

SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES

Washington, DC 20549-3628

September 20, 2013

The Honorable Mary Jo White
Chair
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chair White:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation to extend the comment period for the Commission's rule proposal to amend Regulation D, Form D, and Rule 156 under the Securities Act. This recommendation was unanimously approved by the members of the Advisory Committee present and voting at a meeting held on September 17, 2013.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request with respect to these recommendations.

Respectfully submitted on behalf of the Committee,



Stephen M. Graham
Committee Co-Chair



M. Christine Jacobs
Committee Co-Chair

Members of the Committee

David A. Bochnowski
John J. Borer, III
Dan Chace
Milton Chang
Joseph "Leroy" Dennis
Stephen M. Graham
Shannon L. Greene
M. Christine Jacobs
Kara B. Jenny*
Richard L. Leza
Paul Maeder *

Kathleen A. McGowan
Catherine V. Mott
Karyn Smith*
Charlie Sundling *
Timothy Walsh
Gregory C. Yadley

* Not present at the meeting held on September 17, 2013.

Official Observers

A. Heath Abshure
Pravina Raghavan

Enclosure

cc: Commissioner Luis Aguilar
Commissioner Daniel M. Gallagher
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Keith Higgins
Elizabeth Murphy
Mauri Osheroff
Ted Yu
Johanna V. Losert

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

**Recommendation on the Proposed Amendments to
Regulation D, Form D, and Rule 156 under the Securities Act**

September 20, 2013

AFTER CONSIDERING THAT:

1. Section 201(a)(1) of the JOBS Act directs the Commission to amend Rule 506 of Regulation D under the Securities Act of 1933 to permit general solicitation or general advertising in offerings made under Rule 506, provided that all purchasers of securities are accredited investors.
2. On July 10, 2013, the Commission adopted the final amendments to Rule 506 of Regulation D to implement Section 201(a) of the JOBS Act.
3. On the same date, the Commission also proposed additional amendments to Regulation D, Form D, and Securities Act Rule 156 that, if implemented, would significantly modify the filing and other requirements associated with Rule 506 offerings.
4. The proposed rules are intended to enhance the Commission's ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise in connection with permitting issuers to engage in general solicitation or general advertising under the amended Rule 506.
5. While the Committee recognizes the importance of increasing the amount of information available to the Commission to enable the Commission to evaluate market practices and address concerns related to Rule 506 offerings, the Committee is concerned that the proposed amendments, if adopted, could have a significant negative impact on the 506 market by discouraging some investors from participating in Rule 506 offerings, adversely affecting capital raising and job creation.
6. Among other things, the Committee believes that the following merit additional consideration: –
 - a. Whether the advance filing requirement for Form D for Rule 506(c) offerings should be eliminated;
 - b. If the advance filing requirement for Form D for Rule 506(c) offerings is not eliminated, then the due date for filing should be designed so as not to generate inadvertent violations of Regulation D;
 - c. Whether there should be a requirement for a closing Form D amendment for Rule 506 offerings;

- d. Whether the additional burden and cost of generating additional information is merited;
 - e. Whether the penalty for failing to file a Form D for a Rule 506 offering, and the resulting risk of being unable to raise capital under Rule 506 for one year after the required Form D filings are made, is appropriate; and
 - f. The implications of submitting written general solicitation materials used in Rule 506(c) offerings to the Commission.
7. Accordingly, the Committee believes that the time for commenting on the proposed amendments should be extended to allow for additional thought and comment in an effort to ensure that the final amendments do not have a chilling effect on investor participation in Rule 506 offerings.
8. The comment period for this rule proposal is scheduled to end on September 23, 2013.

THE COMMITTEE RECOMMENDS THAT:

The Commission extend the comment period for the Commission's rule proposal to amend Regulation D, Form D, and Rule 156 under the Securities Act (Release No. 33-9416) for an additional period of time, such as forty-five (45) days, to provide interested persons more time to analyze the issues and prepare their comments.