



U.S. Securities and Exchange Commission

Statement at Open Meeting

by

Commissioner Luis A. Aguilar

U.S. Securities and Exchange Commission

Open Meeting
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Today the Commission votes on a proposal (the "Proposing Release") that contains a number of changes which would help protect investors and provide the Commission with information it needs to advance its regulatory, oversight, and enforcement functions.

More specifically, the Proposing Release would amend Regulation D to improve the content and timeliness of the Form D notice filing and to require legends and other disclosures in written materials disseminated in offerings utilizing general solicitation. The proposal would also amend Rule 156 to extend certain antifraud guidance to the sales literature of private funds, and would add new Rule 510T to require, on a temporary basis, the submission of written general solicitation materials to the Commission no later than the date of first use of such materials.

The Proposing Release follows the Commission's adoption of rule amendments to implement Section 201 of the JOBS Act by removing the prohibition on general solicitation in certain exempt offerings (the "General Solicitation Rule").¹

The Proposing Release is intended to address some of the concerns that many commenters have raised regarding general solicitation, including concerns regarding an increase in fraudulent activity, as well as to improve the Commission's ability to evaluate the development of market practices in Rule 506 offerings.

Although I support the Proposing Release, I would like to emphasize that this proposal is not a "quick fix" to the problems associated with the way the majority of the Commission has decided to implement general solicitation. Nor does this proposal rectify the Commission's failure to consider commenters' recommendations in connection with the original proposal of the General Solicitation Rule, or its failure to repropose that rule, so that such recommendations could be taken into account concurrently with the rule's adoption. As I have said before, I'm afraid that any protections resulting from today's proposal will come too late, if they come at all, for many investors.

It is ironic that the Proposing Release describes a work plan developed by the Commission staff to monitor, review, and analyze the use of Rule 506(c),

including monitoring the Rule 506(c) market for indications of fraud. While I appreciate any effort by the staff to better inform our rulemaking and enforcement efforts, I am struck by the fact that the need for such a work plan is simply further confirmation that the General Solicitation Rule adopted today fails to address the risks to investors arising from the faulty process followed in implementing Section 201 of the JOBS Act.

I hope that the Regulation D enhancements we propose today — as well as needed improvements to the definition of accredited investor — will be adopted promptly. Investors should not be at risk any longer than is necessary.

Before I conclude, I would like to thank the staff who worked on the Proposing Release. I appreciate your efforts.

¹ *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-[XXXX] (July 10, 2013). See, Luis A. Aguilar, “Facilitating General Solicitation at the Expense of Investors,” Statement at SEC Open Meeting (July 10, 2013). I also recognize the Commission action today to adopt rule amendments to implement Section 926 of the Dodd-Frank Act by disqualifying certain felons and “bad actors” from offerings under Rule 506, *Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings*, Release No. 33-[XXXX] (July 10, 2013). See, Luis A. Aguilar, “Limiting — But Not Eliminating — Bad Actors from Certain Offerings,” Statement at SEC Open Meeting (July 10, 2013).

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