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March 2, 2015

Via Electronic Mail
Rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-12-14 - In Response to Request for Comments to Proposed Rule Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act

Dear Mr. Fields:

The Alternative & Direct Investment Securities Association ("ADISA" or the "Association", f/k/a "REISA") submits this letter in response to the U.S. Securities and Exchange Commission's ("SEC") request for comments to the proposed rulemaking in connection with revisions to Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") to reflect the new, higher thresholds for registration, termination of registration and suspension of reporting that were set forth in the Jumpstart Our Business Startups Act (the "JOBS Act"). The proposed amendments would also revise the definition of "held of record" in Exchange Act Rule 12g5-1 to exclude certain securities held by persons who received them pursuant to employee compensation plans and establish a non-exclusive safe harbor for determining whether securities are "held of record" for purposes of registration under Section 12(g) of the Exchange Act.

Our comments will focus on the following issues: (i) the proposed amendments relating to the Exchange Act reporting thresholds, including the application of the increased threshold for accredited investors; and (ii) the proposed amendments to Exchange Act Rule 12g5-1, including the statutory requirement and definition of "employee compensation plan", the definition of "held of record", and the non-exclusive safe harbor for determining holders of record.

These issues are discussed in more detail below.

Background

ADISA is a national trade association that influences over 20,000 real estate professionals who offer and manage alternative investments. These alternative

investments include, but are not limited to non-traded REITs, real estate partnerships, real estate income and development funds, tenant-in-common interests, oil and gas interests, equipment leasing, business development companies, and other securitized real estate investments. The Association has more than 2,000 active members, who are key decision makers who represent over 30,000 professionals throughout the nation, including sponsors and managers of real estate and related offerings, broker-dealers, securities licensed registered representatives, registered investment advisers, investment adviser representatives, accountants, attorneys, mortgage brokers, institutional lenders, qualified intermediaries, real estate agents and real estate brokers. ADISA works to maintain the integrity and reputation of the industry by promoting the highest ethical standards to its members and provide education, legislative and regulatory advocacy, and networking opportunities. The Association connects members directly to key industry experts providing timely trends and education and helping create a diversified portfolio for their clients.

Discussion

ADISA supports the efforts of Congress to promote the growth of new businesses and the creation of jobs by easing some of the restrictions originally placed on the capital formation process in 1933. The Association believes that the SEC's proposed rules strike a balanced approach between investor protection and capital formation for smaller issuers. While ADISA believes the SEC has presented a fair and balanced approach in its proposal, we have the following comments and concerns regarding the proposed rules.

I. Proposed Application of the Increased Threshold for Accredited Investors

Section 501 of the JOBS Act amended Exchange Act Section 12(g)(1) to increase the threshold that triggers registration by an issuer to total assets exceeding $10 million and a class of equity security held of record by either 2,000 persons or 500 persons who are not accredited investors. To rely on the new higher threshold established by the JOBS Act an issuer will need to be able to determine which of its record holders are accredited investors.

A. Accredited Investor Definition

ADISA supports the SEC's proposal to use the definition of accredited investor set forth in Rule 501(a) of the Securities Act for purposes of Section 12(g)(1). Rule 501(a) contains a definition of "accredited investor" that includes any person who comes within, or who the issuer reasonably believes comes within, any of eight enumerated categories. The Association, however, does not support the proposal that the determination of accredited investor status be made as of the last day of the fiscal year rather than at the time of the sale of the securities. The Association believes the rule should provide some flexibility on the timing of the determination. This would permit issuers to rely on information available to them at the time they made a judgment regarding accredited investor status, rather than requiring issuers to update the information as of the end of the fiscal year.

B. The SEC Should Not Apply the Rule 506(c) Accredited Investor Standard in This Context

Should the SEC elect to apply the definition of accredited investor set forth in Rule 501(a) to the registration threshold in Section 12(g)(1), ADISA believes it would be unduly burdensome to require issuers to employ procedures similar to those used when conducting an offering under Rule 506(c). The Association encourages the SEC to adopt a "reasonable basis" standard for issuers to evaluate the accreditation status of an investor.

C. The SEC Should Provide Guidance to Issuers on How to Establish a Reasonable Belief of Accredited Investor Status

The Association recommends the SEC provide guidance to issuers regarding how to establish a reasonable belief that a security holder is an accredited investor. While the SEC has provided guidance on how to establish accredited investor status in a Rule 506(c) offering, such guidance is ill-suited to this context.

