



July 14, 2011

filed via e-mail to rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. S7-21-11; SEC Release No. 33-9211
Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings
Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Ladies and Gentlemen:

The Real Estate Investment Securities Association (“REISA”)¹ submits this letter in response to the request for comments regarding the Disqualification of Felons and Other “Bad Actors” From Rule 506 Offerings 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”).

Overview

We appreciate the opportunity to comment on the Release, and we limit our comments to the following key areas (each of which is expanded upon in the next section of this letter):

1. 10% Rule and Scope of Covered Persons – The Release proposes that any beneficial owner of 10% or more of any class of an issuer’s equity securities be a “covered person” whose actions could lead to the issuer not being able to use Rule 506 for an offering. We believe that the standard established should only be applicable to those persons who have the ability to exercise control over the issuer.

2. A Grandfather Provision is Needed for All Prior Orders and Convictions – The Release proposes that any issuer would be ineligible to use Rule 506 as a result of all disqualifying events that occurred within the look-back period, regardless of whether the events occurred before the

¹ REISA is a national trade association of more than 700 decision makers that influence over 20,000 real estate securities professionals (broker-dealers, registered representatives, RIAs, financial advisers, real estate sponsors, and affiliated businesses such as law, accounting and real estate brokerage firms) who offer and manage private placements, direct participation programs, and alternative investments. These typically include, but are not limited to: non-traded REITs, real estate partnerships, real estate income and development funds, tenant-in-common interests, oil and gas interests, equipment leasing, and other securitized real estate investments. We work to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, networking opportunities, and resources. REISA connects members directly to key industry experts through intimate forums providing timely trends and education; helping create a diversified portfolio for their clients.

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org



U.S. Securities and Exchange Commission
July 14, 2011
Page 2

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org

enactment of the Dodd-Frank Act. We believe that all orders and convictions prior to the date of implementation of final Rule 506(c) should be automatically excluded from being a disqualifying event.

3. Waiver of Disqualification – The Release proposes that issuers may seek waivers from disqualification from the Commission. We believe that waivers should be permitted to be determined by state or local securities authorities or the Commission, at the option of the issuer, and that the Commission should establish a dedicated office for submission and review of waiver requests.

4. The “False Filing” Disqualification Should Only be for Intentional, Material and Misleading Items – The Release proposes that making a “false filing” with the Commission will be a disqualifying event. Because the proposed language would include any incorrect information filed with the Commission, simple mistakes and unintentional misstatements would subject an issuer to a disqualifying event. We propose that the “false filing” must be made intentionally and must be material and misleading with respect to the issuance of a security.

5. Five Year Look Back for All Actions – The Release proposes a 10-year look-back for final orders of certain state and federal regulatory authorities and for criminal convictions of covered persons and a 5-year look-back for all other events. We believe that a 5-year look-back is appropriate for all cases, other than as specifically set forth in the Dodd-Frank Act.

6. Bad Acts Should be Directly Related to a Securities Offering – The Release proposes that the definition of disqualifying event include any felony or misdemeanor or any final order which arises out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment advisor or paid solicitor of purchasers of securities. We believe that this language is overbroad and would also include technical and administrative orders related to such persons which are not related to misleading investors. We believe that such orders should be limited to those related to the applicable person’s offering of securities to investors.

7. Definition of “Final Order” – The Release solicits comments regarding the definition of “final order” and whether it should mean an order that is not subject to further appeal. We believe that the definition of “final order” should mean an order for which all appeal timeframes have expired.

8. The Commission Should Decide Whether Conduct is “Fraudulent, Manipulative or Deceptive” – The Release solicits comment regarding whether the Commission should defer to the regulator that issued an order with respect to the determination of whether conduct is fraudulent, manipulative or deceptive. We believe that the Commission, rather than the regulator that issued an order, should make the determination as to what is fraudulent, manipulative or deceptive.



U.S. Securities and Exchange Commission
July 14, 2011
Page 3

Expansion of Comments

1. 10% Rule and Scope of Covered Persons – The Release proposes that the disqualification provisions of Rule 506(c) cover any beneficial owner of 10% or more of any class of an issuer’s equity securities. We believe that, rather than imposing a strict ownership test, “covered persons” should be limited to those individuals that have the ability to exercise control over the issuer with respect to operations and the offering of securities. Generally speaking, only those vested with decision-making authority are in a position to defraud investors. The proposed language is over-broad and could result in a passive investor in an issuer becoming a “covered person.” These individuals do not control any of the decisions of the issuer and are not in a position to defraud potential investors. Thus, they should not be a “covered person” which could cause an issuer to be disqualified under the new rule.

We propose that a “covered person” should only include the managers, general partners, executive officers, directors and other control individuals of an issuer. Limiting the definition of “covered person” to those who have the ability to exercise control over the issuer and/or its securities offerings, serves the goal of investor protection better than using an arbitrary ownership standard that bears no relationship to the control of the issuer.

