

**MEMO# 21692**

October 1, 2007

## **Draft Institute Comment Letter on SEC Proposal to Amend Regulation D; October 3rd Conference Call**

[21692]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 35-07  
INVESTMENT ADVISERS COMMITTEE No. 18-07  
SEC RULES COMMITTEE No. 75-07  
SMALL FUNDS COMMITTEE No. 36-07 RE: DRAFT INSTITUTE COMMENT LETTER ON SEC  
PROPOSAL TO AMEND REGULATION D; OCTOBER 3rd CONFERENCE CALL

As you know, the Securities and Exchange Commission recently published for comment revisions to several rules under the Securities Act of 1933 applicable to private offerings.\* The Institute's draft comment letter on the SEC's proposal is attached and briefly summarized below.

Comments on the proposal are due to the SEC on October 9th. We will hold a conference call to discuss the Institute's draft letter on Wednesday, October 3rd at 4:30 pm Eastern time. The dial-in number for the call is 800-779-9977 and the pass code is 69259. The leader for the call is Rachel Graham.

If you plan to participate in the call, please let Spring Long know via email ([slong@ici.org](mailto:slong@ici.org)) as soon as possible, but no later than 12 pm Eastern time on October 3rd. If you are unable to participate, please provide any comments on the draft letter directly to Rachel Graham by phone (202/326-5819) or email ([rgraham@ici.org](mailto:rgraham@ici.org)) no later than October 4th.

The draft letter focuses on two principal issues. First, it addresses proposed Rule 507 of Regulation D, which would establish a new exemption from Securities Act registration for offers and sales to “large accredited investors.” The rule would allow issuers – not including hedge funds and other private investment pools – to publish tombstone-like announcements in print media and on the Internet in connection with such offerings. The draft letter expresses the Institute’s vigorous opposition to the limited advertising component of Rule 507, stating that it would represent a dangerous erosion of the long-established line between public and private securities offerings. The draft letter also asserts that the SEC has failed to demonstrate that allowing limited advertising in connection with Rule 507 offerings is necessary or appropriate in the public interest and consistent with the protection of investors.

Second, the draft letter endorses the SEC’s decision not to provide hedge funds and other private investment pools with the ability to announce their offerings in widely available public media. The letter urges the SEC to use this opportunity to reiterate that allowing any form of general solicitation or general advertising by private pools is fundamentally inconsistent with their exclusion from the Investment Company Act. The letter discusses in detail why general solicitation and general advertising by private investment pools would contravene the clear intent of Congress in adopting Sections 3(c)(1) and 3(c)(7) of the Investment Company Act and, moreover, would raise serious investor protection concerns.

The draft letter expresses the Institute’s view that the SEC must maintain as strict a line as possible between public and private offerings of securities, and it calls upon the SEC to ensure the highest level of investor protection possible with respect to unregistered offerings of securities. In keeping with these broad principles, the draft letter recommends that the SEC take the following course of action on selected other aspects of the proposal:

- Adopt the proposed “accredited natural person” standard for investors in private investment pools organized under Section 3(c)(1) of the Investment Company Act, but without an exclusion for venture capital funds.
- Continue to exclude manner of sale violations from the list of insignificant deviations from Regulation D in Rule 508.
- Adjust for inflation all dollar thresholds in the accredited investor standards in Rule 501 of Regulation D by making: (1) an immediate adjustment that would correct for the effect of inflation from 1982, when the standards were adopted, to the present and (2) adjustments every five years thereafter to keep pace with inflation.
- Adopt the proposed “bad actor” disqualification provisions for all securities offerings under Regulation D.

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## [Attachment](#)

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