offered securities.

4. Current Practices

The potential economic impact of the proposed amendments will depend on the current practices of issuers and market participants in Rule 506 offerings – specifically, on the extent to which issuers currently file Form D and their incentives for doing so in the future. The analysis below provides an assessment of current compliance rates with respect to Form D filing requirements.

a. Missing Form D Filings

Issuers that use an exemption under Regulation D to raise capital are required to file a Form D not later than 15 days after the first sale of securities in the offering; however, the filing of Form D is not a condition to the use of Regulation D. Commenters have indicated that a number of issuers in Regulation D offerings do not file the form, even though the filing of Form D is a requirement of Regulation D. Assessing the prevalence of current non-compliance is difficult because a Form D filing is often the only public record of a Regulation D offering. We can provide an estimate of filing compliance for issuers under Rule 506 that use a registered broker-dealer in these offerings and for private funds that are managed by a Commission-registered investment adviser.[212] Because information related to private offerings for these sets of issuers is available in other filings, we can determine, in certain cases, when a Form D should have been but was not filed. In the analyses below, we present evidence on the corresponding

[212] Broker-dealers registered with FINRA are required to file private placement memoranda under FINRA Rules 5122 and 5123 for their or their client's private offering. Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4] authorize the Commission to collect the information required by Form ADV. Investment advisers that are required to register with the Commission and exempt reporting advisers are required to file Form ADV with the Commission. The form includes disclosure of Regulation D offerings that they conduct for their client issuers.

rate at which we observe Form D filings. It should be noted that our estimates are subject to some degree of error because in some instances it is possible that that a Form D was filed even though we could not match it to a specific offering. In other instances, a Form D may not have been filed because the issuer may be relying on another exemption from Securities Act registration that does not require a Form D filing, such as the statutory exemption under Section 4(a)(2). Our estimates of compliance for issuers that use a registered investment adviser or broker-dealer also may not reflect the rate of compliance among issuers that do not. To the extent that Forms D are more likely to be filed when a registered entity is involved, there could be a greater rate of non-compliance among the remaining Rule 506 offerings that do not involve a registered investment adviser or broker-dealer.[213]

Form D and Form ADV reconciliation. Our estimate of Form D filing compliance among Commission-registered investment advisers that manage private funds is based on their requirement to report to the Commission on Form ADV the Regulation D offerings that they conduct. We matched the Form D file numbers reported on Form ADV filings from 2012 to the actual Form D and Form D amendments filed on EDGAR. This created a universe of 18,276 private funds identified on Form ADV filings for the period between 2002 and 2012.[214] The matching was done in two steps. First, we matched the file number of each Regulation D offering as reported by the investment adviser on Form ADV to the file numbers in EDGAR.[215] Second, if there was no file

[213] Approximately 20% of Rule 506 offerings use either a broker-dealer or investment adviser.

[214] We chose this period because Form D file numbers are not available for Form D filings submitted prior to January 1, 2002.

[215] Some advisers identify a private fund's Form D file number as a series of 9s because they may not be able to locate the fund's Form D file number (particularly with respect to Form D filings made prior to

number for the Regulation D offering, we matched by private fund name. We compared the name of the private fund reported by the investment adviser in its Form ADV to the issuer names in the Form D and Form D amendment filings. Conducting both steps resulted in an 89% match – i.e., during the period from 2002 to 2012, as many as 11% of the private funds advised by registered investment advisers did not file a Form D when relying on the Regulation D exemption. This number, however, could overstate the actual number of private funds that did not file a Form D due to typographical errors in the name of the private fund or filing number. Also, registered investment advisers are required to identify Form D filing numbers only for private funds that are currently offering their securities. As a result, the Form ADV filings of advisers to private funds that are closed to new investments or are no longer engaged in a Regulation D offering of their securities are not required to disclose a Form D filing number.

Form D and FINRA filing reconciliation. Our estimate of Form D filing compliance among registered broker-dealers that facilitate private offerings is based on their compliance with FINRA Rules 5122 and 5123 (the latter rule took effect on December 3, 2012), which requires member firms that sell securities in certain private offerings to file with FINRA copies of any private placement memorandum, term sheet or other offering document used in these offerings (or amendments thereof) or, alternatively, to file a notice stating that no such offering document was used.[216] As of December 31,

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January 1, 2002 because such file numbers are not available through an EDGAR search). Advisers may also mask the Form D file number to maintain the anonymity of a private fund's name. These factors will understate the number of funds that file Form D and Form D amendments. Thus, in such cases we attempted to match by fund name.

[216] Not all broker-dealers that sell securities in private offerings have to file private placement memoranda with FINRA under FINRA Rules 5122 and 5123. FINRA filings represent a small proportion of Regulation D offerings. For example, if a broker-dealer is not registered as a member of FINRA, they will

2012, FINRA oversaw nearly 4,300 brokerage firms.[217] During the period from December 3, 2012 to February 5, 2013, FINRA received 366 filings under this rule. Each private offering could have multiple broker-dealers and consequently the 366 filings could represent fewer than 366 unique offerings. Further, FINRA rules require filing by broker-dealers associated with a Regulation D or other private offerings, not all of which require the filing of Form D. A Form D filing is only required by issuers that undertake Regulation D offerings. We cannot identify how many of the 366 filings are related to non-Regulation D offerings.

We matched these FINRA filings to the Form D and Form D amendment filings received on EDGAR. The matching was done in multiple steps. First, we matched using the issuer CIK number and the Form D filing number[218] contained in each of the separate filings. Then, for each unmatched FINRA filing, we searched the issuer name, and variants of the name, in EDGAR to determine if a Form D was filed for that issuer's offering. Applying both procedures resulted in a 91% match – i.e., during this three-month period, subject to the limitations described above, as many as 9% of the offerings represented in the FINRA filings for Regulation D or other private offerings that used a registered broker did not have a corresponding Form D.

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not file with FINRA. Further only those private offerings that have retail investors, i.e., natural persons, trigger the requirement for the broker-dealer to file the private placement memorandum with FINRA.

[217] See http://www.finra.org/Newsroom/Statistics/.

[218] The Form D filing number is the 021- Commission filing number reported in the header of the Form D filing.

b. Legends and Other Disclosures in Regulation D Offering Materials

Prior to the effectiveness of Rule 506(c), general solicitation has not been permitted for private offerings under Rule 506. Although advertising by issuers is prohibited, issuers may provide some material or information to intermediaries and interested investors regarding themselves and their offering. Because this information is not filed with the Commission, we do not know if legends and relevant disclosures are included in any such material.

C. Analysis of the Amendments Relating to Form D

We are proposing amendments to Form D and Regulation D as they relate to Form D in order to enhance our understanding of the Rule 506 market, particularly the impact of the adoption of Rule 506(c). These proposed amendments would:

- require the filing of Form D 15 calendar days in advance of the first use of general solicitation in a Rule 506(c) offering;
- require the filing of a closing amendment to Form D within 30 calendar days after the termination of a Rule 506 offering;
- require issuers to provide additional information in Form D primarily with respect to Rule 506 offerings; and
- disqualify an issuer from relying on Rule 506 for future offerings until one year after the required Form D filings are made if the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five years, with Form D filing requirements in a Rule 506 offering.

The proposals relating to the Form D filing requirements are intended to improve the availability of Form D information to the Commission that would enable it to evaluate

market developments in the Rule 506 market. The amendments to the information requirements of Form D would enable the Commission to obtain more complete information about the Rule 506 market than it has now, especially with respect to the composition of investors and the general solicitation practices and verification methods employed in Rule 506(c) offerings.

