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Via Email: rule-comments@sec.gov

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

Re: Request for Public Comments on SEC Regulatory Initiatives
Under the JOBS Act, Title II – Access to Capital for Job Creators

Ladies and Gentlemen:

Section 201(a)(1) of the JOBS Act directs the Commission to amend Regulation D under the Securities Act of 1933 to eliminate the long-standing prohibition against "general solicitation or general advertising" in Rule 506 offerings, provided that all purchasers in the offering are "accredited investors" under Rule 501(a). I comment narrowly here on Congress' directive that the Commission require "reasonable steps to verify" that an investor in a Rule 506 offering is accredited.

To summarize my comments: Because the JOBS Act's authorization of "general solicitation or general advertising" makes it likely that issuers will sell securities to strangers in many Rule 506 offerings, the Commission predictably will require some "reasonable steps to verify" a "stranger" investor's status that often are considered unnecessary and thus are not taken by many issuers who rely on the more restrictive current version of Rule 506. What the Commission need not do, however, and should carefully avoid doing inadvertently, is to thwart the capital-raising objective of JOBS Act Section 201 by extending the Commission's new "reasonable steps to verify" requirements unnecessarily to investors who are not "strangers" to the issuer, investors who could properly participate in a Rule 506 offering today without such status-verification steps being required.

The Rule 501(a) definition of "accredited investor" long has included a "reasonably believes" prong – meaning that an investor may possess none of the objective attributes of an "accredited investor" and yet actually be an "accredited investor" if the issuer reasonably believes the investor does possess such attributes. As interpreted in practice over the years, this "reasonably believes" prong of Rule 501(a) has added an important requirement that Section 201(a)(1) of the JOBS Act soon will eliminate: a pre-existing relationship between the issuer (or its representative) and an investor sufficient to give the issuer reason to believe the investor is

accredited. To be sure, even today, such a pre-existing relationship must be supplemented in some circumstances by additional status-verification steps. But such additional steps typically are less intrusive and burdensome for investors than the "reasonable steps to verify" likely to be required by the Commission for "stranger" investors in a Rule 506 offering.

Because no pre-existing relationship will exist between an issuer and many investors who learn of a Rule 506 offering through general solicitation or general advertising, it will be necessary that the issuer establish in some other way its reasonable belief that such a "stranger" investor is accredited. That need will not arise, however, if a sufficient pre-existing relationship already exists between the issuer and an investor, and – a finer point that should not be overlooked – this will be no less true if the "non-stranger" investor happens to learn of the Rule 506 offering through "general solicitation or general advertising" rather than through a private communication that unquestionably would pass muster under the current version of Rule 506.

In short, an issuer in a Rule 506 offering should be permitted to establish the reasonableness of its belief in an investor's accredited-investor status in either of two ways, neither of which ways will depend on how the investor learned of the offering: (1) by complying with the Commission's "reasonable steps to verify" requirements, whatever they may turn out to be; or (2) by establishing the existence of a pre-existing relationship between the issuer (or its representative) and the investor (supplemented when appropriate by additional status-verification steps as already required under Rule 506) sufficient to satisfy the "reasonably believes" prong of Rule 501(a) without regard to the Commission's new "reasonable steps to verify" requirements. Obviously only the first choice will be available for a "stranger" investor and the need for it will arise only in an offering that employs "general solicitation or general advertising," while either choice will be available for a "non-stranger" investor, regardless of whether the offering employs "general solicitation or general advertising."

Implicit in these alternatives is my sole concern here: to ensure that the key distinction emerging from the JOBS Act's elimination of the prohibition against "general solicitation or general advertising" – the distinction between "stranger" investors and "non-stranger" investors – is highlighted by the Commission when it adopts its "reasonable steps to verify" requirements pursuant to JOBS Act Section 201(a)(1). The wording of Congress' directive in Section 201(a)(1) unquestionably permits the Commission to draw this distinction. The Commission thus should make clear that, whether or not "general solicitation or general advertising" is used in a Rule 506 offering, the Commission's new "reasonable steps to verify" requirements will not apply to an investor if the issuer would have had a reasonable basis to believe the investor was accredited had the offering instead been made, without any general solicitation or general advertising, under Rule 506 without regard to the Commission's "reasonable steps to verify" requirements adopted pursuant to JOBS Act Section 201(a)(1) (though with due regard, of course, to the remaining requirements of the "reasonably believes" prong of Rule 501(a) – including "status-verification" requirements as they exist today and may evolve independently of the Commission's "reasonable steps to verify" requirements applicable only to "stranger" investors).

If this distinction is not made clear, Section 201(a)(1) of the JOBS Act, ironically, could make it more difficult, not less, for issuers to raise capital in a Rule 506 offering than is the case today. This unintended consequence could be especially troubling for sponsors of hedge funds and other private investment funds, many of whom have long-standing relationships with sophisticated investors who predictably will balk at the additional intrusion or burden imposed by whatever new "reasonable steps" the Commission may require to verify the "accredited investor" status of "stranger" investors.

/s/ Eric A. Brill
Eric A. Brill

EAB: jy