D. Issuers Should be Permitted to Rely on a Written Certification by the Investor

ADISA believes the safe harbor or other guidance should permit an issuer to rely on previously obtained information relating to the person's accredited investor status, such as information obtained at the time the issuer's securities were initially, or most recently, sold to that person. We support the recommendation of the Business Law Section of the American Bar Association ("ABA") that the SEC permit an issuer to rely on an annual affirmation from investors that their accredited investor status has not changed.[1] However, such a provision should be limited to situations in which the issuer does not have information that would lead it to believe that the previously obtained information was incorrect, unreliable or had changed.

E. Issuers Should be Allowed to Rely on Third Parties for Accredited Investor Status

ADISA believes the guidance should permit an issuer to form its reasonable belief that a person is an accredited investor based on determinations made by third parties, including but not limited to a written confirmation by a registered broker-dealer, a registered investment adviser, a licensed attorney, or a certified public accountant to satisfy the requirement that the issuer take reasonable steps to verify the accredited investor status of a purchaser.

II. The Definition of "Held of Record" and the Proposed Safe Harbor That Relies on Rule 701

Exchange Act Section 12(g)(5), as amended by Section 502 of the JOBS Act, provides that the definition of held of record does not include securities held by persons who received them pursuant to an employee compensation plan in transactions exempted

[1] *See* letter from the Business Law Section of the American Bar Association (June 26, 2013).

from the registration requirements of Section 5 of the Securities Act. The provision does not define the term "employee compensation plan." Section 503 of the JOBS Act instructs the SEC to amend the definition of "held of record" to implement the amendment in Section 502 and to adopt a safe harbor that issuers can use when determining whether holders of their securities received them pursuant to an employee compensation plan. ADISA supports the SEC's proposal to amend Exchange Act Rule 12g5-1 and to establish a non-exclusive safe harbor for issuers.

A. The SEC Should Establish a Non-exclusive Safe Harbor That Relies on Rule 701

The Association supports the SEC's proposal to revise the definition of "held of record" and establish a non-exclusive safe harbor that relies on the current definition of "compensatory benefit plan" in Rule 701 and the conditions in Rule 701(c). ADISA believes that using the conditions of Rule 701(c) to structure the safe harbor for determining whether holders received their securities pursuant to an employee compensation plan in exempt transactions will permit issuers to apply well understood principles of an existing Securities Act exemption to the new Exchange Act registration determination under the JOBS Act.

B. The Safe Harbor Should Have an Expansive Application

The Association supports an expansive application of the safe harbor to plan participants enumerated in Rule 701(c), including employees, directors, general partners, trustees, officers and certain consultants and advisors. ADISA believes the safe harbor should also be available for permitted family member transferees with respect to securities acquired by gift or domestic relations order, or securities acquired by them in connection with options transferred to them by the plan participant through gifts or domestic relations orders. We do not believe the SEC should limit the categories of persons who may receive securities pursuant to employee compensation plans for purposes of the safe harbor.

ADISA supports the SEC's proposal to establish a non-exclusive safe harbor that relies, in part, on existing Rule 701(c) to establish guidelines for an issuer to use when determining whether holders of their securities received them pursuant to an employee compensation plan. However, the Association believes the SEC will need to provide guidance to issuers on the application of existing Rule 701(c) and the implementation of the safe harbor.

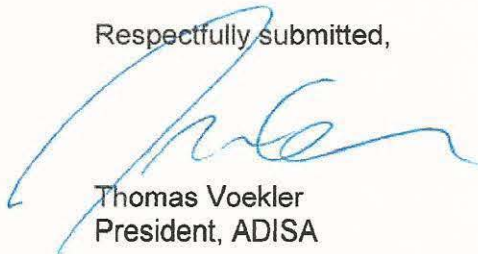
Conclusion

The Association supports the efforts of Congress and the SEC to improve access to capital and spur economic growth. However, we also recognize the importance of striking the proper balance between investor protection and capital formation. In general, ADISA believes the SEC has achieved that balance in connection with the proposed amendments relating to the Exchange Act reporting thresholds. We support the proposed increased thresholds for registration and reporting obligations. The Association, however, has concerns with respect to the application of the proposed

increased threshold for accredited investors. We do not believe the SEC should apply the Rule 506(c) accredited investor standard in this context. ADISA supports the proposed amendments to Exchange Act Rule 12g5-1, including the revised statutory requirement and definition of "employee compensation plan" and the revised definition of "held of record". Finally, the Association supports the proposed non-exclusive safe harbor for determining holders of record.

ADISA appreciates the opportunity to provide its perspective and comments on the proposed rules. We look forward to continuing this discussion with the Commissioners and the SEC staff on these and other important issues for the protection of investors and the capital markets.

Respectfully submitted,



Thomas Voekler
President, ADISA

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