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AFR Press Statement: Rushed JOBS Act Rulemaking Puts Investors at Risk, Advocates Warn SEC

FOR IMMEDIATE RELEASE

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As the Securities and Exchange Commission (SEC) reportedly prepared to adopt a controversial new JOBS Act rule without allowing for prior public input, former securities regulators, leading securities law experts, and advocates for investors, workers, and older Americans wrote to SEC Chairman Mary Schapiro on Wednesday voicing "strong opposition to any such circumvention of the public comment process for this or any other [JOBS Act] rulemaking." The more than two dozen individuals and organizations signing a joint letter asked Chairman Schapiro to "abandon this rushed approach, which puts vulnerable investors at risk, and to adopt instead a fully transparent rulemaking process based on a careful consideration of the significant potential harm to investors that is likely to result" and "the best ways to eliminate or minimize those risks."

The rule in question would lift a long-standing ban on general solicitation and advertising in private offerings. The SEC reportedly intends to lift the ban by issuing an interim final or temporary rule at its August 22 meeting, and to do so without waiting for outside comment either on the possible risks to investors or on how the Commission might seek to mitigate those risks. In the 1990s, a previous experiment with lifting the general solicitation and advertising ban led to an immediate upsurge in fraud, causing the Commission to reinstate the restriction. Since passage of the JOBS Act, advocates argue, both the magnitude of the risks and the complexities of the issues the Commission must address in any rulemaking have only increased.

The JOBS Act itself requires the SEC to issue rules affecting how solicitation can be conducted and it does nothing to eliminate the agency's existing responsibility to ensure that investors are adequately protected in private offerings, according to the advocates. For the Commission to immediately go ahead with a temporary or interim rule "would violate the spirit and letter of the Administrative Procedures Act" and allow hedge funds and other Wall Street interests to achieve their goals without regard for basic investor-

protection concerns. The issuance of a temporary or interim rule would likely end any practical hope of addressing such concerns, the advocates say.

Such an action, they add, would also violate the standard the Commission has set for itself in conducting economic analysis of proposed rules. "The Commission cannot apply a less rigorous approach when analyzing the potential harm to investors and the markets from weakening investor protections, as this regulation would do, than it applies when considering the cost of regulations to strengthen investor and market protections, such as those required under the Dodd-Frank Act," the letter states. "On the contrary, protecting investors and promoting market integrity remain the primary responsibilities of the agency."

In light of these concerns, the letter urges Chairman Schapiro to "show the same leadership you demonstrated when you spoke out against the JOBS Act's rollback of vital investor protections during Senate consideration of this legislation, to stand up against pressure to move forward with rulemaking in a hasty and reckless fashion, and to demand a full opportunity for public comment and full consideration of the potential impact on investors before proceeding with rulemaking in this area."

The AARP has voiced a similar set of objections in a [separate letter](#) to the SEC, as has the North American Securities Administrators Association in [its own letter](#).

Joint letter at http://ourfinancialsecurity.org/2012/08/sign-on-letter-investors-oppose-rushed-jobs-act-rulemaking/

AARP letter at http://ourfinancialsecurity.org/2012/02/aarp-letter-aarp-criticizes-the-jobs-act/

NASAA letter at http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Letter-to-SEC-re-Rule-506.pdf

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