

**MEMO# 26530**

September 27, 2012

## **Draft ICI Letter on Proposed Rules to Implement the JOBS Act**

[26530]

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TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 18-12  
INVESTMENT ADVISERS COMMITTEE No. 3-12  
SEC RULES COMMITTEE No. 59-12 RE: DRAFT ICI LETTER ON PROPOSED RULES TO IMPLEMENT THE JOBS ACT

As you know, Congress enacted the Jumpstart Our Business Startups Act (the “JOBS Act”) earlier this year, which, among other things, repeals the ban on general solicitation and general advertising in private securities offerings under Rule 506 of Regulation D. [\[1\]](#) Last month, the Securities and Exchange Commission proposed rules and rule amendments to implement this provision in the JOBS Act, with a comment deadline of October 5. [\[2\]](#)

A draft of the Institute’s comment letter is attached. As with the comment letters we submitted prior to the publication of the proposal, [\[3\]](#) ICI’s comments focus on Rule 506 offerings by private funds (i.e., funds that rely on either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 to be excluded from the definition of “investment company” under that Act).

The draft letter reiterates our prior recommendations, which include:

- Imposing content restrictions on private fund advertising at least as extensive as those currently applicable to mutual funds;
- Prohibiting performance advertising by private funds until the Commission can craft a rule that requires private funds to calculate performance based on standardized methodologies;
- Requiring certain disclosure in advertisements to ensure that all investors who may see a private fund advertisement—whether accredited or not—do not confuse the private fund for a mutual fund or other regulated, registered investment company;
- Directing the Financial Industry Regulatory Authority (“FINRA”) to require private fund advertisements to be filed with FINRA to the same extent as advertisements for mutual funds; and
- Reconsidering the income and net worth thresholds in the definition of “accredited

investor” to ensure that the definition appropriately defines a universe of investors that do not need the protections of the securities laws.

The letter then answers several of the specific questions posed by Commissioner Luis Aguilar in his statement on the proposal, using those questions to expand upon the Institute’s earlier recommendations. [\[4\]](#)

In an effort to highlight the potential for investor confusion over seeing advertisements for mutual funds and private funds side-by-side, the draft letter includes mock-ups of hypothetical fund advertisements on page 3 and in the appendices. We are particularly interested in member views on these mock-ups.

The public was given just thirty days to comment on this proposal, and comments are due on October 5. Accordingly, please provide comments on the draft letter to me at [rcg@ici.org](mailto:rcg@ici.org) or 202/371-5430 no later than the close of business on Wednesday, October 3.

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Securities Regulation - Investment Companies

## [Attachment](#)

### **endnotes**

[\[1\]](#) See Memorandum No. [26422](#), dated August 30, 2012.

[\[2\]](#) Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33-9354 (August 29, 2012) (the “Proposing Release”), available at <http://www.sec.gov/rules/proposed/2012/33-9354.pdf>.

[\[3\]](#) See Letters from Paul Schott Stevens, President and CEO of the Investment Company Institute, dated May 21, 2012 (available at <http://www.sec.gov/comments/jobs-title-ii/jobstitleii-13.pdf>) and August 17, 2012 (available at <http://www.sec.gov/comments/jobs-title-ii/jobstitleii-66.pdf>).

[\[4\]](#) Commissioner Aguilar voted against issuing the proposal, instead issuing his own request for comment on the topics that, in his view, “the Commission’s proposal is deficient in failing to address.” See “Increasing the Vulnerability of Investors,” speech by Commissioner Luis A. Aguilar, Securities and Exchange Commission (August 29, 2012), available at <http://www.sec.gov/news/speech/2012/spch082912laa.htm>. The request for additional comment is contained in Appendix A.