



U.S. Securities and Exchange Commission

Statement at Open Meeting regarding Proposed Amendments to Regulation D, Form D and Rule 156 under the Securities Act

by

Commissioner Daniel M. Gallagher

U.S. Securities and Exchange Commission

Washington, D.C.
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Thank you, Chair White.

I cannot support today's proposal.

I believe that the proposal, presented under the guise of "investor protection," would thwart the purposes of the JOBS Act and threatens real harm to the private markets that are so essential to capital formation, particularly for small businesses.

Some aspects of the proposal might make sense and could result in the Commission gaining useful insights, but in the aggregate – and in particular given the nature and intent of certain questions posed – I believe the proposal would do more harm than good.

The JOBS Act passed in both the Senate & the House of Representatives with overwhelming bipartisan support. The President both encouraged enactment of the law in his 2012 State of the Union address and praised it in a bipartisan signing ceremony, saying that the law was a "potential game changer" for small businesses.

The JOBS Act was able to command such impressive bipartisan support because, as its preamble states, it was responsive to a real crisis – chronic unemployment. That crisis continues to this day. According to figures released last week, unemployment is still at an unacceptable 7.6 percent, and remains at still higher levels for young people and minorities. I'm glad, therefore, that the Commission is, albeit very belatedly, making progress in implementing the JOBS Act, and I hope we can give effect to the will of Congress and the President by completing our JOBS Act mandates soon.

Today's proposal, however, is particularly disappointing. As the proposal itself indicates, the Reg D markets far eclipse the size of the public equity markets. Indeed, nearly four times as much capital was raised through Reg D offerings as was raised through IPOs in 2012. Some would argue that this is the natural result of the incredible burdens that policymakers, interest groups, and litigation have inflicted upon the public markets over the years. But our response to that cannot be to further burden the private markets. Today's proposed rules would lead to smaller, more burdened private

markets, their frictions mirroring those of our public markets, which have for years now been too costly and burdensome for all but the largest companies. More needs to be done to encourage public offerings, but not at the expense of stifling the private markets.

Today we are finally implementing Section 201 of the JOBS Act, which, if Congress and the President are right, will facilitate capital formation. Unfortunately, however, the Commission is also using its discretion to pursue rules that would undermine this very bipartisan goal. It is not normal for the Commission to propose rules designed to mitigate perceived problems with Congressional mandates before those mandates have been effectuated. If it were, perhaps the extractive resources rulemaking that was promulgated by the Commission last year and vacated by the courts last week would have been accompanied by a package of rules facilitating capital formation. But, alas, in the face of statutory mandates we only think outside the box and use our expertise when it means adding regulation, no matter the cost. I find this dismaying and inconsistent with our mission.

Accordingly, I cannot support the proposal.

I do, however, want to encourage commenters to provide us with unvarnished feedback on all aspects of the proposal -- this is not the time to be polite.

I have no questions.

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