1. Advance Filing of Form D for Rule 506(c) Offerings

We are proposing to amend Rule 503 of Regulation D to require issuers that intend to engage in general solicitation for Rule 506(c) offerings to file an initial Form D with certain information 15 calendar days in advance of any general solicitation for the offering. We believe that requiring issuers to file an Advance Form D would assist the Commission's efforts to evaluate the use of Rule 506(c). The Advance Form D would be useful to the Commission and the Commission staff, as it would enhance the information available to the Commission to analyze issuers that attempted to conduct Rule 506(c) offerings but were unsuccessful in selling any securities through these offerings or chose alternative forms of raising capital. Currently, Form D is required to be filed only after the first sale of securities, which means that issuers that attempted to, but did not, complete a sale are not required to file a Form D, thereby limiting the Commission's ability to determine which issuers are facing challenges raising capital under Rule 506(c) and whether further steps are needed to facilitate issuers' ability to raise capital under Rule 506(c). We also understand that the Advance Form D would be useful to state securities regulators and to investors in gathering timely information about the use of Rule 506(c).

On the other hand, to the extent that an Advance Form D filing signals planned

capital-raising activity and related details to potential competitors, some issuers may be reluctant to use Rule 506(c) when they might otherwise. The proposed Advance Form D filing requirement could thus deter some issuers from using Rule 506(c) as they would be forced to indicate their capital raising plans to a limited extent prior to commencing their general solicitation activities. In addition, the proposed Advance Form D filing requirement could impose market timing costs to the extent that an issuer would like to move quickly but has not yet filed an Advance Form D. We have proposed an advance filing deadline that we think appropriately balances the benefits of advance notice with these market timing costs. Nevertheless, many issuers may choose to file an Advance Form D just in case they decide to conduct a Rule 506(c) offering. As a result, many Advance Form D filings may not reflect the true intent of issuers to conduct these offerings. If there are large numbers of issuers that frequently engage in this practice, there could be a sizable number of premature, and possibly even meaningless, notices of Rule 506(c) offerings; however, requiring specific information about the anticipated offering could decrease the likelihood that issuers file an Advance Form D when they do not intend to conduct an offering in the near term.

To complete an Advance Form D would cause issuers to incur costs; however, because the information in Advance Form D mirrors the information required to be filed within 15 days of the first sale of securities, the additional expense to collect the information for the Advance Form D would be offset by the lack of any need to do so for the subsequent filings.

2. Form D Closing Amendment for Rule 506 Offerings

We are also proposing to amend Rule 503 to require the filing of a final

amendment to Form D within 30 calendar days after the termination of a Rule 506 offering. Requiring a closing filing through a Form D amendment upon the termination of a Rule 506 offering, in combination with the changes to Form D to require additional information on Rule 506 offerings, would provide more complete information of the total amounts of capital raised in these offerings by the types of investor and the methods used to verify accredited investor status in Rule 506(c) offerings.

At present, issuers are required to file a Form D within 15 days of the first sale of securities in a Regulation D offering and amendments to the Form D under certain circumstances. As a result, if the total offering amount remains the same or is increased by less than 10%, any capital raised or any change in the composition of subscribing investors, subsequent to the last filing for the offering, is not required to be reported in a Form D. For example, in 2010, issuers sought to raise $1.2 trillion in reported Regulation D offerings, but only $905 billion was reported as sold at the time of the initial Form D filing.[219] Thus, based on the available information, we are not able to determine the actual amount raised. A requirement to file a closing amendment to Form D for a Rule 506 offering that confirms the actual amount raised in the offering could provide more complete information.

Without a closing Form D amendment requirement, it may be difficult to clearly ascertain, for example, all of the methods of general solicitation that issuers used in Rule 506(c) offerings or the types of investors solicited in these offerings, particularly if any changes in solicitation methods or targeted investors after the initial Form D filing are not otherwise required to be reported. In such case, any analysis of the information in

[219] See Ivanov/Bauguess Study. For issuers that reported their offering amount as 'Indefinite', we assumed that amount offered is equal to amount raised.

Form D filings would be based on incomplete data, which may limit the intended benefits of collecting the Form D information. Updated and more conclusive data on Rule 506 offerings from closing Form D amendments would provide the Commission with a more complete account of the flow of capital in the Rule 506 market, how the flow relates to offering characteristics and the potential associated risks and would assist the Commission in evaluating whether further regulatory action is necessary.

Requiring a closing Form D amendment for Rule 506 offerings would likely come at a nominal cost to issuers in terms of filing another notice, particularly because the filing would be substantially similar to the initial Form D filing or prior Form D amendments for the offering.

3. Amendments to the Content Requirements of Form D

The information about Regulation D offerings collected to date and described in this release illustrates and underscores the importance of the non-registered offering market to the U.S. economy. Form D is the primary source of information for the Commission to assess the Regulation D market. Much of what we know about the size and characteristics of the private offering market comes from Form D filings. The continued collection of this information following the elimination of the prohibition against general solicitation in Rule 506(c) offerings will be an important tool for determining the ongoing impact of Rule 506(c).

A number of the proposed amendments to Form D would require additional information specific to Rule 506(c) offerings, which would enable the Commission to develop a greater understanding of the new Rule 506(c) market, particularly with respect to those matters where limited to no information would otherwise be available. Other

proposed revisions to Form D would require additional information in regard to both Rule 506(b) offerings and Rule 506(c) offerings, which would permit a more complete analysis and comparison of the use of current Rule 506(b) and new Rule 506(c).[220] Without a substantially similar set of information collected for both Rule 506(b) and 506(c) offerings, the effects of the use of general solicitation on the Rule 506 market may be difficult to measure or identify. Increased consistency in the reporting of information in Form D filings for offerings under Rules 506(b) and 506(c) would promote the availability of comparable data for the two types of offerings and, consequently, may result in a more complete assessment of the effects of the elimination of the prohibition against general solicitation on raising capital under Regulation D. In addition, because the overwhelming majority of Regulation D offerings are conducted in reliance on Rule 506, this should provide the Commission with substantially more complete information about the Regulation D market generally, which, when considered along with the information collected as part of the Commission's Rule 506 review program, would help the Commission evaluate the need for additional action to enhance investor protection.

On the other hand, the proposed amendments to Form D may result in higher compliance costs for issuers conducting offerings in reliance on Rule 506(b) and new Rule 506(c). Issuers relying on Rule 506(b) would have to provide more information than is currently the case in regard to Form D, which would be coupled with the risk of disqualification from using Rule 506 in future offerings, under proposed Rule 507(b), if they or their affiliates or predecessors fail to comply with the additional Form D filing

[220] A number of the proposed revisions to Form D would also require additional information in regard to offerings under Rule 504, Rule 505, and Section 4(a)(5).

requirements. Nevertheless, we believe that the additional burden to provide the additional required information to be minimal. The proposed amendments would also require, depending on the circumstances, additional information under Items 5 and 9 of Form D with respect to offerings under Rule 504, Rule 505 or Section 4(a)(5), which, as discussed below, we do not believe would result in materially higher compliance costs for issuers conducting these offerings.

Issuers may view the increased reporting requirements as a greater regulatory burden and a loss of commercial privacy,[221] which could put certain issuers at a competitive disadvantage if the costs are sufficient to deter them from raising capital in the private offering market. Requiring issuers to report more information in Form D could also result in some issuers choosing to consider other capital-raising options.

A discussion of a number of the proposed amendments to Form D is set forth below.

a. Investor Types

The proposed amendment to Item 14 (Investors) of Form D would require information, with respect to Rule 506 offerings, on the number of investors under the following categories: natural persons who are accredited investors, legal entities that are accredited investors, and if applicable, non-accredited natural persons and non-accredited legal entities. The additional required information would include the amount raised from each of the four categories of investors. At present, Form D requires information on the total amount of capital expected to be raised and the number of accredited and non-

[221] Issuers may not wish to reveal certain information such as the timing of amounts offered and raised, including whether an offering was successfully completed, which could inform other market participants, including competitors, about the issuers' ability to finance investments.

accredited investors that have purchased securities in a particular offering. We do not have information on the number of investors who are natural persons or legal entities, or the amounts raised from each of these investor categories. The proposed amendment would thus require more detailed information on the composition of investors in the Rule 506 market than is currently available. Because all purchasers in Rule 506(c) offerings must be accredited investors, and offerings under Rule 506(b) can have no more than 35 non-accredited investors who meet certain sophistication requirements, disaggregated data regarding the number of each type of investor and the amount invested by accredited and non-accredited investors would provide a more complete view of their participation in the Rule 506 market.

