

United States Senate

WASHINGTON, DC 20510

September 23, 2014

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

We urge you to act promptly to finalize and strengthen investor protections for private securities offerings that you proposed more than one year ago. Today marks the one year anniversary of implementation of the Commission's rule allowing general solicitation and advertising of certain private securities offerings. For the last year, issuers have been allowed to use highway billboards, internet advertisements, cold calls to senior living centers, and promotional T-shirts to market their securities to investors, with no education for investors and limited disclosure of risks. We are deeply concerned that, for the last year, the Commission has allowed private securities offerings to take place using general solicitation and advertising without adequate investor protections.

Last year, while finalizing rulemaking required by the Jumpstart Our Business Startups (JOBS) Act, to allow general solicitation in certain private offerings, the Commission simultaneously proposed, but did not finalize, rule amendments to enhance investor protections and deter schemes perpetuated through general solicitation and advertising, such as those preying on the retirement savings of vulnerable Americans.

In response to the rule amendments proposed last year, the Commission has received a number of detailed comments suggesting ways to restore and enhance some basic investor protections in private offerings. Two of these safeguards are especially important and should be adopted without further delay.

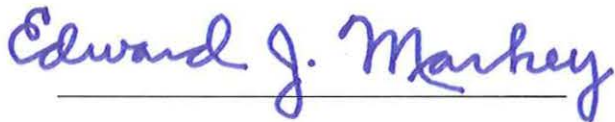
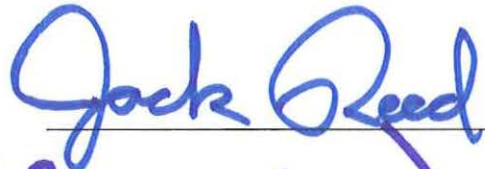
First, general solicitation materials that will be used by issuers, especially for private investment funds, should be filed with the Commission, and should contain risk disclosures. Such requirements will provide the Commission and other regulators with a more complete understanding of the general solicitation landscape, and will deter misleading advertisements. Mutual funds, which generally are less risky to investors than private securities offerings, are required to submit advertising materials for review by regulators and are required to include specific risk disclosures in their advertisements. We believe that private securities offerings, especially for private investment funds, should be subject, at minimum, to the same standards as mutual funds. Similar requirements for submission of materials and uniform disclosure of past performance were recommended by the Commission's Investor Advisory Committee in 2012.

Second, issuers should be required to file a Form D before engaging in general solicitation, and those who engage in general solicitation without filing the required Form D registration form, or who file improperly, should not be allowed to rely upon the Securities Act

registration exemption until corrective action is taken. Current rules, coupled with lax enforcement, have resulted in an environment where there are few, if any, meaningful consequences for issuers that fail to file a Form D in a timely manner. Form D is an important tool for federal and state securities regulators to be able to track and monitor offerings, and to target surveillance and education efforts appropriately. Without it, a regulator's first sign of a problematic offering may be a phone call from an investor who faces a lost retirement. The current regulation does not require a Form D to be filed until two weeks after an offering has commenced, and for many offerings, provides little incentive to file at all. Requiring pre-filing and adding a real consequence for failing to properly file with the Commission, such as the potential loss of the issuer's Securities Act exemption, would provide better information to regulators and a much-needed incentive for issuers to comply with the filing requirements.

Again, we urge you to promptly take action to strengthen and finalize the investor protection rules proposed more than a year ago. A wave of fraudulent schemes could hurt confidence in the integrity of our markets broadly, and unfortunately, today, investors are unnecessarily exposed to undue risks of fraud and financial loss. Therefore, it is vital that prompt action be taken.

Sincerely,



Cc: The Honorable Luis A. Aguilar, Commissioner, Securities and Exchange Commission
The Honorable Daniel M. Gallagher, Commissioner, Securities and Exchange Commission
The Honorable Kara M. Stein, Commissioner, Securities and Exchange Commission
The Honorable Michael S. Piwowar, Commissioner, Securities and Exchange Commission