



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

December 6, 2016

Ethan L. Silver
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1251 Avenue of the Americas
New York, New York 10020

**Re: In the Matter of Equidate, Inc. and Equidate Holdings LLC
Waivers of Disqualification under Rule 506(d)(2)(ii) of Regulation D
and Rule 262(b)(2) of Regulation A
Securities Act of 1933 Release No. 10262, December 6, 2016
Securities Exchange Act Release No. 79481, December 6, 2016
Administrative Proceeding File No. 3-17708**

Dear Mr. Silver:

This letter responds to your letter dated October 19, 2016 ("Waiver Letter"), written on behalf of Equidate, Inc. and Equidate Holdings, LLC (collectively, "Equidate"), and constituting an application for waivers of disqualification under Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that will arise as to Equidate under Rule 506 of Regulation D and Rule 262 of Regulation A under the Securities Act by virtue of the Commission's order entered December 6, 2016 in the Matter of Equidate, Inc. and Equidate Holdings LLC, pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Release No. 10262 (the "Order").

Based on the facts and representations in the Waiver Letter and assuming Equidate complies with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that Equidate has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D or Regulation A by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to Equidate under Rule 506 of Regulation D or Regulation A by reason of the entry of the Order is granted on the condition that it fully complies with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

Sebastian Gomez Abero
Chief, Office of Small Business Policy
Division of Corporation Finance

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October 19, 2016

Sebastian Gomez Abero, Chief
Office of Small Business Policy
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100 F Street, N.E.
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Dear Mr. Gomez Abero:

We are writing on behalf of Equidate, Inc. and Equidate Holdings, LLC (collectively, "Equidate") in connection with the anticipated settlement relating to *In the Matter of Secondary Market Trading in Pre-IPO Companies* (File No. SF-03983). The settlement would result in an Order Instituting Cease and Desist Proceedings pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (the "Order") against Equidate.

We hereby respectfully request a waiver of any disqualification that may arise pursuant to Rule 506 of Regulation D ("Rule 506") and Rule 262 of Regulation A ("Rule 262") under the Securities Act of 1933 (the "Securities Act") with respect to Equidate or any of its affiliates as a result of the entry of the Order.

BACKGROUND

Equidate, Inc. is a private, San Francisco-based company that provides private investors access and exposure to private company shares in the secondary market. Equidate, Inc.'s wholly owned subsidiary, Equidate Holdings, LLC, ("EHLLC"), is a holding company that serves as owner of those shares on behalf of the investors.

Equidate has engaged in settlement discussions with the Securities and Exchange Commission ("SEC" or "Commission") Division of Enforcement in connection with the Commission's investigation of trading in the secondary market of "Pre-IPO" companies, namely large companies that have not yet arranged for registration of their shares in the public market. In the course of its investigation, the Order concluded that certain contract instruments Equidate used were characterized as securities-based swaps, in violation of requirements of Section 5(e) of

the Securities Act of 1933 (the "Securities Act") and Section 6(l) of the Securities Exchange Act of 1934 ("Exchange Act"). As a result of these discussions, Equidate has agreed to the Order.

The Order states that from August 2014 through December 2015, the contracts that Equidate used with investors and shareholders violated certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") that limit transactions in security-based swaps (as defined in Section 3(a)(68) of the Exchange Act) to persons who are "eligible contract participants" (as defined in Section 1a(18) of the Commodity Exchange Act). Specifically, Equidate entered into Shareholder Notes ("SHN") with shareholders, which provided that a shareholder would receive a certain fixed up-front payment in exchange for a later payment of the value of their shares in a private company (or, in some circumstances, delivery of the shares themselves) to EHLLC, once the shares became freely tradable in the public markets, typically upon the company's public offering or acquisition. Similarly, Equidate entered into Payment-Dependent Notes ("PDN") with investors by which investors paid EHLLC the amount of the up-front payments to the shareholders, in exchange for the eventual collections received from shareholders. The total volume of these contracts during the period was more than \$13 million. The Order will find that both types of contracts provided for payments dependent on the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (the private company's public offering or acquisition), and the contracts were based on a single security (the underlying shares). By entering into such contracts with parties that were not always "eligible contract participants," the Order states that Equidate violated Section 5(e) of the Securities Act and Section 6(l) of the Exchange Act.

The Order requires Equidate to cease and desist from committing or causing any violations and any future violations of Section 5(e) of the Securities Act and Section 6(l) of the Exchange Act and requires that Equidate pay civil money penalties in the amount of \$80,000 to the Commission.