Understanding the composition of investors in Rule 506 offerings as between natural persons and legal entities would also be important for risk assessment purposes. Institutional investors usually have a greater amount of resources at their disposal and therefore are more likely to have better information and greater sophistication when considering the potential risks and benefits of a particular investment, as compared to natural persons.[222] To the extent that natural persons are less sophisticated and more prone to be targets of fraud than institutional investors, understanding how many natural persons are participating in Rule 506(c) offering could help identify those Rule 506(c) offerings that raise greater investor protection concerns. This information could also help the Commission better understand how general solicitation is used with respect to the types of investors. Additionally, concerns about verification methods to assess accredited investor status are greatest as it relates to natural persons. Having a better understanding

[222] See note 198.

of the involvement of natural persons in Rule 506(c) offerings would assist the Commission in its assessment of the efficacy of the verification provisions.

Issuers relying on Rule 506(c) will be collecting such information as part of their verification of accredited investor status for Rule 506(c) offerings. We do not expect the requirement that issuers report this information on Form D to impose significant additional costs.

b. Issuer Size

The proposed amendment to Item 5 (Issuer Size) of Form D would replace the "Decline to Disclose" option with "Not Available to Public" option. This change to Form D would assist the Commission in obtaining a greater amount of information on the size of issuers that conduct Rule 506 offerings. This proposed amendment would also apply to offerings under Rule 504, Rule 505 and Section 4(a)(5). At present, a majority of Form D filings do not provide information on the size of the issuer's revenue (if the issuer is an operating company) or net asset value (if the issuer is a hedge fund or other investment fund). It is likely that some issuers keep this information private for competitive purposes and therefore do not make this information widely available. For those issuers that already make this information publicly available, or that do not currently make a reasonable effort to keep such information confidential, reporting their size range in a Form D filing would not impose a material cost. Having this information would provide a more complete picture of the Rule 506 market and allow the Commission to more accurately assess the impact of allowing general solicitation on capital formation across issuer sizes. This information would be particularly useful in better understanding the effects of general solicitation on capital formation by small

businesses, a set of issuers that otherwise face significantly greater challenges than larger issuers in finding investors.

c. Issuer Industry Group

Industry information is an important issuer characteristic that helps in assessing the effectiveness of private markets in promoting capital formation across industry groups. An analysis of Form D filings over the period 2009-2012 indicates that the "Other" category was checked in over 15% of offerings.[223] The proposed amendment to Item 4 (Industry Group) would require an explanation to be provided when an issuer checks "Other" as its industry. This would allow a better assessment of the representation of a particular industry or sub-industry in Regulation D offerings and help the Commission evaluate whether industry classifications are appropriately defined in Form D.

d. Control Persons

The proposed amendment to Item 3 (Related Persons) to include controlling persons when the issuer seeks to use general solicitation in a Rule 506(c) offering will expand the set of persons covered under the existing list of related persons that includes promoters, directors and executive officers. Thus, a beneficial owner who has a significant equity stake in an issuer but may not be a managing executive would now need to be identified. This information may be helpful to the Commission in developing a more comprehensive understanding of the issuers and other market participants that are involved in Rule 506(c) offerings.

Including information regarding control persons would enable investors to better

[223] See Ivanov/Bauguess Study.

identify persons who may be in positions to influence the Rule 506(c) offering. The identity information could also be useful if questions arise about the offering. Issuers would incur additional reporting costs when there are control persons that are not also related persons. In many instances this information is readily available and easy to collect, particularly to the extent that issuers identify controlling shareholders under the bad actor provisions we are adopting today. Issuers could, however, find this amendment burdensome as they may want to keep information on controlling persons private.

There could be instances where some shareholders who own a significant stake in the issuers' equity but are passive owners are incorrectly identified as control persons in a publicly filed form. Because this information would be required only for Rule 506(c) offerings, issuers would not face these privacy concerns if they do not rely on Rule 506(c) for their offering.

e. Trading Venue and Security Identifiers

Proposed Item 18 would require issuers to identify if any of its securities are traded on a national securities exchange, ATS or any other organized trading venue. If the issuer answers in the affirmative, it is required to identify the names of such trading venues where its securities are being traded and the SEC file number for such class of securities. The issuer, under proposed Item 18, would also need to identify if the securities to be sold in the offering are of the same class as the class of securities listed or quoted on the trading venue. Further, the proposed amendment to Item 9 (Types of Securities Offered) of Form D would require information on the trading symbol and

security identifier, such as a CUSIP number[224] or ISIN (International Securities Identification Number), for the offered securities, if any.

These proposed amendments would apply to offerings under Rule 506 as well as to offerings under Rule 504, Rule 505 and Section 4(a)(5). In many cases, the class of an issuer's security offered through a Rule 506 offering may not be eligible for trading on a national securities exchange, ATS or any other organized trading venue, and may not have an assigned security identifier.

For classes of securities where this information is available, regulators could link the offered securities to financial information about the issuer and the class of security – such as accounting data and security-price data – that is not available on Form D but is available through common third-party data aggregation platforms and through the associated trading venues. The inclusion of a security identifier in Form D would be relevant information for a number of private offerings. For example, analysis of Form D filings shows that approximately 10% of Exchange Act reporting companies conducted Regulation D offerings during the period between 2009 to 2011.[225]

The inclusion of this information could be useful to the Commission in evaluating developments in the Rule 506 market in several ways. First, with respect to a security identifier, linking Rule 506 offerings and financial information about the issuer from other financial data providers would allow for a more effective evaluation of one part of

[224] CUSIP (Committee on Uniform Securities Identification Procedures) is a universally recognized identification for more than 9 million unique financial instruments. The CUSIP system, owned by the American Bankers Association and operated by Standard & Poor's, facilitates the clearing and settlement process of securities. The number consists of nine characters (including letters and numbers) that uniquely identify a company or issuer and the type of security. See https://www.cusip.com/cusip/index.htm. CUSIP is one of the most widely available securities identifiers and is available for the securities issued by Exchange Act reporting companies.

[225] Ivanov/Bauguess Study.

the Rule 506 market. In particular, the availability of a security identifier would enable us to automatically match and process financial and other information about the issuer in a manner that would be significantly less burdensome than if we had to rely solely on a firm name and other identifying information. Security identifiers also could facilitate tracking multiple issuances by the same issuer, which might not otherwise be clear if a security identifier exists but is not made available. In addition, identifying the trading venue for an offered security could help us assess whether particular trading venues – or the lack of trading venue – is associated with higher prevalence of fraud and other illegal activities.

Identifying whether the securities being offered in reliance on Rule 506 are of the same class of securities, or are convertible into, or exercisable, or exchangeable for such class of securities will provide additional informational linkages between publicly available data and private offerings. The marginal cost to issuers of providing this information is likely to be low because this information should be readily available to the issuers of the offered securities.

f. Use of Proceeds

The proposed amendment to Item 16 (Use of Proceeds) of Form D would require issuers that are not pooled investment funds to report information on the portion of proceeds (if any) from Rule 506 offerings that will be used to repurchase or retire the issuer's existing securities. This information would allow the Commission to distinguish between offerings that raise capital to allow insiders and/or incumbent shareholders a partial or full exit and offerings that use the proceeds for investments or capital expenditures. This information could help us better distinguish the impact of the ability

to use general solicitation in Rule 506(c) offerings on capital formation versus investment exit strategies, particularly for small businesses. It may also help inform investors and the market generally about the issuer's incentives or related risks. For example, proceeds used towards redemption of securities could indicate that existing shareholders are lowering their investment exposure in the issuer.

