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June 6, 2011

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 33-9211; File No. S7-21-11
Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings

Ladies and Gentlemen:

Set forth below are three general comments concerning the above proposal. Because I anticipate providing additional input through Committees of the Business Law Section of the American Bar Association concerning the details of the proposal and the Commission's many requests for comment, this letter is restricted to three broad comments which I believe to be particularly important to the final version of the Rule. These comments are mine alone and do not reflect any input from other members of the ABA or the Securities Laws Committee of the Washington State Bar Association, nor do they constitute the official position of this firm or any of its clients on the subject.

First, I commend the Commission's attempts to adopt a "bad actor" disqualification provision for Rule 506 because it would address directly a legitimate concern held for many years by federal and state securities regulators which they have attempted to address indirectly in a variety of ways, with only limited success. The SEC's direct approach, which would apply throughout the US, should obviate any future efforts by the Commission and various states to address these concerns indirectly and imprecisely through other means. Such other means would include, for example, through possible future burdensome regulation of private placement brokers or "finders." Indeed, a future private placement broker registration exemption might be conditioned upon exclusive use of Rule 506.

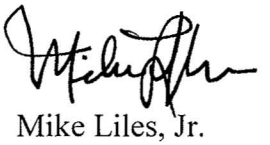
Second, the proposal has so much detail and requests comments on so many different nuances of that detail, that it risks creating a final version that is too complicated for ordinary small businesses to use with an acceptable degree of reliability. If the final version is too cumbersome, many small businesses may elect to use the private offering

exemption of Section 4(2) of the Securities Act of 1933 without reliance upon the safe harbor provided by Rule 506. Exploration of this subject is already underway. See, e.g., ***Law of Private Placements (Non-Public Offerings) Not Entitled to Benefits of Safe Harbors – A Report*** by the Committee on Federal Regulation of Securities, ABA Section of Business Law, 66 Bus. Law. 85 (November 2010). And the securities laws of certain states, including the State of Washington in which I practice, have a self-executing private offering exemption from registration that is not dependent upon the filing of a form with any regulator. See RCW 21.20. 320(1) [second clause]. It is my view that any trend towards the making of private offerings outside of Rule 506 would be unfortunate for a variety of reasons, including the difficulty of a regulator's or citizen's being able to know of the existence of a given private offering, as well as in estimating the magnitude of private offerings in the United States, without the issuer's having filed a Form D, which accompanies a private offering made in reliance upon the safe harbor of Rule 506.

Third, disqualification from the use of Rule 506 is a radical consequence of having committed one of the offenses to be listed in paragraph (c)(1) of the proposed new Rule, and it is entirely appropriate to specify with particularity the time periods in which these offenses would apply so that whether or not disqualification exists can be determined with reasonable certainty. However, the nature of some of these offenses is serious enough that, even if more than the specified 5 or 10 year time limit has passed, appropriate disclosure in the offering materials may still be warranted under Rule 10b-5 and other general anti-fraud provisions of federal and state securities laws, and I suggest that a clear note to this effect be included in the Instructions to the new Rule. Such a disclosure alert in a note is important because of the nature of the questionnaires that I would anticipate would be used in making the requisite factual inquiry under the Instruction to proposed Rule 506(c)(2)(ii) as to whether any disqualification exists. In this regard, typical D&O Questionnaires currently used by practitioners to elicit comparable information under Regulation S-K usually ask "within the last five years have you . . . ?" and such common format as to disqualifying events would not elicit information that would alert the draftspersons to the existence of relevant material disclosures that should be included (such as, for example, that the responding person served time in prison some 12 years previously for masterminding a Ponzi scheme that defrauded elderly investors out of millions of dollars).

I hope that the above comments will prove useful to the Staff and the Commission in developing the final version of the Rule.

Very truly yours,



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