory authority and which sets forth clearly the factual information needed to support the Investor Statement, or (2) in the case of investors claiming accredited investor status under Rule 501(a)(5) (natural persons), or of other investors for whom no such publicly filed document exists, a statement from a qualified third party that, taking into account its knowledge of the investor and relevant documentary evidence furnished to the third party by the investor, it reasonably believes that the investor meets the factual criteria needed to support the Investor Statement.
>
> The qualified third party may be a lawyer, banker, accountant or registered broker-dealer (ie, a member of a regulated profession with skills appropriate for assessing the information which would support the Investor Statement) who has known the investor for a minimum of 12 months[1], or a qualified provider of services, as discussed in the release accompanying the proposed rules. The issuer should be required to maintain the Investor Statement and Supporting Document and, if applicable, the third party should be required to maintain the documentary evidence furnished by the investor in support of the Investor Statement, for a minimum period of time.

In order to maintain issuer flexibility in the event an issuer prefers to adopt alternative methods, the regulatory standard proposed above could be deemed a non-exclusive safe harbor.

[1] The minimum period of acquaintance with the investor is proposed as a means of helping ensure the quality and reliability of the supporting document provided by a third party.

5. Other changes: Adaptation of Rule 135c to ensure that only accredited investors purchase the offered securities

Under current regulations, public announcements of unregistered offerings are not permitted, except in accordance with certain conditions, such as those set forth under Rule 135c under the Securities Act. Public communications regarding unregistered offerings will henceforth be permitted in connection with private placements made under the new Rule 506(c), but such communications will not need to comply with the conditions of Rule 135c.

I would like to recommend to the Staff consideration of the benefits, in terms of investor protection, of retaining the requirement set forth in Rule 135c(a)(2), namely that all public communications regarding unregistered offerings include a statement identifying them as unregistered with the SEC and, in the case of private placements made under Rule 506(c), stating that such offerings are open only to persons who provide the issuer with satisfactory confirmation of their status as accredited investors. Requiring such disclosure in all public communications regarding Rule 506(c) private placements may help ensure that only accredited investors purchase the offered securities.

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Thank you for your consideration of the above comments. If you have any questions, I would be pleased to respond.

Sincerely,

Lee D. Neumann