DISCUSSION

Equidate understands that the entry of the Order may disqualify it and its affiliates¹ from relying on both Rules 506 and 262. Equidate is concerned that, if it or any of its affiliates are deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of an issuer, or promoter of securities, or if it is deemed to be acting in any other capacity described in Rule 506 for purposes of Rule 506(d)(1), then Equidate, its affiliates, and third parties that engage Equidate and its affiliates to act in (or otherwise involve Equidate in) one of the listed capacities in connection with their securities offerings would be prohibited from relying on Rule 506. Equidate is further concerned of a similar prohibition arising under Rule 262 with respect to Regulation A.

The Commission has the authority to waive this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.² According to the

¹ An affiliate is defined under 17 CFR § 230.262 (a) to include among other things beneficial owners of 20% or more of an entity's outstanding securities.

² See Rule 506(d)(2)(i).

statement of policy by the Commission's Division of Corporation Finance regarding granting such waivers,³ the Division considers the following factors when determining whether good cause is shown:

- Who was responsible for the misconduct;
- What was the duration of the misconduct;
- What remedial steps have been taken; and
- Impact if the waiver is denied.

The policy statement explains each in detail. Further, in cases where there is a criminal conviction or scienter based violation involving the offer and sale of securities, there is a "significantly greater" burden on the party seeking the waiver to show good cause that a waiver is justified.

As discussed below, Equidate believes that these factors weigh in favor of finding good cause that a disqualification should not be imposed. Accordingly, Equidate respectfully requests that the Commission waive any disqualifying effects that the Order may have under Rules 506 and 262 as a result of its entry as to Equidate and its affiliates, based on the following grounds.

1. Nature of Violations

Although the violations described in the Order concern the sale or offering of securities, these were not criminal or scienter-based violations. Thus, Equidate should not be held to a "greater" burden under the Division's waiver policy.

2. Responsibility for Misconduct

Although Equidate is ultimately responsible for the securities transactions it entered, Equidate's former outside counsel helped create, structure, and advise Equidate on the transaction documents that are the subject of the Order. Equidate sought the advice of a well-known international law firm on compliance with securities laws including how *not* to engage in swap transactions, were advised that its transactions were not swaps – "incorrectly" so, as stated in the Order – and proceeded in reliance on the advice they received. Equidate has since retained new counsel and adopted new contract documents and fund structure, as described below. The individuals and firm responsible for that advice are no longer providing services to the company.

Equidate's own personnel sought to comply with securities laws and regulations. Based on advice of counsel they believed that the company's contract documents and the substance of the transactions they described fell outside of the statutory definition of swaps⁴.

³ See "Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D, <https://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>.

⁴ Section 2(a)(17) of the Securities Act and Section 3(a)(68) of the Exchange Act, namely transactions providing for payment or delivery based on the occurrence of an event relating to a single issuer of a security that directly affects the financial condition of the issuer.

Upon obtaining new securities counsel, Equidate released to the Commission communications between it and its former counsel, under a partial waiver of attorney-client privilege. The Order will not charge Equidate with a scienter-based violation, and will not name any individual participants in connection with the conduct underlying the Order. Accordingly, neither Equidate's CEO nor any other officers, directors, or other control persons (or any other Equidate-affiliated persons) have been charged and we understand that no such charges are likely to be forthcoming.

3. Duration of the Violations

The Order describes violations occurring from August 2014 through December 2015.

4. Equidate Has Taken and Will Continue to Take Remedial Steps

a. Equidate Restructured its Transactions

The contracts that are the subject of the Order included SHNs signed between the shareholders and EHLLC and PDNs signed between EHLLC and investors beginning August 2014. As a remedial step, Equidate completely ceased purchasing SHNs and issuing PDNs, implemented a new transaction contract and fund structure, and has offered to convert the PDNs currently outstanding to the new fund structure.

In April 2016, after a pause in operations, Equidate transitioned its business to a more conventional fund structure under which investors buy interests in a traditional-style Series LLC fund ("Fund Interests") corresponding to securities of the private issuer that are held as fund assets. The fund, in turn, enters forward purchase and other direct purchase agreements to buy securities from shareholders. Fund Interests are sold by an Equidate affiliate to accredited investors only in accordance with the exemption provided by Rule 506(b) of Regulation D. Further, the forward agreements that Equidate is using are based upon a standard Securities Industry and Financial Markets Association ("SIFMA") forward contract.