The proposed amendment also requires issuers, other than pooled investment funds, that are relying on Rule 506 to provide more information on the use of offering proceeds. Issuers will be required to indicate what part of the proceeds is being used to pay for offering expenses, asset acquisition, working capital, business acquisition or repayment of existing debts. For non-fund issuers, this information would help us evaluate whether and how Rule 506 enhances capital formation that would be used for new investments, consistent with the intent of the JOBS Act, as compared to refinancing and capital restructuring. However, the additional information may reveal previously non-public information about issuer plans that could put the issuer at a competitive disadvantage. Moreover, an issuer may not be certain as to the ultimate use of proceeds or may alter its intended use as time passes and market conditions change. In these cases, the Form D information may not accurately reflect issuer plans or the issuer may be required to file an amended Form D.

g. Issuer Website

The proposed amendment to Item 2 (Principal Place of Business and Contact Information) would require all Regulation D issuers to provide their publicly accessible business website, if they have one. Websites for operating businesses have become ubiquitous and are part of their contact information, and in some instances, businesses

could be operating only via the Internet and may not have a physical location. When available, this information would be a useful component of issuer identification and would not be burdensome to provide.

h. Types of General Solicitation Used

The proposed amendments to Form D would include adding a requirement for issuers to provide information on the types of general solicitation used in Rule 506(c) offerings. The options would include oral communications, written communications, such as mass mailings and emails, websites or television and the web link to the advertising if the advertising is presented on a website. Having this information would help the Commission perform reviews of the Rule 506 market to better understand how the different methods of solicitation correspond to issuer behavior, including potentially fraudulent activity, identified through the Commission's Rule 506 review program.

i. Verification Methods

The proposed amendments to Form D would include adding requirements for issuers to provide information about how the investors in the offerings qualified as accredited investors, such as a natural person on the basis of income or net worth, as well as information on the types of methods used for verifying the accredited investor status of purchasers. This information would help us assess the nature of the verification methods used and how issuers are complying with the requirement to take reasonable steps to verify the accredited investor status of purchasers in Rule 506(c) offerings. The Commission may be able to use this information to analyze whether there are correlations between certain verification methods and the incidence of fraud in the private offering market. Similarly, information about verification practices learned through the

Commission's Rule 506 review program could be applied to subsequent Commission reviews of any practices, or combinations of practices and other offering characteristics, associated with the increased likelihood of fraudulent activity.

4. Proposed Amendment to Rule 507

The proposed amendment to Rule 507 would disqualify an issuer from using Rule 506 for future offerings if the issuer, or its predecessors or affiliates, had conducted an offering under Rule 506 in which, within the last five years, it or they did not comply with the Form D filing requirements of Rule 503 in Rule 506 offerings. Disqualification would extend for a period of one year after the filing of all required Forms D and Form D amendments have been made. This provision should increase the incentive for issuers to submit timely filings of Form D.

As described above, we could not locate Form D filings for approximately 10% of Regulation D offerings where broker-dealers or registered investment advisers were involved.[226] Although we cannot estimate the rate of compliance among the issuers of the remaining 89% of Rule 506 offerings that do not use a registered investment adviser or broker-dealer, it may be reasonable to assume that they are no more likely to file a Form D, particularly to the extent that they undertake an offering without the assistance of a regulated entity. This evidence suggests that many private issuers are failing to file a Form D even though this is a requirement under Regulation D. By disqualifying an issuer from relying on the Rule 506 exemption for one year for future offerings when the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five

[226] This evidence was based on 11 years of Form ADV filings by registered investment advisers, and three months of data at the beginning of 2012 for broker-dealers filing offering documents with FINRA.

disclose that fees and expenses have not been deducted and that if such fees and expenses had been deducted, performance may be lower than presented.

The inclusion of mandated legends would better inform potential investors as to whether they are qualified to purchase in Rule 506(c) offerings. Including risk and performance legends could make investors more aware of the potential risks associated with such offerings and, with respect to offerings by private funds, could help investors avoid confusing private funds with registered funds, which have a different risk and regulatory profile. Performance disclosures for private funds would also assist potential investors in assessing performance claims that may be included in the general solicitation materials. These legends would alert potential investors to certain investment risks.

Even though only accredited investors are allowed to purchase in Rule 506(c) offerings, advertising and other activities by issuers and intermediaries could induce non-accredited investors to believe that they are eligible to participate in these investment opportunities. Legends notifying them that only accredited investors are eligible to invest in these offerings could help alert non-accredited investors as to their ineligibility to participate.

We anticipate that the cost of including such legends in sales materials would be minimal for issuers. In some instances, the legends may be of limited benefit to investors because legends do not address whether the offering is fraudulent. It is possible that some unsuspecting accredited investors might erroneously believe that the inclusion of legends validates all of the information and risks regarding the offering. Further, it is possible that because these legends may contain standardized language, investors might discount the relevance of these legends.

Requiring additional disclosures for private funds, similar to those required by Rule 482 under the Securities Act for registered investment companies, would increase the likelihood that the performance data that is reported in the written general solicitation material is timely and would provide additional information and context about the performance presented. Because there are no standardized performance reporting requirements for private funds, such disclosure would address some concerns about investors being misled or confused in interpreting the performance information and may decrease the likelihood of misleading or exaggerated performance information being presented in private fund written general solicitation materials. While flexibility in reporting performance data may be appropriate for private funds that have a varied scope of investment strategies, performance calculation methodologies that are non-standardized or complicated limit how much investors can appropriately glean from the data advertised in the written material. The purpose for requiring these additional disclosures is to provide context so investors can better understand fund performance information.

The proposed requirement for private funds to include a telephone number or website where an investor may obtain current performance data could impose costs, including the cost of establishing a telephone line or establishing a website for this information. We have attempted to address these costs by providing flexibility to distribute the information either through a telephone number or a website. We have also determined to not require that the telephone number be toll-free or collect. We believe that most private funds (or their advisers) currently maintain either a telephone number or website, though we recognize that some private funds or their advisers may incur

additional costs for staff and technology. The current information that a private fund would be required to provide would only need to be as of the most recent practicable date. Because this requirement would not require a private fund to calculate performance for dates on which the fund would not otherwise be calculating performance, we believe this will limit the costs incurred by private funds. In addition, updated current performance would be provided as of the last date on which the private fund determined the valuation of its portfolio securities. We do not expect a private fund to value its portfolio solely for the purpose of providing updated current performance under proposed Rule 509, which would not increase costs.

2. Proposed Amendments to Rule 156

Rule 156 under the Securities Act is an interpretive rule that provides guidance on the types of information in investment company sales literature that could be misleading for purposes of the federal securities laws, including Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. We are proposing amendments to Rule 156 to apply the guidance contained in the rule to sales literature used by private funds. The sales literature and other offering materials used by private funds are already subject to the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. The proposed amendments to Rule 156 are intended to provide helpful guidance to private fund issuers in developing sales literature that is neither fraudulent nor misleading. The proposal may also encourage private funds to include additional disclosure regarding performance and other statements or representations about the characteristics of the fund. Funds may incur some costs in reviewing their sales literature for consistency with the interpretive guidance set

forth in Rule 156. We note, however, that private funds should already be reviewing their sales literature for misleading statements to avoid violating the antifraud provisions of the federal securities laws. Accordingly, we believe that the amendments to Rule 156 would not impose significant compliance costs on private funds.

3. Request for Comment on Manner and Content Restrictions for Private Funds

Commenters have suggested that there be standards or requirements that would govern the content and/or manner of general solicitations by private funds in Rule 506(c) offerings. As discussed above, there may be investor protection concerns with respect to the offering materials used by private funds as these funds are not subject to specific disclosure requirements in reporting their performance, unlike registered funds. Some commenters have advocated that, in order to engage in general solicitation, the materials used by private funds should be held to standards that are analogous to those that are applicable to the materials used by mutual funds. They have also advocated for restricting the use of performance data in general solicitation materials by private funds until the Commission can develop standardized performance calculation and reporting requirements. We recognize, however, that prescribing performance standards in general solicitation materials could reduce the flexibility of issuers when methodologies for calculating performance may vary for legitimate reasons, including investor preferences, and could be burdensome for issuers, especially if their general solicitation materials are otherwise not misleading.

