



Americans for Financial Reform
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September 26, 2013

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

Re: Release No. 33-9416, File No. S7-06-13

Dear Ms. Murphy:

Americans for Financial Reform¹ (AFR) appreciates the opportunity comment on the proposed rules to amend Regulation D, Form D, and Rule 156. As an organization dedicated to promoting a strong, stable, and ethical financial system, AFR opposed the Commission's decision to lift the ban on general solicitation without incorporating much needed protections for investors in Rule 506 offerings. We therefore support the current rule proposals as a small, but still inadequate, step toward restoring the regulatory protections necessary to promote the transparency and accountability on which a well-functioning market depends. We urge the Commission to strengthen the rules so that they can serve as a more effective deterrent to fraudulent and misleading practices, benefiting investors and legitimate issuers alike.

AFR Supports Proposed Changes to Form D Filing and Content Requirements

The Commission proposes to require issuers who plan to engage in general solicitation to file an Advance Form D 15 days prior to any solicitation activities, to include additional information about the offering on Form D, and to require issuers to file an amended form when the offering is complete. In order to improve compliance with the filing requirements, the Commission is also proposing to impose a new sanction for non-compliance – disqualification from participation in future offerings for a year – and to eliminate the need to go to court to obtain an injunction to trigger disqualification. AFR supports each of these requirements, which should greatly improve the Commission's ability to monitor developments in the Regulation D market. These proposals also have the potential to support strengthened enforcement efforts by both the Commission and state securities regulators, who will be able to review the filings earlier in the process and thus act more quickly if they identify issuers who are non-compliant, materials that are misleading, or offerings that are fraudulent.

¹ [Americans for Financial Reform](http://www.ourfinancialsecurity.org) is an unprecedented coalition of more than 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups.

We are concerned, however, that the inclusion of a waiver for issuers who complete the filing within a cure period will severely limit the potential benefits of this approach. If waivers are routinely or automatically granted in such cases, compliance with the new pre-solicitation filing requirement is likely to be inconsistent at best. If delayed compliance carries no meaningful penalty, those offerings where regulators would benefit most from an early look may be least likely to meet the pre-solicitation filing requirement. We therefore strongly encourage the Commission to revise the proposed approach, so that waivers are granted only rarely in instances where the issuer can credibly claim not to have been aware of the pre-filing requirement and where the issuer acts quickly to correct the problem. Under no circumstances should repeat offenders be granted a waiver for late filings. Finally, we urge the Commission to take steps to ensure that it can when necessary quickly shut down offerings that fail to comply with the pre-filing requirement. Such an approach would better enable the Commission to act quickly to shut down fraudulent offerings while investors still have a chance to recover a portion of their money. That is an important enforcement tool that the Commission lost when the ban on general solicitation was lifted.

AFR Urges Strengthened Protections Against Misleading Advertising Practices

The rule proposal requires the addition of certain legends to written solicitation materials, including legends specific to private funds. While we support the addition of these legends, we are concerned that this proposal falls well short of what is needed either to limit misleading advertising practices or to ensure that investors fully understand the potential risks of investing in unregistered securities. The legends developed by the Commission do not adequately convey those risks. We urge the Commission to engage in investor testing to develop standardized legends that effectively convey the appropriate information.

Of greater concern is the Commission's total failure to act proactively to prevent a predictable emergence of confusing and misleading advertising practices. This is particularly important with regard to advertisements by private funds that make performance and fee claims. Past experience in the mutual fund industry has clearly demonstrated the inadequacy of anti-fraud authority for preventing misleading practices. There is no reason to believe it will be more effective in the context of unregistered funds. Nor does the fact that sales are limited to accredited investors provide sufficient protection, given the lack of financial sophistication of many of these investors and the failure of the financial thresholds to provide an adequate buffer against losses.

We urge the Commission to develop reasonable standards for private fund advertisements. Any such standard should require that performance claims be based on a recognized performance standard. To limit the potential for misleading practices, performance should have to be disclosed net of fees and for certain standard periods, such as the 1-, 5-, and 10-year periods required for mutual funds. Any such standards would impose minimal burdens while significantly reducing the risk that investors will be confused or misled by advertising and solicitation materials.

AFR Supports the Proposal to Require Issuers to Submit Written Solicitation Materials

The Commission is also proposing a temporary rule requiring issuers who plan to engage in general solicitation to submit written solicitation materials to the Commission no later than first use of those materials. We agree that this requirement has the potential to enhance the Commission's ability to monitor developments in this market. Indeed, we believe such a requirement is essential for the Commission to provide the stepped up oversight of this market that it promised when lifting the ban on general solicitation. Once again, however, we believe the proposal should be strengthened both by making the requirement permanent and by extending the requirement to all video and audio materials as well. There is no reason to believe the Commission's need to monitor developments in this market will end after two years. We therefore urge the Commission to make this requirement permanent.

AFR Strongly Supports Amending the Accredited Investor Definition

The proposal requests comment on whether the Commission should revise the accredited investor definition. AFR believes that updating the definition is the single most important step the Commission can take to ensure that unregistered securities sold under Rule 506 are sold only to those investors who are financially sophisticated enough to understand the risks and wealthy enough to absorb potential losses. The current definition fails to meet either of these standards. In considering how best to revise the definition, we urge the Commission to look beyond merely increasing the financial thresholds to reflect inflation since they were adopted. In addition, the Commission should consider how to incorporate measures of investment knowledge, experience and financial sophistication into the definition.

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Lifting the ban on general solicitation increases the risk of fraud and misleading practices in the vast and increasingly important Regulation D market. We are disappointed that the Commission continues to resist taking the steps necessary to respond to those increased risks. While we support the current rule proposals as a small step in the right direction, they fall well short of the action needed to respond effectively to the increased threat. This is bad for investors, but it is also bad for the legitimate issuers who rely on this market to raise capital. Experience tells us that the cost of capital drops and the efficiency of the capital formation process increases when markets are transparent and viewed by investors as fair and reliable. We urge the Commission to adopt the strengthening amendments needed to ensure that these rules meet that standard.

Sincerely,

Americans for Financial Reform

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defender's League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club

- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC

- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending

- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