Equidate has secured a professional fund management company to service its funds. Because the management company is not dependent on Equidate's ongoing involvement in order to manage the fund and settle its transactions, investors are protected against any default by Equidate. As part of its suite of services, the manager reviews fund transactions and files a Form D with respect to this exemption, and performs any state-level "blue sky" compliance work, all to ensure compliance with the Securities Act. Equidate also is now the sole owner of a broker-dealer that it will supervise directly, and appointed an executive with extensive supervisory brokerage experience to serve as the broker-dealer's CEO and CCO. In these roles, this individual has installed and oversees robust compliance policies and procedures relating to Equidate transactions. Those policies and procedures include detailed written supervisory procedures; detailed suitability questionnaires for investors; thorough information gathering concerning investor net worth, income, and past investing experience; further steps for know your customer and anti-money laundering compliance; a customer identification program check implemented with payment processors; due diligence practices for reviewing pending transactions and prospective customers; written risk management procedures such as credit

reviews and limits on shareholder exposure co-developed with an insurance company; and regular thorough organization of client records.

b. Equidate Provided Meaningful Cooperation with The SEC Staff Throughout The Investigation

Equidate provided meaningful cooperation with the Commission throughout a two-year investigation, including, among other things:

- Production of tens of thousands of documents, many without regard to subpoena, privilege or other limitations;
- Production of numerous witnesses for on-the-record interviews or testimony;
- Detailed presentations and in-person meetings between the Commission and counsel for Equidate providing in-depth answers to Commission inquiries; and
- Amicable and expeditious settlement discussions.

There is no pattern of misconduct. Since its inception, neither Equidate nor any of its affiliates has ever been the subject of an SEC, FINRA or state enforcement action. The persons associated with Equidate and its affiliates have also never been the subject of an SEC, FINRA or state enforcement action.

Looking forward, Equidate believes that its new fund structure and professional fund management service, new law firm relationships, wholly-owned broker-dealer and ongoing cooperation with various Divisions of the Commission are all affirmative steps that will minimize the possibility of future violations.

5. Impact of Disqualification from Relying on the Exemptions under Regulation D.

a. Adverse Impact on Equidate and Affiliates.

Equidate believes that applying the Rule 506 disqualification to Equidate and its affiliates would adversely impact it and potentially shut down its entire private equity business.

Equidate's business is to sell unregistered securities to accredited investors. Although Equidate's prior structure relied on the general 4(a)(2) exemption, all transactions that use the new fund structure, which is remedial in nature, will rely on exemptions provided by Rule 506(b) under the Securities Act, for which a Form D will be filed. Equidate's arrangement with its fund manager requires it to proceed under Rule 506 and the manager to make the Form D filings. The arrangement also requires a subsidiary of Equidate to serve as manager to each fund, which in turn relies on Rule 260.204.9 of the California Code, which is a "qualifying private funds" exemption to California's investment adviser registration requirement. Disallowing Equidate and its affiliates from relying on the Rule 506 exemption would mean that Equidate cannot use its new fund structure. Furthermore, disallowing reliance on the Regulation A exemption would

trigger a disqualification of the California exemption.⁵ Without both of these abilities, Equidate would not be able to use its new structure, and its investors would once again become completely reliant on Equidate's ongoing servicing of their investments.

Further, Equidate routinely makes representations to its own investors and to customers that as issuer it is not subject to any securities sanctions or disqualifications, and that it knows of no reason why a Rule 506(b) registration exemption would not apply. For Equidate to remove this representation, or disclose as an exception that it is subject to a disqualification, would harm its relationships with potential investors and customers, who generally do not trust and often will not consider transacting with companies under sanction or that cannot operate under Rule 506 registration exemptions. Nevertheless, upon the waiver being granted, Equidate will disclose in connection with representations it makes relating to securities sanctions or disqualifications, that it received an SEC waiver from disqualification.

If a disqualification cut off Equidate's source of business, it would also affect the fortunes of those individuals and investment funds that have each invested in Equidate as a company. They would all stand to lose their entire investments because Equidate would not be able to use its new structure and in turn would potentially shut down its business.

b. Adverse Impact on Clients and other Third Parties

The effect of disqualifying Equidate from participating in Rule 506 offerings or serving as an investment adviser would extend well beyond Equidate. Shareholders and investors who have participated in Equidate's transactions to date, including those transactions that are the subject of the Order, continue to rely on Equidate to service and otherwise maintain their contracts until final settlement. For example, the shares of one issuer covered by Equidate's SHN have recently become transferable as a result of the issuer's public offering. Equidate has worked

