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May 3, 2012

VIA ELECTRONIC SUBMISSION

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Pre-Rulemaking comments on Jumpstart Our Business Startups (JOBS) Act

Dear Ms. Murphy:

BlackRock is pleased to provide pre-rulemaking comments on the recently enacted Jumpstart Our Business Startups (JOBS) Act. In particular, we will comment on the requirement under Title II of the JOBS Act that the Securities and Exchange Commission (the "Commission") revise Rule 506 under Regulation D<sup>1</sup> to provide that the prohibition against general solicitation or general advertising not apply to offers and sales of securities made pursuant to Rule 506, provided that all purchasers of the securities are accredited investors. BlackRock understands that the Commission has a limited period of time in which to propose and finalize this revision. Our primary concern is the cost and potentially disruptive unintended consequences of rules that would make private offerings more complicated. We would discourage the Commission from making any changes in the name of investor protection that would undermine the intent of Congress.

BlackRock is one of the world's largest asset management firms. We manage \$3.7 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, mutual funds, exchange-traded and private funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world. BlackRock manages over \$110 billion of alternative assets globally, including through offerings of private funds such as hedge funds, private equity funds and funds of funds. BlackRock distributes its private funds through affiliated and third-party broker-dealers and other intermediaries.

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<sup>1</sup> 17 CFR § 230.506.

Customarily, offerings of private funds rely on Section 4(2) and Regulation D thereunder, which provides a safe harbor exclusion from registration.<sup>2</sup> Most private funds offered in the United States rely on Rule 506, which currently allows for an unlimited number of offers and sales to accredited investors provided that:

neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and (2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.<sup>3</sup>

BlackRock supports the removal of the prohibition on “general solicitation” and “general advertising” under Regulation D provided for in the JOBS Act, as we believe that this prohibition has unnecessarily limited the methods by which issuers can reach sophisticated investors. We believe private funds such as hedge funds and private equity funds can be important sources of diversification in an investor’s portfolio, and therefore should be readily accessible to investors who are eligible to invest.<sup>4</sup> Investors are better served by having access to more information about private funds, not less.

BlackRock does not believe that an additional regulatory framework for private fund advertising is necessary for the protection of investors. Investor protection concerns are adequately addressed by existing regulatory requirements. For example, Title II of the JOBS Act requires all investors in any private offering under the expanded marketing capability be accredited investors. Due to the changes to the Advisers Act made by the Dodd Frank Act, the vast majority of advisers of private funds are now required to be registered investment advisers and are accordingly subject to periodic inspection by the staff. Advertising materials are and will continue to be subject to review during the ordinary course of SEC examinations and, since most private funds are offered through brokers, FINRA examination as well. Private funds managed by any adviser, whether registered or not, are fully subject to the antifraud rules of the 1933 and 1934 Acts and advisers, whether registered or not, to such private funds are subject to the non-scienter based antifraud rule set forth in Advisers Act Rule 206(4)-8. Finally, brokers selling private funds are fully subject to the FINRA Conduct Rules with respect to sales of private funds. Accordingly, BlackRock believes that additional advertising and antifraud rules are not required.

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<sup>2</sup> Private funds typically rely on exclusions from the definition of “investment company” under Section 3(c)(1) and 3(c)(7) under the Investment Company Act of 1940, which require that the fund not make or propose to make a “public offering of its securities.” The Commission’s staff has interpreted this phrase to require that a fund seeking to rely on either of these exclusions for an offering to U.S. investors must have a valid private placement under the Securities Act of 1933. Further, Section 201(b) of the JOBS Act specifies that offers and sales exempt under Rule 506 shall not be deemed public offerings under the federal securities laws, which would include the Investment Company Act of 1940.

<sup>3</sup> 17 CFR §230.502(c).

<sup>4</sup> In that connection, we applaud Congress’s decision to join other developed countries’ securities regimes in this regard. For example, the United Kingdom permits public promotions targeted at investment professionals without any registration or review process.

Due to recent revisions, the standard for "accredited investor" status is very high. Further, funds managed by registered advisers can only pay capital gains or total returns based performance compensation if all of the investors are qualified clients, which requires that the investor have at least \$1 million of assets under management with the adviser, or a net worth of at least \$2 million, a higher standard than "accredited investor."<sup>5</sup> Furthermore, many private funds rely on the exclusion from investment company status under the Investment Company Act set forth in Section 3(c)(7), which requires that all investors are "qualified purchasers," which in most cases requires ownership of at least \$5 million of financial investments. We believe these thresholds, together with applicable anti-fraud requirements, are adequate to protect these investors.

In particular, we do not believe that the Commission needs to subject private fund advertising to requirements similar to those currently applicable to mutual funds. Those rules were designed for funds which are publicly offered to unsophisticated investors, whereas Section 201 of the JOBS Act is limited to private placements. Accredited investors and qualified purchasers have the means and sophistication to conduct appropriate diligence on funds and managers, no different than today.

We also wanted to urge the Commission to provide in its revised Rule 506 that investors whom the issuer or its service providers have taken reasonable steps to confirm are accredited investors will be deemed to be accredited investors. This is the effect of the current Rule 506 and deviation from that principle would undercut the intent of Congress in linking the accredited investor requirement to a verification process. Issuers should not be made into guarantors of the status of each investor.

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We thank the Commission for providing BlackRock the opportunity to provide comments and suggestions regarding the rule proposals. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

/s/ Barbara Novick

Barbara Novick  
Vice Chairman  
BlackRock, Inc.

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<sup>5</sup> 17 CFR §270.205-3(a).