



## U.S. Securities and Exchange Commission

### **Opening Remarks Regarding the Adoption of Rules Eliminating the Prohibition Against General Solicitation, the Adoption of Rules Regarding Disqualification of "Bad Actors" from Rule 506 Offerings and the Proposal of Amendments to Regulation D, Form D and Rule 156**

*by*

**Commissioner Elisse B. Walter**

*U.S. Securities and Exchange Commission*

Washington, D.C.

July 10, 2013

I too would like to thank the staff who worked tirelessly on these releases. Thanks especially to the staff of the Division of Corporation Finance for your thoughtful consideration of our comments and questions.

I would also like to take this opportunity to welcome Keith Higgins to his first Open Meeting since joining the staff as Director of the Division of Corporation Finance. We're happy to have you on board.

At the same time we're welcoming Keith, I understand that this will be Gerry LaPorte's last open meeting with us before he retires. Like me, Gerry has a couple of tours of duty at the SEC under his belt. First, Gerry served as a special counsel in the Office of the General Counsel and as Counsel to Commissioner Joseph Grundfest. And then after several years in private practice we were able to entice him to return to serve as the Chief of the Office of Small Business Policy, a position he has held since 2002. I'd like to thank you for your dedicated public service at the SEC and wish you well as you enter retirement. You leave big shoes to fill.

The releases we are considering today bring significant changes to private offerings conducted pursuant to Rule 506. Removing the ban on general solicitation will fundamentally change the way issuers raise capital in the private marketplace. I believe this will enhance the ability of issuers to raise capital efficiently. However, I also believe that the rules under consideration today provide an opportunity for us to demonstrate how our dual mandate to both foster capital formation and protect investors do not need to be in tension. As I have said before, I agree with both sides of the debate that has raged about the issues before us today. I believe that the actions recommended today will satisfy both sides of the equation; these three releases together represent how regulations can evolve without sacrificing investor protection.

While I'm pleased to support all three releases, I would like to make it clear that I view them as a package. As I've stated in the past, I support the removal of the ban on general solicitation. The world looks very different

than it did in 1982 when Regulation D was adopted, and technology has rapidly and permanently altered the ways in which we communicate with each other. Congress recognized that and directed us to update Regulation D by removing the ban on general solicitation for offerings to accredited investors.

But even though Congress mandated this rule change, that in no way absolves us of our duty to consider all of the consequences such a big change will have on issuers, on markets, and most importantly, on investors. In fact, it makes increased vigilance by the Commission even more important. One way we are doing that today is by adopting rules mandated by Section 926 of the Dodd Frank Act to prohibit felons and other bad actors from relying on the safe harbor provided by Rule 506. Although both of the rules we are adopting today were required by Congress in separate statutes, I believe it is important that the bad actor provisions will be in place when the ban on general solicitation is lifted. I am hopeful that the added investor protection from the bad actor provisions will reduce some of the risk of lifting the ban on general solicitation.

These releases also increase the expectations on market participants. Issuers will need to be diligent that their offerings do not include bad actors and are made only to accredited investors. Investors will need to be diligent in ensuring that the investments they make are appropriate for their circumstances.

Lifting the ban on general solicitation may have unintended consequences. And I believe we have an obligation to monitor the consequences of lifting the ban and to make a determination as to whether further action is appropriate. In order to make that determination we need to have more complete and more accurate information about the Rule 506 market. That's information that we don't currently have, which is why I believe both the proposing release—including additional information requirements for Form D and a mandate to file soliciting material—as well as the work plan the staff will follow to analyze general solicitation offerings, are so critical. We cannot determine whether lifting the ban on general solicitation increases the incidence of fraud in the market or increases the number of sales to non-accredited investors if we do not have complete and accurate data. As I have said in the past, I favor the retrospective review of rules generally, and believe that the Commission should undertake such a review of many of its rules in the normal course – but for the rule we adopt today a thorough review of its effects is particularly important. Having better information about Rule 506 offerings will allow us to implement any appropriate changes and to effectively target our enforcement efforts, which will, I believe, promote confidence in the marketplace for private offerings.

The proposing release also includes additional investor protections, including rules requiring issuers to disclose additional information in Form D, rules disqualifying an issuer who fails to comply with the Form D filing requirements for a period of one year, rules requiring issuers to include legends on written general solicitation materials, and rules applying antifraud guidance to private funds. Given the changes we are making today to Rule 506 offerings, I believe these investor protections are quite important, and the Commission needs to move forward with these proposals.

It is imperative that investors have confidence that the private offering marketplace has not turned into the Wild West. And it is important that investors know and understand that we are monitoring the marketplace and stand ready to implement any further appropriate protections. If investors

lose confidence, then the market cannot succeed.

I urge commenters to respond to the questions raised by the proposing release to ensure that any final rule is the result of informed decision-making from all market participants. And, I urge the Commission to take final action as soon as practicable on the investor protections proposed today.

Thank you, and I have no questions.

*<http://www.sec.gov/news/speech/2013/spch071013ebw.htm>*

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