E. Analysis of Temporary Rule Relating to Mandatory Submission of Written General Solicitation Materials

Proposed new Rule 510T in Regulation D would require an issuer conducting a Rule 506(c) offering to submit to the Commission any written general solicitation materials prepared by or on behalf of the issuer and used in connection with the Rule 506(c) offering. This requirement would enable the Commission to evaluate the use of written general solicitation materials. It could also serve as a deterrent against potential forms of misleading advertising or other fraud because the written general solicitation materials would be submitted to the Commission and accessible to other securities regulators. Having access to the written general solicitation material could help regulators evaluate market practices.

The written general solicitation material would not be treated as filed or furnished with the Commission and is therefore not subject to the particular liability provisions under the Securities Act or the Exchange Act for filings. Conditioning the future availability of Rule 506 on not being subject to any order, judgment or court decree for failure to comply with proposed Rule 510T would provide incentives for submitting written general solicitation material. Inclusion of a two-year sunset period for this rule would provide a finite period of time (and information) for issuers to submit written general solicitation materials for the Commission's consideration in assessing general solicitation in Rule 506(c) offerings and would therefore also limit issuers' costs of compliance.

Under the proposed rule, written general solicitation materials would be required to be submitted no later than the date of first use of such materials. Issuers are required to submit only written general solicitation materials, so to the extent issuers' written

general solicitation materials do not change, they should not be costly to submit. If the written general solicitation materials change or are updated during the course of an offering, however, submission of these materials at multiple times could create an increased burden for issuers.

F. Analysis of Potential Impacts on Efficiency, Competition and Capital Formation

The proposed amendments to the Form D filing requirements would enable the Commission to evaluate the effectiveness of Regulation D market more systematically and to more accurately determine the economic impact of eliminating the prohibition against general solicitation in Rule 506 offerings. A more complete understanding of how and where capital is being raised in offerings relying on Rule 506(b) or Rule 506(c) would help the Commission better assess the risk in these markets and evaluate the effectiveness of the use of general solicitation materials in capital-raising activity. Appropriate and timely regulatory responses to Rule 506 market developments would enhance investor protection, and could encourage greater investor participation in the Rule 506 markets, which would lead to higher aggregate of capital formation.[227]

The proposed amendments to the Form D filing requirements would also provide the Commission, other regulators and investors with more information about market participants and practices in the private offering market. The increased quantity and quality of information about private offerings is designed to make it easier for regulators to identify poor or inappropriate market practices, which may help deter fraudulent

[227] See, e.g., Andrei Shleifer and Daniel Wolfenzon, Investor Protection and Equity Markets, 66 Journal of Financial Economics 3 (2002).

activity. A better understood and regulated market would promote investor protection and contribute to broader participation by accredited investors.

The inclusion of legends and additional disclosures would inform investors about the differences between Rule 506(c) offerings and registered offerings, allowing for greater transparency and better understanding of the differences in the underlying risks of the two types of offerings. This would improve investor decision-making and thereby, the allocative efficiency of capital in the Rule 506 market. The proposed amendments to Securities Act Rule 156 may also make private funds and their investment advisers more aware of potentially misleading statements in their sales literature and written general solicitation material.

The elimination of the prohibition against general solicitation may enhance the ability of accredited investors to identify and evaluate investment opportunities in private funds that would not have previously been available. This could increase the level of competition between private funds and registered funds and result in a shift in the flow of invested capital from registered to private funds. The proposed amendments to require legends and disclosures in written general solicitation materials are intended to limit such a shift to only those investors that are qualified to participate in Rule 506(c) offerings. We are not, however, able to quantify the magnitude of such a potential substitution of investment in private funds and registered funds or the extent to which the proposed legends will affect that shift.

We recognize the proposed rule and form amendments in this release could increase the regulatory burden for issuers in the Rule 506(b) and Rule 506(c) markets, which could drive potential issuers, especially small issuers, to the Rule 504 and Rule

505 markets. Some issuers may even find accessing public markets more attractive. However, with the availability of general solicitation in Rule 506(c) offerings, the benefits of using Rule 506(c) are still likely to justify the higher costs of complying with the proposed rule and form amendments.

X. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[228] the Commission must advise the OMB as to whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- the potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment or innovation.

[228] Pub. L. No. 104-121, Tit. II, 110 Stat. 857 (1996).

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

XI. INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared this Initial Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act.[229] This Initial Regulatory Flexibility Analysis relates to the amendments to Regulation D and Form D and Rule 156 that we are proposing in this release.

A. Reasons for, and Objectives of, the Proposed Action

The primary reason for, and objective of, the proposed amendments to Form D and the proposed amendments to Regulation D relating to Form D is to improve the Form D data collection process with respect to offerings under Rule 506 of Regulation D and, in particular, to assist our efforts to assess the use of general solicitation in Rule 506(c) offerings. We believe these amendments, in general, would improve our Form D data collection efforts by providing a greater incentive for issuers to file Form D and by amending the information requirements of Form D to require additional information on Rule 506 offerings. Proposed Rule 509, which would require issuers to include certain legends and other disclosures in written general solicitation materials used in Rule 506(c) offerings, is intended to address investor protection concerns arising from the ability of issuers to engage in general solicitation in these offerings. Proposed Rule 510T, which would require issuers to submit to the Commission any written general solicitation materials used in Rule 506(c) offerings, is intended to facilitate the Commission's understanding of the market practices relating to how issuers solicit

[229] See 5 U.S.C. 603.

potential purchasers through written general solicitation materials for their Rule 506(c) offerings. The proposed amendments to Rule 156 are intended to provide helpful antifraud guidance to those preparing sales literature for private funds.

We are proposing the amendments to Regulation D and Form D under the authority in Sections 4(a)(2), 19(a) and 28 of the Securities Act,[230] as amended, and Section 201(a) of the JOBS Act.[231] We are proposing the amendments to Rule 156 under the authority in Section 19(a) of the Securities Act[232] and Sections 10(b) and 23(a) of the Exchange Act.[233]

B. Small Entities Subject to the Proposed Rule and Form Amendments

For purposes of the Regulatory Flexibility Act, under our rules, an issuer, other than an investment company, is a "small business" or "small organization" if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[234] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[235]

The proposed amendments would apply to all issuers that conduct offerings under Rule 506 and would affect small issuers (including both operating businesses and pooled

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[230] 15 U.S.C. 77d(a)(2), 77s(a), and 77z-3.

[231] Pub. L. No. 112-106, sec. 201(a), 126 Stat. 306, 313 (Apr. 5, 2012).

[232] 15 U.S.C. 77s(a).

[233] 15 U.S.C. 78j(b) and 78w(a).

[234] 17 CFR 230.157.

[235] 17 CFR 270.0-10(a).

investment funds that raise capital under Rule 506) relying on this exemption from Securities Act registration. All issuers that sell securities in reliance on Rule 506 are required to file a Form D with the Commission reporting the transaction. For the year ended December 31, 2012, 16,067 issuers made 18,187 new Form D filings, of which 15,208 issuers relied on the Rule 506 exemption. Based on information reported by issuers on Form D, there were 3,958 small issuers[236] relying on the Rule 506 exemption in 2012. This number likely underestimates the actual number of small issuers relying on the Rule 506 exemption, however, because over 50% of issuers declined to report their size. The proposed amendments to Rule 156 would apply to all private funds.

C. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Regulation D and Form D would impose certain reporting and compliance requirements on issuers that conduct Rule 506 offerings. The proposed amendment to disqualify an issuer from relying on the Rule 506 exemption if the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five years, with Form D filing requirements in a Rule 506 offering would not add a new reporting, recordkeeping or other compliance requirement because the filing of Form D is currently a requirement of Regulation D. The proposed amendments to Regulation D to require an Advance Form D filing for Rule 506(c) offerings, a closing Form D amendment for Rule 506 offerings, temporary submission of written general solicitation materials used in Rule 506(c) offerings, prescribed legends and disclosure in written general solicitation materials used in Rule 506(c) offerings, as well as the proposed

[236] Of this number, 3,627 of these issuers are not investment companies, and 331 are investment companies. We also note that issuers that are not investment companies disclose only revenues on Form D, and not total assets. Hence, we use the amount of revenues as a measure of issuer size.

amendments to Form D to require additional information, would, however, impose additional reporting and compliance requirements on issuers that conduct offerings under Rule 506 and, to a much lesser extent, offerings under Rule 504, Rule 505 and Section 4(a)(5). We expect that small entities would incur additional initial and ongoing costs related to complying with these requirements. Initial costs include those associated with preparing the first Form D filing that includes the required additional information in Form D, preparing legends and disclosures to be included in written general solicitation materials for Rule 506(c) offerings and submitting such materials to the Commission prior to the date of first use. Ongoing costs include the additional costs arising from providing this additional information in each subsequent filing of a Form D or Form D amendment when required, including the prescribed legends in written general solicitation materials, submitting updated or new written general solicitation materials to the Commission and submitting Advance Form D filings for Rule 506(c) offerings and closing amendments to Form D for Rule 506 offerings. The proposed amendments to Rule 156 may cause small entities to incur some costs in reviewing their sales literature for consistency with the interpretative guidance set forth in Rule 156, but we do not expect these costs to be significant.

D. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that the proposed amendments would not duplicate, overlap or conflict with other federal rules.

E. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives of our amendments, while minimizing any

significant adverse impact on small entities. In connection with the proposed amendments, we considered several alternatives, including the following:

- establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- further clarifying, consolidating or simplifying the proposed requirements;
- using performance rather than design standards; and
- providing an exemption from the proposed requirements, or any part of them, for small entities.

The Commission is not proposing the establishment of different compliance or reporting requirements or timetables for the rules, as proposed, for small entities. The Commission believes that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the proposed requirements or the use of performance rather than design standards would be inappropriate because these approaches would detract from the completeness and uniformity of the Form D dataset and, as a result, reduce the expected benefits of more consistent submission of Rule 506 information and improved collection of data for Commission enforcement and rulemaking efforts. We believe that the proposed amendments to Rule 156 should apply to all private funds, regardless of size. The Commission solicits comment, however, on whether differing compliance, reporting or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with the main goal of improving the Form D data collection process with respect to Rule 506 offerings.

F. General Request for Comment

The Commission is soliciting comments regarding this analysis. In particular, the Commission requests comment regarding:

- the number of small entities that may be affected by the proposed amendments;
- the existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis, as well as any effects that have not been discussed; and
- how to quantify the impact of the proposed amendments.

The Commission asks those submitting comments to describe the nature of any impact and to provide empirical data to support the nature and extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

XII. STATUTORY AUTHORITY AND TEXT OF PROPOSED RULE AND FORM AMENDMENTS

The Form D and Regulation D amendments contained in this release are being proposed under the authority set forth in Sections 4(a)(2), 19(a) and 28 of the Securities Act, as amended, and Section 201(a) of the JOBS Act. The amendments to Rule 156 contained in this release are being proposed under the authority set forth in Section 19(a) of the Securities Act and Sections 10(b) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Advertising, Investment companies, Securities.

For the reasons set out above, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations, as follows:

PART 230--GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll (d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. No. 112-106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

2. Amend § 230.156 by:

a. Revising the heading;

b. In paragraph (a), adding the phrase "or a private fund" at the end of the first sentence.

c. Revising paragraphs (b)(3) introductory text, (b)(3)(ii) and (c); and

d. Adding paragraph (d).

The revisions and addition read as follows:

§ 230.156 Investment company and private fund sales literature.

(a) * * *

(b) * * *

(3) A statement involving a material fact about the characteristics or attributes of an investment company or a private fund could be misleading because of:

(i) * * *

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or the private fund or an investment in securities issued by such entity, services, security of investment or funds, effects of government supervision, or other attributes; and

* * * * *

(c) For purposes of this section, the term sales literature shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company or private fund. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

(d) For purposes of this section, the term private fund means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act (15. U.S.C. 80a-3(c)(1) or 80a-3(c)(7)).

3. Amend § 230.503 by:

a. Redesignating paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) as paragraphs (a)(2), (a)(3), (a)(4) and (a)(6), respectively;

b. Adding new paragraphs (a)(1) and (a)(5);

c. Revising newly redesignated paragraph (a)(2);

d. Removing “and” in newly redesignated paragraph (a)(4)(ii)(I);

e. Removing the period and adding in its place ";" in newly redesignated paragraph (a)(4)(iii); and

f. Adding new paragraphs (a)(4)(iv) and (a)(4)(v).

The revisions and additions read as follows:

§ 230.503 Filing of notice of sales.

(a) When notice of sales on Form D is required and permitted to be filed. (1) An issuer that intends to offer or sell securities in reliance on § 230.506(c), and has not previously filed a notice under paragraph (a)(2) of this section of such intended offering in reliance on § 230.506(c), must file with the Commission, no later than 15 calendar days prior to the first use of general solicitation or general advertising for such offering, a notice of sales containing the following information required by Form D (17 CFR 239.500) for such offering:

(i) The issuer's identity (Item 1);

(ii) Principal place of business and contact information (Item 2);

(iii) Related persons (Item 3);

(iv) Industry group (Item 4);

(v) Federal exemptions and exclusions claimed (Item 6);

(vi) Type of filing (Item 7);

(vii) Type(s) of Securities Offered (Item 9);

(viii) Business combination transaction (Item 10);

(ix) Sales compensation (Item 12); and

(x) Use of proceeds (Item 16).

(2) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 (other than an issuer that has previously filed a notice for such offering under paragraph (a)(1) of this section) must file with the Commission a notice of sales containing the information required by Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

* * * * *

(4) * * *

(iv) To contain the information required by Form D for such offering of securities in reliance on § 230.506(c), if the issuer is offering or selling securities in reliance on § 230.506(c) and has previously filed the notice under paragraph (a)(1) of this section, no later than 15 calendar days after the first sale of securities in the offering; and

(v) Not later than 30 calendar days after the termination of an offering conducted in reliance on § 230.506, unless all the information that would be included in such amendment is included in a notice previously filed under this paragraph (a) and such notice indicated that it was the closing amendment to the Form D.

(5) Where the end of a period specified for filing under paragraph (a)(1), (a)(2), (a)(4)(iv) or (a)(4)(v) of this section falls on a Saturday, Sunday or holiday, the due date for such filing would be the first business day following.

* * * * *

4. Amend § 230.507 by:

a. Redesignating paragraph (b) as paragraph (c);

b. Revising paragraph (a);

c. Adding new paragraph (b); and

d. In newly redesignated paragraph (c), removing the words "Paragraph (a)" and adding in their place "Paragraphs (a) and (b)".

The revision and addition read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under § 230.504, § 230.505 or § 230.506 shall be available for an issuer if such issuer, or any of its predecessors or affiliates, has been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with § 230.503. No exemption under § 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with § 230.509 or § 230.510T.

(b) (1) No exemption under § 230.506 shall be available for an issuer if such issuer, or any of its predecessors or affiliates, has, within the five preceding years, failed to comply with the requirements of § 230.503 in connection with an offering conducted in reliance on § 230.506, except that such exemption shall be available for offers and sales in connection with offerings that commenced before the failure to comply occurred. In determining compliance with § 230.503 for purposes of this paragraph (b)(1), a notice on Form D (§ 239.500) or amendment thereto will be deemed timely if it is filed not later than 30 calendar days after the

date specified for such filing in § 230.503, unless the issuer previously failed to comply with such a filing deadline in connection with the same offering.

(2) One year after the filing by the issuer and such predecessor(s) and affiliate(s), as the case may be, of all notices on Form D (§ 239.500) and amendments thereto required under § 230.503 in connection with each offering conducted in reliance on § 230.506 that has not been terminated, and of the closing amendment required under § 230.503(a)(4)(v) with respect to each previous offering conducted in reliance on § 230.506 within the five preceding years that has been terminated, the issuer shall be permitted to rely on the exemption under § 230.506.

