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July 14, 2011

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attention: Elizabeth M. Murphy, Secretary

Re: File No. S7-21-11  
Release No. 33-9211, Disqualification of Felons and Other “Bad Actors”  
from Rule 506 Offerings

Ladies and Gentlemen:

We welcome the opportunity to comment in response to the above-referenced release (the “Release”), in which the Securities and Exchange Commission (the “Commission”) has requested comments on proposed rule amendments to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. We have limited our comments to several questions set forth in the Proposing Release. The comments set forth in this letter reflect our views and not necessarily those of any of our clients.

22-23. It is appropriate to define the term “final order” for purposes of the disqualification rules. While the FINRA definition is helpful, we have one concern. Many states begin their enforcement activities by issuing a cease and desist order, without notice to the issuer or other covered person and without any opportunity for the covered person to respond or present its position on any issue. The typical order asserts possible wrongdoing by the covered person, then imposes an order that the person refrain from violating the securities laws of the particular jurisdiction in the future. We are concerned that many persons may have allowed such orders to become final because they did not believe they had violated or would violate securities laws in the particular jurisdiction, or because they elected not to expend resources to challenge the particular order. In making this decision, a covered person would not have considered the possibility that the presence of the order would result in a disqualification under any Commission rules. In these circumstances, it may not be appropriate to treat a summary cease and desist order, entered prior to the effective date of the amended rule, as a “final order” unless the summary order was answered by the covered person. As noted below, another way to address this issue would be by means of a transition rule, rather than a clarification to the definition of final order.

29-32. In our view, guidance regarding what constitutes “fraudulent, manipulative or deceptive conduct” would be extraordinarily helpful to issuers given the various terms used by state regulators in their administrative orders and by states in their securities laws and

regulations. Whether conduct results in a disqualification should not be determined based on the laws and regulations of the various states. No state should be in a position to adopt legislation or rules, for example, that any violation of the state's securities law will result in a disqualification rendering Regulation D unavailable to an issuer. Nor should a state administrator be asked to express a view concerning whether a particular violation should result in a disqualification. We suggest the rule define such conduct with reference to section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as determined by the common law. We believe scienter should be an element of such violations, and that an order should not result in a disqualification absent a finding of fact that "fraudulent, manipulative or deceptive conduct" had occurred.

With respect to the latter comment, we are particularly concerned regarding when a final order will be deemed "based on a violation of any law or regulation that prohibits" such conduct. It is not uncommon for a state administrative order, particularly a summary cease and desist order, to allege violations of a state's registration requirements, then order an issuer or other covered person to refrain from violations of both registration and antifraud provisions of the state's securities laws. In other instances, the order would simply direct the person to comply in the future with the state's securities laws. It will be extremely difficult for issuers and other covered persons to determine when such an order is "based on a violation of any law or regulation that prohibits" fraudulent, manipulative or deceptive conduct. Absent findings of fact that its conduct was "fraudulent, manipulative or deceptive," and that it acted with scienter, a covered person should not be barred from reliance on Rule 506 of Regulation D.

63-65. The Commission should provide for grandfathering of certain pre-existing events that would otherwise result in disqualification. We submit the rule should exempt two limited categories of pre-existing events. First, as the Commission contemplated in request for comment 65, it would be appropriate to grandfather orders arising out of negotiated settlements agreed to prior to the effective date of the new rule. It is beyond question that many such orders would not have been entered had the affected parties known that a consequence of settlement would be a disqualification from all Rule 506 offerings.

Similarly, as noted above, we are concerned about state administrative orders that were entered without notice to an issuer or other covered person, which may have become final without any appearance by the covered person. If an issuer determined, prior to the effective date of the new rule, to allow a summary cease and desist order to stand, the issuer would not have contemplated the possibility that its decision would result in a disqualification.

In order to balance fairness to issuers and other covered persons with the need for investor protection and the Congressional intent that the disqualification rule apply to pre-existing events, we suggest that the availability of grandfathered protection from the disqualification rule be conditioned upon disclosure of the grandfathered order to investors in any Rule 506 offering conducted in which the covered person is involved. We do not believe that such a limited grandfathering provision would impair the effectiveness of the disqualification rule. Any negative impact of the grandfathering provision is ameliorated by requiring disclosure to investors of the grandfathered event.

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We wish to thank the Commission for providing us the opportunity to comment on the proposed rulemaking. Please feel free to contact the undersigned at 972.628.3631 with any questions about this letter.

Very truly yours,

A handwritten signature in black ink that reads "Lawrence B. Mandala". The signature is written in a cursive style with a large initial 'L'.

Lawrence B. Mandala

LBM:nc