

FILED ELECTRONICALLY

March 13, 2013

Members of the SEC Investor Advisory Committee
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Lift the Ban on General Solicitation and Advertising in Rule 506 Offerings: Efficiently Balancing Investor Protection, Capital Formation and Market Integrity

Dear Committee Members:

I am the General Counsel for SecondMarket, the reinvented stock market. We enable companies, community banks and funds to provide liquidity, raise capital and communicate with their stakeholders. SecondMarket has over 100,000 participants registered on our online platform, including over 20,000 accredited investors, and has conducted billions of dollars in transactions across all of our asset classes. In the context of private company transactions, we act as an intermediary agency broker-dealer facilitating transactions between sellers and pre-qualified accredited investors, within the meaning of Rule 501(a) of Regulation D of the Securities Act of 1933.

We read with interest the Committee's recommendations regarding the proposed elimination of the ban on general solicitation presented to the Securities and Exchange Commission (the "Commission") on January 18, 2013 and applaud the Committee's efforts to put forth proposals that balance the goals of investor protection, capital formation and market integrity.

We would like to specifically comment on the following recommendations:

Recommendation 3

Adopt a safe harbor that provides clear and enforceable standards for verification, as opposed to reasonable belief, of accredited investor status, including standards to promote reliance on reliable third parties, such as broker-dealers, banks, and licensed accountants.

We agree with the Committee's assessment that without clear guidelines, counsel and issuers will, in many circumstances, be unwilling to take the risk associated with a "facts and circumstances" test. This position is certainly consistent with the feedback that we have received from members of the federal and state securities bars. We strongly support the Committee's conclusion that non-exclusive safe harbor guidelines will help promote reliance on the new

statutory provisions by issuers who are risk adverse and seek to responsibly comply with the federal securities laws.

In a letter we submitted to the Commission on May 25, 2012, in response to its request for public comments relating to the rules that the Commission is required to adopt pursuant to Section 201 of the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”) relating to general solicitation and general advertising, we also encouraged the Commission to formulate a non-exclusive safe harbor that provides issuers flexibility while still satisfying the Commission’s legislative mandate.

Our letter also recommended that the Commission should establish specific guidelines that third party intermediaries must satisfy with respect to verifying accreditation in order to be relied upon by issuers who choose to outsource the accreditation verification process. We also recommended that any third party verifying accreditation be subject to Commission oversight.

As we stated in our letter, we believe that permitting issuers to rely on a regulated third party to verify accreditation will assuage potential investors’ potential legitimate privacy concerns around providing highly confidential personal information directly to issuers, who would not be subject to the regulatory safeguards and requirements noted above, or to multiple broker-dealer intermediaries. Additionally, issuers and their intermediaries, as well as the Commission, would have certainty that the verification process is being carried out in strict adherence to the guidelines established by the Commission.

Since the date of our letter to the Commission, SecondMarket has developed an Accreditation Verification Platform, or “AVP”, that we intend to launch once the Commission adopts final rules with respect to the elimination of the ban on general solicitation. In formulating the process that we would follow to verify accreditation, we sought input from over 20 leading law firms across the United States and considered the flexible approach provided in the Commission’s August 29, 2012 proposed rules.

Subject to the requirements of the Commission’s final rules, SecondMarket’s AVP will require a potential purchaser to complete a robust questionnaire and upload supporting documentation. As opposed to the current industry standard questionnaire, SecondMarket’s questionnaire asks purchasers a series of factual questions designed to determine if they meet the accredited investor standards applicable to that purchaser. The answers to these questions sort potential purchasers into four categories: 1) accredited entities 2) accredited natural persons satisfying the income test; 3) accredited natural persons satisfying the net worth test; 4) non-accredited investors.

- Entities that are broker-dealers or investment companies will be required to upload corporate identification for verification through the SEC or FINRA.
- Entities qualifying based on status and assets would be required to upload evidence of corporate organization and total assets.

