The Reardon Firm
ATTORNEYS-AT-LAW

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August 9, 2012

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

Re: Comments to rules to be enacted under Title II of the Jumpstart Our Business Startups Act

Dear Ms. Murphy:

I have been an attorney in private practice in the Dallas-Fort Worth area for 35 years. During that time, a substantial portion of my time has been devoted to the transactional practice of securities law, including innumerable private placements. For the last 15 years, I have been the proprietor of a boutique law firm involved in private placements ranging in size from under $1.0 million to hundreds of millions of dollars. Also, as the proprietor of this law firm, I am a small business owner.

I am writing to comment on the proposed rules that the Securities and Exchange Commission will issue under subsections 201(a)(1) and 201(c) of Title II of the Jumpstart Our Business Startups Act ("JOBS Act"). The comments in this letter are my own, and in this letter I speak for no other person.

Legislative Purpose

The legislative history[1] and the language of the JOBS Act reflect the following Congressional determinations:

1. Complex regulatory requirements, particularly securities laws and regulations, are impeding the growth of U.S. business and the creation of jobs in the private sector.

2. In addition to impeding growth in small business and employment, this condition is delaying economic recovery in the U.S.

3. To alleviate these problems and facilitate private sector employment, Congress enacted the JOBS Act. This law makes various changes to the U.S. securities laws and in certain cases directed the Commission to enact enabling rules.

4. Among these enabling rules, the Commission was directed to revise Rule 506 of Regulation D to provide that "the prohibition against general solicitation or general

[1] *Congressional Record*, House of Representatives, 112th Congress, 2nd Session, March 8, 2012.

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> advertising contained in [Rule 502(c) of Regulation D] shall not apply to offers and sales of securities made pursuant to [Rule 506], provided that all purchasers of the securities are accredited investors."[2]

5. The only additional gloss on this Congressional directive with respect to Rule 506 was that the Commission should provide that issuers must take "reasonable steps to verify that purchases of the securities are accredited investors, using such methods as determined by the Commission."[3]

6. In other parts of the JOBS Act, Congress called for far more expansive changes requiring more complex rule-making and therefore longer time has been provided for the Commission to enact rules.

Section 201(a)(1)—Changes to Rule 506

Because the deadline for the Commission to promulgate rules under Title II of the JOBS Act has passed, I am concerned that the Commission has not understood the urgent bipartisan message from Congress in enacting the JOBS Act. That message is to relax the impediments to business capital formation, particularly small business capital formation. This will facilitate business growth and importantly stimulate private hiring.

Congress correctly sensed that the most rapid changes can be implemented in the areas addressed by Title II of the JOBS Act. With respect to traditional private placements under Rule 506, Congress gave the Commission two simple directives:

> (a) remove the prohibition on general solicitation and general advertising to accredited investors, and
>
> (b) require issuers to make sure the investors are accredited.

Because of the dire economic conditions that have gone on for years, Congress is looking to the Commission to implement these changes as directed in the law without additional regulatory restrictions.[4]

Despite what other commenters urge, Congress does not want the Commission to rewrite the standards for accredited investors. Congress did that in Dodd-Frank[5], but no such directive is in the JOBS Act. Nor is there anything in the JOBS Act about changing disclosure requirements,

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[2] JOBS Act, Sec. 201(a)(1). As additional clarification, Section 201(b) of the JOBS Act adds an interpretative amendment (codified as Section 4(b) of the Securities Act of 1933) that provides

> "Offers and sales exempt pursuant to [Rule 506 of Regulation D as revised] shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation."

[3] *Id.*

[4] I also support the changes to Rule 144A contained in Sec. 201(a)(2) of the JOBS Act.

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Sec. 413.

amending Form D, or other changes. Perhaps experience will indicate that those changes are needed later.

No, what Congress wants is for the SEC to take the two steps noted in (a) and (b) above. To do more now, the Commission would run the risk of thwarting the Congressional desire to facilitate business capital formation and private sector employment at this critical time.

Section 201(c)—Platforms or Mechanisms; Transaction-Based Compensation

Without focusing on the details, Section 201(c) of the JOBS Act permits the creation of platforms or mechanisms for the offering of securities pursuant to Rule 506 of Regulation D.[6] One of the prohibitions on the operation of the platforms or mechanisms is the payment of compensation in connection with the purchase or sale of a security to persons not registered as a securities broker under Section 15(b) of the Securities Exchange Act of 1934.[7]

This prohibition has been a long-time premise of federal and state broker-dealer regulation—persons not registered as a broker or dealer cannot receive transaction-based compensation.

For years prior to the enactment of the JOBS Act, my experience has been that there are many unregistered brokers already seeking to collect transaction-based fees and commissions. Therefore, I fear that some some unregistered operators of these new platforms or mechanisms will appear seeking to charge and collect fees as if they were licensed brokers. If the past is a predictor of the future, much effort will be expended arguing that transaction-based compensation is in fact something else.

It would greatly assist private practitioners in holding the line on these requirements if (a) the Commission (and the state securities regulators) could bring some enforcement resources to bear on the scofflaws who flaunt these requirements, and (b) the Commission staff could give interpretative guidance contrasting permissible compensation from impermissible in these situations.

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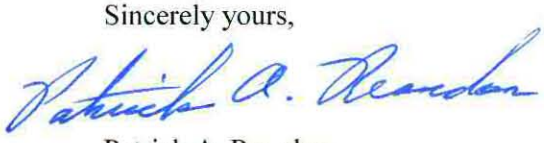
I will be happy to answer any questions or provide any information that is available to me.

Sincerely yours,



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[6] These provisions now are codified as subsection 4(b)(1), (2), (3) of the Securities Act of 1933.
[7] Section 4(b)(2)(A).