



THE CHAIR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 8, 2013

The Honorable Patrick T. McHenry
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHenry:

Thank you for your letter of July 22, 2013 concerning the implementation of Title II of the JOBS Act by the Securities and Exchange Commission.

As you know, the JOBS Act required a significant change in the Rule 506 marketplace by mandating that the Commission eliminate the ban on general solicitation in Rule 506 securities offerings. As I stated on July 10, 2013 at the Open Commission Meeting, I believe that the Commission had a responsibility to implement this Congressional mandate expeditiously. I also believe, however, that in connection with the implementation of this JOBS Act mandate, the Commission should closely monitor and collect data on the changes to the Rule 506 market to, among other things, assess whether non-accredited investors are participating in this market, observe the practices that issuers and market participants are using, evaluate whether the changes are creating new capital raising opportunities, and assess whether and to what extent the changes in the private offering market lead to additional fraud. The Commission's proposal to amend Regulation D, Form D, and Securities Act Rule 156,¹ which was approved on July 10th, is designed to provide the Commission with additional tools to assist in this effort. The Commission is very interested in reviewing the comments that it receives on the proposal.

Your letter sets out a series of questions about the Commission's proposal, including the Commission's evaluation of the costs and benefits of certain aspects of the proposal. You also asked that the Commission modify certain aspects of this proposal or withdraw it entirely.

As we are currently in the public comment period for the Commission's July 10th rule proposal, it would be premature to discuss the actions that the Commission may take with respect to the proposal generally or any specific aspect of it. As you know, the Administrative Procedure Act requires the Commission to give the public an opportunity to comment on a rule proposal for a period of time after it is published. We will give your views very careful

¹ *Amendments to Regulation D, Form D, and Rule 156*, Release No. 33-9416 (July 10, 2013).

consideration as part of this process. If a final rule is adopted, it will include a robust economic analysis, including consideration of the costs and benefits of the rule.² Because your letter addresses a rulemaking for which the Commission is soliciting public comment, your letter will be added to our official comment file.

You also expressed concern that the issuance of the July 10th rule proposal may have created uncertainty among some issuers and market participants as to whether the new Rule 506(c) exemption, which permits general solicitation, can be used once it becomes effective. The Commission approved the adoption of Rule 506(c) on July 10, 2013, and the rule will be effective on September 23, 2013. Once effective, issuers will be able to rely on the Rule 506(c) exemption for securities offerings as long as they comply with the conditions of that exemption. Issuers are not required to comply with any aspect of the Commission's July 10th rule proposal until such time as the Commission may approve a final rule and such rule becomes effective. Should the Commission ultimately decide to adopt final rules, I expect these rules would consider the need for transitional guidance for ongoing offerings that commenced before the effective date of any final rules, as it did when it adopted the Rule 506(c) exemption.³

In your letter, you also requested information about staff time and related expenses dedicated to the Commission's rule proposal. Please note that Commission staff do not track and record their time by specific project and, as a result, this information cannot be generated automatically from existing records. Nonetheless, the staff has gathered certain information in an effort to provide you with an estimate of the staff time spent on this project. To create the estimate, we asked staff who worked on the rule proposal to provide their best estimates of their time spent on it. These staff estimates were based on individuals' recollection of the approximate hours spent working on the rule proposal. Given that the rule proposal was part of a group of Rule 506-related rulemakings considered by the Commission on the same day,⁴ it was difficult for staff to isolate the time spent working on each of the rulemakings. While the staff attempted to be as comprehensive as possible, some of the estimates may be overstated or understated. In addition, the time recorded in connection with this response only includes the time spent on the specific proposal considered and approved by the Commission on July 10, 2013. It does not include time spent either before or after the adoption of the JOBS Act in connection with the consideration of matters relating to the regulatory approach to lifting the restriction on general solicitation. Finally, these estimates do not include time spent by the Commissioners and their staff reviewing and considering the proposal, and do not include time spent by Commission staff providing administrative support in connection with the proposal.

² See *Current Guidance on Economic Analysis in SEC Rulemakings* (Mar. 16, 2012), available at http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

³ The Commission provided transitional guidance in the Rule 506(c) adopting release for an ongoing offering under Rule 506 that commenced before the effective date of Rule 506(c). *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-9415 (July 10, 2013).

⁴ See *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings*, Release No. 33-9414 (July 10, 2013); *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-9415 (July 10, 2013).

Subject to the limitations and exclusions described above, the staff estimates that approximately 3,538 staff hours were spent on the proposal at an estimated labor cost of approximately \$315,574. The labor cost reflects salary, but does not include other components of the Commission's labor cost, such as healthcare and other benefits.

Please contact me at 202-551-2100, or have your staff contact Tim Henseler, Director of the Office of Legislative and Intergovernmental Affairs, at 202-551-2010, if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary Jo White".

Mary Jo White
Chair