



Consumer Federation of America



AFR Press Statement: SEC JOBS Act Proposal Fails to Address Investor Safety Concerns

FOR IMMEDIATE RELEASE

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Earlier today, the Securities and Exchange Commission (SEC) voted 4-1 to issue a proposed rule implementing the provision of the JOBS Act that allows the “general solicitation and advertising” (GS&A) of private stock offerings. Commissioner Luis Aguilar voted against releasing the proposal, pointing out that it did not include any of the enhanced protections suggested by commenters (such as CFA and AFR) to address the significantly increased investor vulnerability that will result from lifting the long-standing ban on these practices.

Americans for Financial Reform and Consumer Federation of America issued the following statement in response:

We were gratified when the Commission announced that it would go the route of proposing a rule and providing an opportunity for public comment. The proposal put forward today, however, does not provide the basis for a pro-investor rule. We are extremely disappointed by the Commission’s failure to include, or even to apparently discuss, the many proposals put forward by us and others to provide needed investor protections. While the JOBS Act requires the SEC to lift the solicitation ban, it does nothing to lessen the SEC’s duty to ensure that investors are adequately protected in private offerings. Unfortunately, based on the comments made by commissioners at today’s meeting, the proposal they approved does not meet even that most basic test.

Specifically:

- It does not appear to include any meaningful “reasonable steps” to ensure that purchasers are accredited investors, as specifically required by the statute. Instead, the proposal relies on a “facts and circumstances” approach, while still providing a safe harbor to issuers who sell to non-accredited investors based on

a reasonable belief standard. This would effectively eliminate the single most significant investor protection mandated by the statute to minimize the potential for abusive sales practices.

- The rule proposal apparently would not even ensure the filing of Form D as a condition of relying on the exemption and engaging in general solicitation. Nor would it require issuers to submit information on their planned advertising and solicitation practices and verification procedures. These are basic steps that would help provide regulators with the ability to police this troubled market.
- The rule apparently does not include any restrictions on hedge fund and private equity fund marketing practices, such as setting basic standards for performance claims. Absent such standards, these risky and loosely regulated funds will be able to advertise their shares to retail investors in the same way that mutual funds do without being subject to even the most basic restrictions that mutual funds must meet.
- The proposal does not revise the definition of accredited investor to better reflect the sophistication needed to assess the speculative and risky investments often sold through private offerings. These offerings will now be marketed heavily to this population, including older Americans who have amassed a nest egg they must rely on to meet basic expenses in retirement.

The SEC has provided a comment process during which the shortcomings discussed here could theoretically be addressed. It is important for those committed to preserving the integrity of our financial markets to participate in this process. It is difficult to see, however, how the Commission could end up adopting even a minimally acceptable final rule on the basis of this proposal. A re-proposal is necessary, incorporating basic protections such as those outlined above. In the meantime, it is incumbent on the Commission to conduct a meaningful economic analysis of its proposed rule, based on a careful examination of the risks to investors.