(3) For purposes of paragraph (b)(1) of this section, failures to comply with § 230.503 that occurred before [effective date of final rule] shall be disregarded.

* * * * *

5. Add § 230.509 to read as follows:

§ 230.509 Required legends and other disclosures.

(a) Required legends. An issuer shall include, in a prominent manner, the following legends in any written communication that constitutes a general solicitation or general advertising in any offering conducted in reliance on § 230.506(c):

(1) The securities may be sold only to "accredited investors," which for natural persons are investors who meet certain minimum annual income or net worth thresholds;

(2) The securities are being offered in reliance on an exemption from the registration requirements of the Securities Act and are not required to comply with specific disclosure requirements that apply to registration under the Securities Act;

(3) The Commission has not passed upon the merits of or given its approval to the securities, the terms of the offering, or the accuracy or completeness of any offering materials;

(4) The securities are subject to legal restrictions on transfer and resale and investors should not assume they will be able to resell their securities; and

(5) Investing in securities involves risk, and investors should be able to bear the loss of their investment.

(b) Additional legend for private funds. If the issuer is a private fund, the issuer shall include, in a prominent manner, in any written communication that constitutes a general solicitation or general advertising in any offering conducted in reliance on this § 230.506(c), a legend disclosing that the securities offered are not subject to the protections of the Investment Company Act.

(c) Required disclosure for performance data of private funds. If the issuer is a private fund and includes performance data in any written communication that constitutes a general solicitation or general advertising in any offering conducted in reliance on this § 230.506(c):

(1) The private fund shall include in such written communication a legend disclosing that the performance data represents past performance; that past performance does not guarantee future results; that current performance may be lower or higher than the performance data presented; that the private fund is not required by law to follow any standard methodology when calculating and representing performance data; and that the performance of the private fund may not be directly comparable to the performance of other funds. The legend should

also identify either a telephone number or a website where an investor may obtain current performance data.

(2) All performance data must be as of the most recent practicable date considering the type of private fund and the media through which the data will be conveyed, and the private fund must disclose the period for which performance is presented.

(3) If the performance presentation does not include the deduction of fees and expenses, the private fund must disclose that the presentation does not reflect the deduction of fees and expenses and that if such fees and expenses had been deducted, performance may be lower than presented.

Note to § 230.509: A private fund is an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7)) of that Act. If applicable, a private fund may modify the required legend to reflect any higher minimum requirements to purchase in the offering, such as for qualified clients, as defined in § 275.205-3(d)(1) of this chapter, and qualified purchasers, as defined in section 2(a)(51) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)) and the rules thereunder.

6. Add § 230.510T to read as follows:

§ 230.510T Submission of written general solicitation materials.

(a) An issuer shall submit to the Commission any written communication that constitutes a general solicitation or general advertising in any offering conducted in reliance on § 230.506(c) no later than the date of first use. The communication shall be

submitted using the intake page designated on the Commission's website for the submission of such materials.

(b) This temporary rule shall expire and no longer be effective on [ ].

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78 o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

8. Amend Form D (referenced in § 239.500) by:

a. Revising Item 2;

b. Revising Item 3;

c. Revising Item 4;

d. In Item 5, in the first column, removing the phrase "Decline to Disclose" after "Over $100,000,000" and adding in its place "Not Available to Public," and in the second column removing the phrase "Decline to Disclose" after "Over $100,000,000" and adding in its place "Not Available to Public";

e. In Item 7, adding a check box that reads "Advance Notice – Rule 506(c) Offering" and the word "OR" before "New Notice" and adding the word "OR"

after “Amendment” and adding a check box that reads “Closing Amendment – Rule 506 Offering” after the word “OR”; and

f. Revising Item 9;

g. Revising Item 14;

h. Revising Item 16;

i. Adding Items 17 through 22 to Form D; and

j. Revising the instruction “When to file:” and the instructions to Items 2, 3, 4, 5, 7, 9, 14 and 16, and adding instructions to Items 17 through 22 to the General Instructions to Form D.

The revisions and additions read as follows:

(Note: The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.)

§ 239.500 Form D, notice of sales of securities under Regulation D and section 4(5) of the Securities Act of 1933.

* * * * *

Form D Notice of Exempt Offerings of Securities

* * * * *

Item 2. * * *

Issuer’s publicly accessible website address, if any: _____

* * * * *

Item 3. * * *

Relationship(s): * * * [ ] Controlling Person (for Rule 506(c) offerings only)

* * * * *

Item 4. * * *

Clarification of Response (if Other): _____

* * * * *

Item 9. * * *

Trading Symbol for the Offered Securities, if any: _____

Generally Available Security Identifier Number for the Offered Securities, if any:_____

* * * * *

Item 14. * * *

For offerings under Rule 506 only:		Natural Persons	Legal Entities
Accredited Investors	Number		
	Amount Raised ($)		
Non-accredited Investors	Number		
	Amount Raised ($)		

* * * * *

Item 16. * * *

Issuers that are not Pooled Investment Funds – Offerings under Rule 506
What fraction of offering proceeds was or will be used to repurchase/retire existing securities:
[ ] None
[ ] Less than 10%

[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

What fraction of offering proceeds was or will be used to pay offering expenses:
[ ] None
[ ] Less than 10%
[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

What fraction of offering proceeds was or will be used to acquire assets, otherwise than in the ordinary course of business:
[ ] None
[ ] Less than 10%
[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

What fraction of offering proceeds was or will be used to finance acquisitions of other businesses:
[ ] None
[ ] Less than 10%
[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

What fraction of offering proceeds was or will be used for working capital:
[ ] None
[ ] Less than 10%
[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

What fraction of offering proceeds was or will be used to discharge indebtedness:
[ ] None
[ ] Less than 10%
[ ] 10-25%
[ ] 25-50%
[ ] More than 50%

Item 17. Offerings Under Rule 506: Specify the Number of Purchasers Who Qualified as Accredited Investors on the Basis of

[ ] Income
[ ] Net worth
[ ] Director, executive officer or general partner of issuer or its general partner
[ ] Other basis

Item 18. Offerings Under Rule 506: National Securities Exchange or Alternative Trading System

If the issuer's securities are traded on a national securities exchange, alternative trading system or any other organized trading venue, the name of such trading venue

_____

If a class of the issuer's securities is registered under the Securities Exchange Act of 1934, the SEC file number for such class of securities _____

Check this box [ ] if the securities being offered in reliance on Rule 506 are of the same class of securities or are convertible into or exercisable or exchangeable for such class of securities.

Item 19. Offerings Under Rule 506: Filing of General Solicitation Materials with FINRA

If the issuer used a registered broker-dealer in connection with the offering, were general solicitation materials filed with the Financial Industry Regulatory Authority (FINRA)?
[ ] Yes [ ] No [ ] Not applicable

Item 20. Offerings Under Rule 506: Name and SEC File Number of Investment Advisers

If the issuer is a pooled investment fund, the name and SEC file number for each registered investment adviser or exempt reporting adviser that functions directly or indirectly as a promoter of the issuer _____

Item 21. Offerings Under Rule 506(c): Types of General Solicitation and General Advertising Used or To Be Used (check all that apply)

[ ] Email
[ ] Mass mailing
[ ] Telephone solicitations
[ ] Public website(s) or webcast(s). [Specify web address(es):_____]
[ ] Broadcast media
[ ] Print media
[ ] Social media

[ ] Other written communications [Specify:_____]
[ ] Seminar(s)/meetings(s)
[ ] Other oral communications
[ ] Not applicable

Item 22. Offerings Under Rule 506(c): Methods Used or To Be Used to Verify that Purchasers Are Accredited Investors (check all that apply):

Non-exclusive List of Verification Methods in Rule 506(c)(2)(ii):

[ ] Verification of natural person's **income** under Rule 506(c)(2)(ii)(A)
[ ] Verification of natural person's **net worth** under Rule 506(c)(2)(ii)(B)
[ ] Confirmation under Rule 506(c)(2)(ii)(C) by
  [ ] Registered broker-dealer
  [ ] SEC-registered investment adviser
  [ ] Certified public accountant
  [ ] Licensed attorney