- Accredited purchasers who satisfy the net income test will be required to upload the most recent year's proof of income (W-2, 1099 or filed tax return). The cumulative net income stated in these documents must meet or exceed the required threshold.
- Accredited purchasers who satisfy the net worth test will be required to upload documentation evidencing sufficient financial assets to meet the required threshold (brokerage or bank statements).
- Accredited purchasers who satisfy both the net income and net worth tests will only be required to provide documents verifying that they satisfy the net income test.
- Non-accredited investors will be flagged by the AVP for the benefit of the issuer and future issuers.

SecondMarket will manually review these documents to confirm that they support the potential purchaser's accreditation status and will report its conclusion to the issuer and the potential purchaser. Accredited purchasers will receive an affirmation of their verification along with an AVP identification number (SecondMarket Identification, or "SMID"). This SMID will be portable, and allow purchasers to bypass re-submitting information if they wish to purchase the securities of another issuer that uses the AVP within the calendar year. Issuers will receive a report noting the accreditation status of each potential purchaser who is routed through the AVP and completes the verification process for purposes of creating a written record that the issuer took reasonable steps by relying on a third party to carry out the verification process.

We believe that the product that we have developed satisfies the requirement that reasonable steps be taken to verify accreditation and, based on the feedback that we have received from law firms regarding our proposed process, we also believe our product provides a reasonable basis upon which a "no registration" opinion can be issued by counsel to the issuer in the context of a Rule 506 transaction.

Recommendation 6

The Commission should amend the natural persons prong of the definition of accredited investors to better reflect a population that has the financial sophistication to analyze the risks in private offerings and/or the wealth to withstand potential losses.

We strongly agree that the current definition of accredited investor, which focuses solely on net income and/or net wealth levels, does not provide an adequate basis for concluding whether an individual has the requisite financial sophistication to analyze and understand the risks associated with private offerings, and note that this view is shared by other market participants.

For example, in July 2012, the Kaufman Foundation convened a Task Force on Entrepreneurial Finance that included 26 scholars, policymakers, practitioners, and leading thinkers around the topic of finance. During their three days of meetings, the Task Force discussed a wide variety of issues relating to the creation and growth of entrepreneurial companies. On February 5, 2013,

the Kaufman Foundation published its 2013 State of Entrepreneurship Address, which included a summary of the problems considered by the participants, as well as the ideas and recommendations that received broad endorsement by participants. Amongst those recommendations was the following proposal:

Create non-financial criteria for sophisticated investors with fewer assets. The current criteria ensure that investors have sufficient wealth to be insulated from losses. And, admittedly, there is greater risk of loss in trading non-public securities than in trading stocks, at least theoretically. Private equity markets are characterized by less information, accountability, and liquidity. Task Force members suggested, however, that private equity markets can be made more inclusive while still protecting naïve investors from these risks. While the current rules only allow for investors who have enough wealth to protect themselves from losses, the definition could be expanded to include those who are sophisticated enough to mitigate some of the risk. A test to certify a certain level of knowledge and understanding (either an existing certification—perhaps an MBA or CFA certification—or a new, much less expensive test to be developed) would allow for knowledgeable investors with fewer assets to participate in private equity markets, without increasing the overall level of risk to investors. Successful completion of the test could be coupled with a limit on the size of the investment, depending on the investor’s net worth, as in crowdfunding. And investors with high net worth would continue to be accredited without knowledge certification, as they have adequate wealth to cushion their risk.

Based on our experience in the private company offering space, we know that there are many highly sophisticated investors who do not satisfy the requisite net worth or net income thresholds currently set forth in Rule 501(a) of Regulation D. It is our view that adding a financial sophistication test as an alternative to the current net income and net worth tests along the lines recommended in the Kaufman report would provide a clearer basis of determining that an individual understands the risks of a potential investment that financial status alone. We support the Commission’s consideration of such an alternative.

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We appreciate the opportunity to comment on the Committee’s recommendations. We applaud the Committee’s efforts on behalf of investors and would be happy to demonstrate our web-based accreditation verification product or to provide any other information that may be helpful

to the Committee. Please feel free to contact me via phone at (212) 668-6671 or email at atierney@secondmarket.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annemarie Tierney", is written over a light-colored rectangular background.

Annemarie Tierney

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