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Via Electronic Submission
U.S. Securities and Exchange Commission
100 F. St., NE
Washington D.C. 20549-1090

Re: Comment To Proposed Amendment to Rule 506
(Release No. 33-9354; SEC File Number S7-07-12)

I. Clarification Is Needed To Ensure That Securities in Rule 506 Offerings Pursuant to New Section 4(b) Are "Covered Securities".

SEC Release No. 33-9354 states at Section VII.C., that "issuers...could prefer to rely on the exemption under proposed Rule 506(c) because they would be able to raise unlimited amounts of capital under proposed Rule 506(c) *and state blue sky securities registration requirements would not apply to these offerings*." (emphasis added).

The basis upon which blue sky registration requirements would not apply to the proposed Rule 506(c) offerings appears to derive from the exemption for "covered securities" specified in the newly designated Section 18(b)(4)(E)[1] of the Securities Act of 1933 (the "1933 Act") (as enacted pursuant to the National Securities Market Improvement Act (1997)("NSMIA")). The blue sky exemption in Section 18(b)(4)(E) as currently worded, however, only applies to securities in offerings exempt from registration pursuant to "Commission rules or regulations issued under section 4*(2)*,...." [2] This is problematic given that no statute is currently designated

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[1] Section "18(b)(4)(E)" was previously designated as Section "18(b)(4)*(D)*" and was re-designated "Section 18(b)(4)*(E)*" by the JOBS Act, and probably should again be re-designated as a new Section "18(b)(4)*(F)*" given that the JOBS Act enacted two separate new subsections both designated as 18(b)(4)(D) (*See*, Sections 305(a) and 401(b) of the JOBS Act).

[2] In its *"Report on the Uniformity of State Regulatory Requirements for Offerings of Securities That Are Not Covered Securities Pursuant to Section 102(b) of the National Securities Markets Improvement Act of 1996"* ("NSMIA"), dated October 11, 1997, (http://www.sec.gov/news/studies/uniformy.htm) the Commission stated that "covered securities" include those that are sold in a transaction that is exempt from registration under

as Section "4*(2)*" in the 1933 Act due to the changes made to Section 4 by The JOBS (Jump Start Our Business Startups) Act (enacted April 5, 2012).

Former Section "4*(2)*" was re-designated as Section "4*(a)*(2)" (emphasis added), and a new Section "4(b)" was created.[3] In what must not have been intended by Congress, the re-designation of Section "4(2)" as Section "4(a)(2)" creates ambiguity as to whether Section 18(b)(4)(E) provides any blue sky exemption whatsoever since such statute now only applies to former Section "4(2)", and there is no express statutory language for any blue sky exemption for securities issued in a transaction pursuant to Section "4(a)(2)" (including current Rule 506 and proposed Rule 506(b) offerings) or for securities issued in transactions pursuant to Section "4(b)" (i.e. proposed Rule 506(c) general solicitation offerings).

Given new Section 4(b) and the re-designated Section "4*(a)*(2)" and Section "18(b)(4)(*E*)", along with the instant Commission Release No. 33-9354, the spirit and intent of The JOBS Act legislation is clearly: (i) to permit general advertising and general solicitation in a Rule 506 - accredited investor only - offering, and (ii) to *exempt such offering from state blue sky registration or review*. Ensuring the applicability of the state blue sky exemption, and therefore an efficient single level of federal regulation for all Rule 506 offerings, and proposed Rule 506(c) offerings in particular, will no doubt create an expedited means to link job creating businesses/issuers with the fragmented accredited investor marketplace. The result will be economic growth through capital formation, and sorely needed increases in federal and state income tax revenues through greater employment and a broader income tax base.

As such, to maintain the status quo for proposed Rule 506(b) transactions, and to make proposed Rule 506(c) viable for its intended purposes, and to eliminate the obviously inadvertent ambiguity and confusion which now exists under the Section 18(b)(4)(E) blue sky exemption, the Commission must cause a conforming amendment to be made in Section 18(b)(4)(E) by substituting the words ***"either Section 4(a)(2) or Section 4(b)"*** in place of "Section 4(2)". In addition, the proposed amendments to Rule 506 should unequivocally define securities issued in all Rule 506 transactions (including Rule 506(c) transactions) as "covered securities" pursuant to Section 18(b)(4)(E).

Commission rules or regulations issued under Securities Act Section 4(2) which include Rule 506 offerings. The Commission further stated that offerings of securities that are not "covered securities" and which remain subject to state registration and review include, among others: "securities issued in private placements under Section 4(2) of the Securities Act that do *not* meet the requirements of Rule 506 under Regulation D", and securities issued in Rule 504 and 505 offerings under Regulation D. (emphasis added).

[3] Section 201(b) of The JOBS Act.

II. Licensing A Rule 506(c) General Solicitation Issuer Is A Simple Deterrent Against Abuse and Added Protection For the Accredited Investor.

Congress has mandated that non-accredited investors be precluded from Rule 506 offerings made by general solicitation for the obvious reason of lack of affordability of the loss of their investment arising from any cause including the risks associated with a dishonest issuer. Common also to the accredited investor, and of paramount concern, is the risk of the loss of investment due to a dishonest issuer.

The regulatory framework should therefore seek to answer the concern of the commentators and seek a minimally invasive method to protect accredited investors and those who may claim to be accredited investors, by deterring and otherwise preventing dishonest issuers (who may seek to "overlook" the facts supporting the determination of accredited investor status, among other illicit activities), from utilizing general solicitation under Regulation D.[4]

A simple solution may be a Rule 506(c) " license" mechanism in the form of a *pre*-offering Form D filing. This simple pre-offering filing would generate license numbers for only those issuers whose controlling persons had no prior "bad boy" record. Such license number would then be required to be disclosed in the issuer's general solicitation advertisements and communications. This process would enable the SEC to know in advance those persons who will be conducting general solicitation offerings, and moreover, would unquestionably serve as a deterrent for those with dishonest intent (and who likely would not otherwise file a *post*-sale Form D).

This registration license database could also be made available to the state securities commissions to assist in their policing and enforcement activities.

The cost of administration of the license registration process could be paid with a nominal license application fee (e.g. $100) paid by each issuer, and should be set up so that the vetting of issuers be automated through a computer database. According to Section IX.B. of Release No. 33-9354, there were 16,692 Rule 506 Form D filers in 2011.

While there is no bulletproof method to avoid abuse by the few who choose to be dishonest, licensing will no doubt provide a substantial added measure of investor protection.

The above comments are respectfully submitted for your consideration.

Very truly yours,

/s/ Eric I. Michelman

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[4] The monitoring activity of the licensed broker-dealer community in connection with private placements is being augmented by new FINRA Rule 5123.