U.S. Securities and Exchange Commission

Statement at Open Meeting Regarding Final Rules Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings; a Final Rule Disqualifying Felons and Other "Bad Actors" from Rule 506 Offerings; and Proposed Rules Amending Regulation D, Form D, and Rule 156 Under the Securities Act

by

Commissioner Troy A. Paredes

U.S. Securities and Exchange Commission

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

I join my colleagues in thanking the staff – especially those in the Division of Corporation Finance – for all of your hard work and dedication.

We are considering three recommendations this morning. The first is to adopt rule amendments, the centerpiece of which is new Rule 506(c), lifting the ban on general solicitation and general advertising in certain securities offerings under Rule 506 of Regulation D as directed by Section 201(a) of the JOBS Act.[1] The second recommendation, which implements Section 926 of the Dodd-Frank Act, is to adopt rule amendments that safeguard investors by disqualifying felons and other "bad actors" from participating in Rule 506 offerings. The third recommendation is to propose rule amendments that would increase the regulatory requirements for Regulation D offerings in the name of improving the Commission's ability to evaluate changes in the private placement market and address practices that develop in Rule 506 offerings.

I support the recommendation to eliminate the prohibition against general solicitation, which incorporates a key investor protection mandated by the JOBS Act – namely, that only accredited investors can purchase securities offered pursuant to a general solicitation and that the issuer is obligated to take reasonable steps to verify each purchaser's accredited status. I also support the recommendation to exclude bad actors from Rule 506 offerings – another significant investor protection.[2]

What I am not able to support is today's proposing release, as to which I have serious concerns and respectfully dissent. Instead of getting into the proposal's particulars – about which commenters will undoubtedly have a great deal to say – I am going to highlight my overarching objection to what is being proposed. Simply put, the proposal provides for a regulatory regime that would unduly burden and restrict the capital formation process. More

to the point, the proposal, if adopted, would undermine the JOBS Act goal of spurring our economy and job creation.

When he signed the JOBS Act into law, President Obama captured why capital formation is so important. He said:

> One of the great things about America is that we are a nation of doers – not just talkers, but doers. We think big. We take risks. And we believe that anyone with a solid plan and a willingness to work hard can turn even the most improbable idea into a successful business. So ours is a legacy of Edisons and Graham Bells, Fords and Boeings, of Googles and of Twitters. This is a country that's always been on the cutting edge. And the reason is that America has always had the most daring entrepreneurs in the world.
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> . . . When [entrepreneurs'] ideas take root, we get inventions that can change the way we live. And when their businesses take off, more people become employed because, overall, new businesses account for almost every new job that's created in America.[3]

More is needed than an entrepreneur's ingenuity, hard work, and determination for small and emerging companies to thrive. To prosper, small business needs capital. A steadfast purpose of the federal securities laws is to facilitate capital formation so that businesses of all types and sizes can raise the capital they need to drive economic growth and so that investors can enjoy an array of investment opportunities.[4] When it comes to raising the funds needed to start up and take off, small business has relied heavily on the private securities market, especially Rule 506 offerings.

Regrettably, although certain features of the proposal may be sensible in allowing the Commission to better understand the marketplace, the totality of what the Commission is proposing would jeopardize the vitality of the private securities market. The proposing release – including all that the release's requests for comment and many questions contemplate – charts a course for subjecting private offerings to a range of new regulatory demands and restrictions. The regulatory expansion would lead to considerable new burdens that issuers would have to shoulder when using Regulation D and is, in my view, at odds with the '33 Act's longstanding regard for a vibrant private securities market that affords issuers and investors a meaningful alternative to the more costly public offering process.

It seems undeniable that the proposal, if it ultimately were adopted, would thwart private offerings as an efficient means of raising capital. This would be to our collective detriment. The harm is real when entrepreneurs cannot raise the capital it takes to build an aspiration into a business and when small businesses are forced to scale back or abandon their plans for growth because they do not have the funds to move forward. When it is too costly for an enterprise to get the capital it needs to hire employees, to develop a cutting-edge innovation, or to expand to a new location, not only is the entrepreneur disadvantaged but so are the company's stakeholders. Indeed, we all are worse off when companies are weighed down by regulatory burdens that suppress entrepreneurism, risk taking, and job creation.

Fortunately, the proposal before us is just that, a proposal. There is a distance to go from here to any final rule, and commenters' input will be valuable as the Commission hopefully strives to shape a final rule that is

workable and does not damage the private market. As my remarks suggest, I am keenly interested in hearing commenters' views on how the proposal could impact capital formation, especially for smaller issuers, and what that impact on capital formation could mean for issuers, investors, innovation, and jobs. It will be troubling, to say the least, if the Commission ends up responding to the JOBS Act by imposing a regulatory regime on the private securities market that actually detracts from economic growth and job creation in contravention of the legislation's purpose.

Thank you.

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1 The Commission is also amending Rule 144A to permit the offering of securities under the rule to persons other than qualified institutional buyers (QIBs), including through general solicitation or general advertising, provided that the seller and any person acting on the seller's behalf reasonably believe that the purchasers are QIBs.

2 Notably, the bad actor rule amendments, as adopted, will not apply retroactively to conduct that occurred before Dodd-Frank was enacted. I was unable to support the bad actor proposal because it provided for what I considered to be an impermissibly retroactive application of Dodd-Frank. *See* Troy A. Paredes, Commissioner, U.S. Securities & Exchange Commission, *Statement at Open Meeting to Propose Rules Regarding Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings* (May 25, 2011), *available at* http://sec.gov/news/speech/2011/spch052511tap-item1.htm.

3 Remarks by the President at JOBS Act Bill Signing (Apr. 5, 2012), *available at* http://www.whitehouse.gov/the-press-office/2012/04/05/remarks-president-jobs-act-bill-signing.

4 *See* Troy A. Paredes, Commissioner, U.S. Securities & Exchange Commission, *Remarks at "The SEC Speaks in 2011"* (Feb. 4, 2011), *available at* http://sec.gov/news/speech/2011/spch020411tap.htm (discussing how capital formation "advances core investors goals").

http://www.sec.gov/news/speech/2013/spch071013tap.htm

Home | Previous Page

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