⁵ California Code of Regulations ("California Code"), Rule 260.204.9(b) sets forth the conditions which a private fund adviser must satisfy in order to be exempt from the certificate requirement of the California Code. The first condition, which is set forth in Rule 260.204.9(b)(1) states that neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of Regulation A; or have done any of the acts, satisfy any of the circumstances, or are subject to any order specified in section 25232(a) through 25232(h) of the California Code. The language in most of these sections of the California Code focuses on criminal, fraudulent and willful activities that are not present in the activities that are the subject of the Order, but there is a seemingly broad provision under paragraph (d)(3) which disqualifies a fund adviser from the certificate exemption if it or any of its adviser affiliates, "[i]s or has been subject to ... any other order of the commission or any administrator, association, or exchange referred to in this subdivision which is or has been necessary for the protection of any investor." The original purpose of the language in paragraph (d)(3) (as with the other provisions of Section 25232(a) through 25232(h) of the California Code) is to allow the California Department of Business Oversight ("DBO") the discretion to deny, suspend or revoke a certificate if subject to an order specified in (d)(3). In discussions with the California Department of Business Oversight ("DBO"), their informal view was that the DBO typically invokes its discretion only where there is a material and significant action that causes harm to investors. This is consistent with the type of criminal, fraudulent and willful activities that cause harm to investors upon which the DBO has taken action in the past to deny, suspend or revoke registration, and not consistent with the activities described in the Order. Therefore, this should not preclude Equidate's reliance on the private fund exemption to California's investment adviser registration requirement. If Equidate is not granted a waiver of Rule 262 of Regulation A, it will not be able to rely on the exemption in California Code Rule 260.204.9(b) and it would have to register as an investment adviser in California. Further, being viewed as disqualified under Rule 262 of Regulation A could weigh against Equidate receiving the requisite certificate in California.

for several days with brokerage firms and transfer agents to make sure that all of the underlying shares are transferred from shareholders to investors as promised. If Equidate were unable to stay in business, it could not service these investments. Left to fend for themselves, investors would have to settle their contracts directly with shareholders, which would be difficult and expensive, requiring cooperation of multiple parties on each side, a fund management task that they are not experienced at performing. This would have a negative impact on investors.

As noted above, Equidate has modified the business structure that is the subject of the Order. Equidate offers and sells new issuances of Fund Interests only to accredited investors in accordance with the exemption provided by Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder. The Funds, unlike Equidate's historical transactions, employ a professional manager that is not dependent on Equidate's ongoing involvement in order to settle the transactions. This remedial step, including potentially converting outstanding contracts to Fund interests, relies on the Rule 506(b) exemption and absence of unwaived Rule 262 disqualification. Accordingly, if Equidate or its affiliates are unable to use the Rule 506 exemption or are subject to a Rule 262 disqualification, its restructuring will be untenable, which would defeat the purpose of the Order and Equidate's acceptance of the Order.

Historically, Equidate's client base has been comprised mostly of private company shareholders who earned their stock as equity grants by startup companies for which they work. Many of those who earned shares by working at pre-IPO companies have the majority of their net worth tied up in the stock of that single employer (or former employer, as the case may be), but are unable to diversify their holdings or access their net worth to meet their financial needs, because the shares are not liquid due to transfer restrictions. Equidate transactions provided more than \$13 million in liquidity to these shareholders during the period described in the Order. Equidate projects a considerably greater transaction rate for the remainder of 2016, which relies on the new structure and in turn the Rule 506(b) exemption and lack of any disqualification under Rules 506 or 262. It has committed to minimum payments to its insurance company based on the increased transaction volume. Equidate and its affiliated broker-dealers are leading participants in the private secondary liquidity market, with very few peers and no company providing an identical service. If it cannot engage in these transactions, Equidate believes that many or most of these shareholders will not find a comparable liquidity opportunity, and thus, will be in a poorer and riskier financial condition due to lack of liquidity and lack of diversification.

6. Conclusion

In agreeing to the Order, Equidate has taken responsibility for its actions and acknowledged the Commission's objections. Equidate's reliance on counsel from the beginning demonstrates that it has always taken a serious and proactive approach to securities compliance, and that any violation arose from poor advice, not ill intent or lack of oversight. Equidate has expanded and matured since the events described in the Order. Equidate has since undertaken remedial steps. These steps, and Equidate's ability to serve its current and future customers, rely on the new structure for which a waiver is necessary. Equidate has also hired new securities counsel, purchased a registered broker-dealer, appointed a CCO, hired a professional fund servicer, and instituted more thorough procedures, policies, and practices. All of these suggest

that Equidate is a compliance-focused operation, and will continue to cooperate with the Commission in the future.

Equidate wishes to assure the Commission that if this waiver application is approved, it will carefully and thoughtfully comply with Regulation D and other securities laws and regulations as guided by its new counsel and new compliance officer.

REQUEST FOR WAIVER

For the above good cause shown, we respectfully urge the Commission, pursuant to Rules 506(d)(ii) and 262, to waive the disqualification provisions in Rules 506 and 262 under the Securities Act, respectively, to the extent they may be applicable to Equidate and its affiliates as a result of the entry of the Order.

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,



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