Verification Using Other Methods (check all that apply):

[ ] Publicly available information [Specify: _____]
[ ] Documentation provided by purchaser [Specify: _____]
[ ] Documentation provided by third parties [Specify: _____]
[ ] Reliance on verification by a third party other than a registered broker-dealer, registered investment adviser, certified public accountant, or licensed attorney
[ ] Questionnaire
[ ] Other (Specify:_____)

* * * * *

General Instruction

* * *

- **When to file:**

o For offerings under Rule 504, Rule 505 and Rule 506(b) of Regulation D and Section 4(a)(5) of the Securities Act, an issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the "date of first sale" of securities in the offering as explained in the Instruction to Item 7. For this purpose, the

date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check. An issuer may file the notice at any time before that if it has determined to make the offering. An issuer must file a new notice with each state that requires it at the time set by the state. For state filing information, go to www.NASAA.org. A mandatory capital commitment call does not constitute a new offering, but is made under the original offering, so no new Form D filing is required.

o When an issuer intends to offer or sell securities under Rule 506(c) of Regulation D and has not previously filed a Form D for the offering, the issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days prior to the first use of general solicitation or general advertising for the offering. The advance Form D is required to include the following information for such offering: the issuer's identity (Item 1), principal place of business and contact information (Item 2), related persons (Item 3), industry group (Item 4), federal exemptions and exclusions claimed (Item 6), type of filing (Item 7), type(s) of securities offered (Item 9), business combination transaction (Item 10), sales compensation (Item 12), and use of proceeds (Item 16). The information under Item 9 and Item 12 is required only to the extent that the information is known at the time of the filing of the advance Form D.

* * * * *

o An issuer must file an amendment to a previously filed notice for an offering:

- to provide the information required by Form D for each new offering of securities in reliance on Rule 506(c) no later than 15 calendar days after the first sale of securities in the offering;

- to correct a material mistake of fact or error in the previously filed notice, as soon as practicable after discovery of the mistake or error;

- to reflect a change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change;

- annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time; and

- not later than 30 calendar days after termination of an offering conducted in reliance on Rule 506, unless a previously filed Form D amendment for such issuer with respect to the same offering includes the information that would have been disclosed in the amendment following termination of such offering and such previously filed amendment indicates that it is the closing amendment to the Form D for the offering.

* * * * *

Item-by-Item Instructions

* * *

Item 2. Principal Place of Business and Contact Information. * * *

Enter the issuer's publicly accessible website address, if any.

Item 3. Related Persons. Enter the full name and address of each person having the specified relationships with any issuer and identify each relationship:

- Each executive officer and director of the issuer and person performing similar functions (title alone is not determinative) for the issuer, such as the general and

managing partners of partnerships and managing members of limited liability companies; and

- Each person who has functioned directly or indirectly as a promoter of the issuer within the past five years of first sale of securities or the date upon which the Form D filing was required to be made, whichever date is later.
- For offerings conducted in reliance on Rule 506(c) only, each person who directly or indirectly controls the issuer.

If necessary to prevent the information supplied from being misleading, also provide a clarification in the space provided.

Identify additional persons having the specified relationships by checking the box provided and attaching Item 3 continuation page(s).

Item 4. Industry Group. * * *

If Other, provide a brief description of the issuer's industry group in the space provided.

Item 5. Issuer Size.

- **Revenue Range** (for issuers that do not specify "Hedge Fund" or "Other Investment Fund" in response to Item 4): Enter the revenue range of the issuer or of all the issuers together for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. GAAP, home country GAAP or International Financial Reporting Standards. If the issuer(s) has not otherwise

made information about its revenues publicly available (for example, in general solicitation materials for an offering conducted in reliance on Rule 506(c)) and otherwise uses reasonable efforts to maintain the confidentiality of such information, enter "Not Available to Public." If the issuer's(s') business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation only), enter "Not Applicable."

- **Aggregate Net Asset Value** (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 4): Enter the aggregate net asset value range of the issuer or of all the issuers together as of the most recent practicable date. If the issuer(s) has not otherwise made information about its net asset value publicly available (for example, in general solicitation materials for an offering conducted in reliance on Rule 506(c)) and otherwise uses reasonable efforts to maintain the confidentiality of such information, enter "Not Available to Public."

* * * * *

Item 7. Type of Filing. Indicate whether the issuer is filing a new notice, an advance notice for an offering in reliance on Rule 506(c), an amendment to a notice that was filed previously, or a closing amendment for an offering in reliance on Rule 506. If this is a new notice, enter the date of the first sale of securities in the offering or indicate that the first sale has "Yet to Occur." For this purpose, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check.

* * * * *

Item 9. Type(s) of Securities Offered. Select the appropriate type or types of securities offered as to which this notice is filed. State the trading symbol and general available security identifier, such as a CUSIP number or an International Securities Identification Number (ISIN), for the offered securities, if any. If the securities are debt convertible into other securities, however, select "Debt" and any other appropriate types of securities except for "Equity." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories. For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property.

* * * * *

Item 14. Investors. Indicate whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors as defined in Rule 501(a), 17 CFR 230.501(a), and provide the number of such investors who have already invested in the offering. In addition, regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, specify the total number of

investors who already have invested. For an offering conducted in reliance on Rule 506, state the number of natural persons who are accredited investors and non-accredited investors and purchased securities in the offering, the number of legal entities that are accredited investors and non-accredited investors and purchased securities in the offering, and the dollar amount raised from each category of investor.

* * * * *

Item 16. Use of Proceeds. For an offering conducted in reliance on Rule 506 by an issuer that is not a pooled investment fund, enter the percentage range of the offering proceeds that was or will be used to repurchase or retire the issuer's existing securities; to pay offering expenses; to acquire assets, otherwise than in the ordinary course of business; to finance acquisitions of other businesses; for working capital; and to discharge indebtedness.

Item 17. Purchasers Who Qualified as Accredited Investors. For an offering conducted in reliance on Rule 506, enter the number of purchasers who qualified as accredited investors on the basis of (1) income, (2) net worth, (3) being a director, executive officer or general partner of the issuer or its general partner, or (4) other basis.

Item 18. National Securities Exchange or Alternative Trading System. For an offering conducted in reliance on Rule 506, if the issuer's securities are traded on a national securities exchange, alternative trading system or any other organized trading venue, state the name of such trading venue. If a class of the issuer's securities is registered under the Securities Exchange Act of 1934, state the SEC file number for such class of securities. Check the box if the securities being offered in reliance on Rule 506

are of the same class of securities or are convertible into or exercisable or exchangeable for such class of securities.

Item 19. Filing of General Solicitation Materials with FINRA. For an offering conducted in reliance on Rule 506, if the issuer used a registered broker-dealer in connection with the offering, indicate whether any general solicitation materials were filed with the Financial Industry Regulatory Authority (FINRA).

Item 20. Name and SEC File Number of Investment Advisers. For an offering conducted in reliance on Rule 506 by an issuer that is a pooled investment fund, if an investment adviser functions, directly or indirectly, as a promoter of the issuer, provide the name and Commission file number for each such investment adviser that is registered with, or reporting as an exempt reporting adviser to, the Commission.

Item 21. Types of General Solicitation and General Advertising. For an offering conducted in reliance on Rule 506(c), indicate each type of general solicitation and general advertising used or to be used in the offering. If public website(s) or webcast(s) are used, specify the web addresses for the public website(s) or webcast(s). If written communications are used other than those listed in this item, briefly describe the form of such written communications.

Item 22. Methods Used to Verify Accredited Investor Status. For an offering conducted in reliance on Rule 506(c), indicate each method used or to be used to verify that the purchasers of securities are accredited investors. If the issuer verifies the accredited investor status of purchasers other than through the non-exclusive list of verification methods in Rule 506(c)(2)(ii), specify the publicly available information,

documentation provided by the purchaser or third parties, or other methods used to verify accredited investor status.

By the Commission.

Elizabeth M. Murphy
Secretary

July 10, 2013