2. A Grandfather Provision is Needed for All Prior Orders and Convictions – The Release proposes that all orders and other relevant events that occurred prior to the effective date of the new Rule 506 be disqualifying events if they occurred during the relevant look-back period. We believe that this application of the look-back period is an unfair ex post facto enforcement of prior activities. REISA believes that all orders and convictions prior to the date of implementation of final Rule 506(c) should be automatically excluded as disqualifying events. It is possible that the affected persons would have approached the relevant action very differently if they had known the entry of the order or conviction would bar future use of Rule 506. In many cases, the affected person may have accepted the order or other disciplinary action based on a cost-benefit analysis that was significantly different under the prior law. We believe that an appropriate method for dealing with prior orders would be disclosure of such prior events in the offering documents and that disqualification under the new Rule 506 should be limited to disqualifying events that occur after the effective date of the new Rule 506.

3. Waiver of Disqualification – The Release proposes that all waiver determinations be made by the Commission. We propose that waivers should be permitted to be determined either at the state agency (or other local administrative agency) level or at the federal level, at the option of the issuer. We believe the current rule has the potential to place undo administrative burdens on the Commission which could result in delays in processing the waiver requests. This could cause delays that could be avoided if additional agencies were involved in the waiver process. We also suggest that the Commission designate a specific office that would be responsible for processing all waiver requests which will help create certainty regarding the process and consistency regarding results. In addition, for the sake of consistency and fairness, we believe all waivers previously

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org



U.S. Securities and Exchange Commission
July 14, 2011
Page 4

granted for Regulation A, Regulation E and Rule 505 should be extended and made applicable to Rule 506.

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org

4. The “False Filing” Disqualification Should be Only for Intentional, Material and Misleading Items – The Release proposes that any “false filing” would be a disqualifying event. As a result, technical or immaterial misfilings would result in a disqualifying event even if such misfiling was not material, misleading to the investors or resulted in fraud. We propose that “false filings” be defined to be any intentional, material and misleading filing with the Commission. This would help avoid technical or unintentional misfilings from being a disqualifying event that would result in an issuer being unable to utilize Rule 506.

5. Five Year Look Back for All Actions – The Release proposes a 10-year look-back for final orders of certain state and federal regulators and for criminal convictions of covered persons and a 5-year look-back for all other events. We believe that, other than the 10-year look-back period specifically mandated by Dodd-Frank for certain regulatory orders and bars, a 5-year look-back should be applied to all actions, including court orders, injunctions, restraining orders and all other judicial and administrative decisions. We believe the relevance of bad acts diminishes over time, and that a 5-year period is sufficient to adequately protect investors. A non-uniform look-back period for these events (i.e., 5 years for some actions and 10 years for others) would likely result in confusion and potential difficulties in interpretation and enforcement. Note that our comment to this provision in no way impacts the disclosure requirements that may be applicable with respect to any criminal or other bad act that occurred outside the above timeframes.

6. Bad Acts Should be Directly Related to a Securities Offering – The Release proposes that any covered person who has engaged in a bad act “arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities” causes a disqualifying event. We believe this language is too vague and broad, and should be limited to bad acts directly related to the offer or sale of securities to investors. Acts that merely “arise out of the conduct of the business” of an applicable person could potentially include issues that have no relation to making false or misleading statements to investors and are not related to the purpose of the new rule – investor protection. We believe that protecting investors from covered persons who have been engaged in fraudulent or misleading activities is the goal of the new rules, not punishing persons for internal record-keeping violations of a broker-dealer that neither harmed nor directly impacted any investors.

7. Interim Characterization During Appellate Process – The Release solicits comments regarding how to define “final order” and whether an order should be considered final before or after all applicable appellate timeframes have expired. If an order that is under appeal were to be a disqualifying event, an issuer could be put in the position of not being able to rely on Rule 506 even though the order is ultimately vacated on the appeal. We believe that this would result in unjust and inequitable results. We propose that “final order” only include those orders where all applicable appeal timeframes have expired. During the interim, we believe issuers should only be subject to a disclosure requirement with respect to all orders still under the appeals process.



U.S. Securities and Exchange Commission
July 14, 2011
Page 5

Real Estate Investment
Securities Association (REISA)

Two Meridian Plaza
10401 North Meridian Street
Suite 202
Indianapolis, IN 46290

main: 317.663.4180
fax: 317.815.0871
toll-free: 866.353.8422

www.reisa.org

8. The Commission Should Decide Whether Conduct is “Fraudulent, Manipulative or Deceptive” – The Release solicits comment regarding whether the Commission should defer to the regulator that issued the order with respect to the determination of whether conduct is fraudulent, manipulative or deceptive. We believe that the Commission should be the final arbitrator of what is fraudulent, manipulative or deceptive. We believe this will provide more consistency in what types of bad acts warrant disqualification. Leaving the determination in the hands of local regulators will likely lead to a wide range of results and greater uncertainty in the industry.

Conclusion

REISA believes in the importance of protecting private placement investors while balancing the need for businesses and sponsors of quality real estate investment products to efficiently raise capital without an overly burdensome regulatory scheme. We believe that it is important to address the issues raised in this letter so that uncertainty in the small business capital formation sector is avoided. We believe that such uncertainty could ultimately harm investors who will not have a diverse marketplace for their investment dollars and who, if Rule 506 is not available to large numbers of issuers, will seek capital investment in other places, including through unregistered, unlicensed and potentially unscrupulous issuers and agents. REISA appreciates the opportunity to provide its perspective on the Release and looks forward to continuing dialogue with the Commission on how to effectively and responsibly enhance capital formation under Rule 506.

Sincerely,

Richard Chess, President