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July 8, 2011

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

Re: File Number S7-21-11

Ladies and Gentlemen:

This letter is in response to the request for comments regarding the disqualification of felons and bad actors (the "Proposed Rules") proposed by the Securities and Exchange Commission (the "Commission") in Release No. 33-9211 (the "Release") to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The comments below correspond to the request for comment numbers set forth in the Release.

Please note that the comments contained herein express solely the views of Kutak Rock LLP and may not necessarily represent the views of any or all of our clients.

Section II. Discussion of the Proposed Amendments.

Q. (2) A. We believe that if an issuer or a compensated solicitor is otherwise subject to a disqualifying event but subsequently has undergone a change of control and change of management, the issuer or compensated solicitor, as the case may be, should not then be deemed a "covered person." It is not unusual for an entity to be sold and management changed and, under such circumstances, we do not believe that such entity should then be deemed a covered person. In this regard, it would appear that no "bad actors" would then be present and there would be no reason for them to be disqualified. See comment relating to Q. (12) for change of control suggestions.

Q. (2) B. It is not clear why the beneficial owners of 10% or more of *non-voting* securities of an issuer should be deemed a covered person. If any such person has no right to vote with respect to management or managements' decisions, we believe they should not be deemed a covered person unless such non-voting securities are convertible into 10% or more of the voting securities of the issuer. See also our comment under Q. (12) below with respect to the 10% threshold amount.

Q. (3) If it is appropriate to include the general partner of partnerships as a covered person with respect to an issuer or a compensated solicitor, we believe that it is appropriate also to include managing members of limited liability companies. In this regard, since limited liability companies can be manager managed as well as member managed, it is probably appropriate to also include managing managers as well as managing members in the covered person definitions.

Q. (5) We note that there is a reference to "finders" in connection with the discussion of compensated solicitors. We suggest that the definition of a "finder" be added to Rule 405 or to the Proposed Rules in order to ensure that issuers have more certainty with respect to what is contemplated by the covered person definition. In this regard, we understand at least four states have differently defined that term and we believe that issuers should be able to rely on one definition for purposes of the Proposed Rules.

Q. (7) We believe that the reference to "officers" should be changed to "executive officers," as suggested to make the Proposed Rules more workable, both with respect to issuers and compensated solicitors. We question, however, whether this can be done based on the requirement of Dodd-Frank to make the Proposed Rules substantially similar to Rule 262 unless a substantially similar finding is made by the Commission.

Q. (10) We believe the look-back periods should be aligned with Section 926 of Dodd-Frank for ease of administration.

Q. (12) See our response above under Q. (2) A. We believe that a change of control should occur if prior owners at the time of disqualification continue to hold less than 25% of the voting securities of the entity and they no longer possess the power, directly or indirectly, to direct or cause the direction of management and the policies of a person through the ownership of voting securities, by contract or otherwise. The 25% requirement should be aligned with the presumption of control set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended, or the "control" definition proposed in Release 34-64148 (Credit Risk Retention). In this regard, it would be helpful to practitioners to have more consistent definitions of "control" in the various securities laws.

Q. (54) We believe that it is appropriate and critical to include a reasonable care exception in the Proposed Rules. Without such an exception, the usefulness of Rule 506 to issuers would be extremely impaired.

Q. (55) If a reasonable care exception is not available in the Proposed Rules, such an exception will eventually be made through litigation that will take time and may be conflicting among jurisdictions. Additionally, the states may separately enact reasonable care exceptions that may be conflicting and confusing.

Q. (57) A. We believe that an exception should be made to the requirements of a factual inquiry regarding non-affiliates if the factual information with respect thereto cannot be obtained without unreasonable effort or expense. See Rule 409 under the Securities Act of 1933, as amended. In this regard, certain entities over which the issuer has no control, such as past promoters who are no longer associated with management or 10% holders who are not affiliates and who may be adverse to an issuer's management, may be unwilling or unable to provide information to comply with the Proposed Rules and, in such cases, the issuer would then have to rely on secondary sources which may be unreliable.

Q. (57) B. It would be helpful for issuers if the Proposed Rules specify more clearly or provide examples of the factual inquiries that may be undertaken by issuers to comply with the reasonable care requirement, especially with respect to persons over which the issuer has no control (e.g. non-affiliates).

Q. (58) Issuers generally have no way of ascertaining which individuals would be the "officers" (or even the "executive officers") of a compensated solicitor and even less ability to determine if all officers (or "executive officers") of a compensated solicitor, especially a large investment banking firm, may have violated one of the bad actor tests. It is often critical for an issuer to engage a registered broker dealer as a placement agent in order to conduct a private offering in compliance with the requirements of Rule 506. Imposing a condition on the availability of Rule 506 that requires an issuer to assure itself that no officer of a broker dealer retained as a placement agent is a bad actor will make it extremely difficult for issuers to rely on Rule 506. If an issuer desires to retain a registered broker dealer that may have a client base of investors for which an investment in the issuer's securities would be appropriate, and if the Proposed Rules are adopted in their present form, the issuer will be faced with the potential of having a faulty private placement exemption because it cannot determine for certain that no officer (or "executive officer") of the broker dealer it intends to retain is a bad actor. We believe the Proposed Rules should specifically grant a safe harbor to issuers allowing them to rely in good faith on questionnaires signed by an authorized agent of a compensated solicitor attesting to the fact that no disqualifying events exist with respect to such solicitor or any of its directors, officers, general partners, or managing members.

Q. (67) In many private placements that take place over an extended period of time, subscriptions may be received but may not be accepted until the happening of certain events, such as the receipt of a minimum amount of subscriptions. Thus, "sales" are not made until the subscriptions are accepted by the issuer when the contingency occurs, which may occur after the effective date of the Proposed Rules. It would appear that subscriptions not cancellable by the subscribers that are received prior to the effective date of the Proposed Rules and not accepted until after such date, should not be subject to disqualification. See also Q. (69) below.

Q. (69) A. If an exception for the situation described in Q. (67) is not made, at the very least we believe a phase-in period of not less than 90 days should be provided.

Q. (69) B. Because of the very short time frame between the due date for comments and the proposed effective date of July 21, 2011 for the Proposed Rules, and because of the extensive comment request in the Release, it is almost impossible for issuers to draft questionnaires sufficient to comply with the Proposed Rules as they are to be adopted. Thus, without a phase-in period, any questionnaires drafted prior to the effective date of the Proposed Rules will in all likelihood have to be revised in an extremely short period of time for continuous offerings to be able to comply with the Proposed Rules as adopted unless the on-going continuous offerings are halted while the questionnaires are being revised and to then have them re-signed by the issuers and other covered persons. Under these circumstances, and notwithstanding our response to Q. (69) A. above, we believe that an implementation period of 90 days is appropriate.

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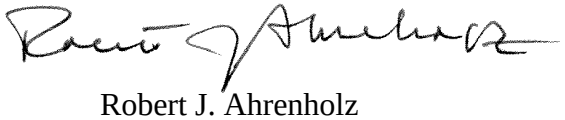
We would be glad to discuss any of our comments with the staff of the Commission.

Sincerely yours,



Robert J. Ahrenholz