



1401 H Street, NW, Suite 1200
Washington, DC 20005-2148
Phone 202/326-8300
Fax 202/326-5828
www.idc.org

September 23, 2013

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Amendments to Regulation D, Form D and Rule 156 under the Securities Act; File No. S7-06-13

Dear Ms. Murphy:

The Independent Directors Council¹ appreciates the opportunity to comment on the Securities and Exchange Commission's proposed measures to address concerns that may arise in connection with permitting issuers, including private funds, to engage in general solicitation and general advertising under new SEC rules.² Directors of registered funds (including mutual funds, closed-end funds, and exchange-traded funds)—whose primary responsibility is to look after the interests of their fund's shareholders—have a keen interest in policy issues affecting fund investors.

When the SEC proposed to eliminate the prohibition on general solicitation and general advertising, IDC and many others expressed concern about the lack of investor protection provisions in

¹ IDC serves the fund independent director community by advancing the education, communication, and policy positions of fund independent directors, and promoting public understanding of their role. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$15.4 trillion and serve over 90 million shareholders, and there are approximately 1,900 independent directors of ICI-member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

² *Amendments to Regulation D, Form D and Rule 156*, Release No. IC-30595; File No. S7-06-13 (July 10, 2013), available at <http://www.sec.gov/rules/proposed/2013/33-9416.pdf>.

the SEC's proposal.³ As we previously noted, we are concerned about the potential for investors to confuse private funds with registered funds as a result of private fund advertising. In addition, we are concerned that misleading advertisements by private funds could affect investor confidence and harm other parts of the market, especially registered funds. In IDC's previous comment letter, we urged the SEC to, at a minimum, prohibit private funds from advertising performance until it can address these investor protection concerns.

We are disappointed that the SEC determined to lift the prohibition before such investor protections are in place. That being said, we are pleased that the SEC has at least proposed some protections at this time. The SEC's proposed investor protections address some of our concerns, but we believe more is needed. We urge the SEC to make investor protection in this area a priority, with the goal of implementing the protections as soon as possible.

The SEC proposes to require private funds to include legends in written general solicitation materials that state, among other things, that the securities offered are not subject to the protections of the Investment Company Act. The SEC states that it believes the legend is appropriate, because the Act provides important protections, including limitations on self-dealing, affiliated transaction and leverage requirements, and independent board members, none of which apply to private funds. We support the requirement for such a legend but suggest that the language should be made clearer for the benefit of investors. In particular, the legend should state that private fund investors do not have the benefits of the protections offered by the Investment Company Act (or that private funds present additional risks).

The SEC also proposes that private funds include certain disclosures in any written general solicitation materials that include performance data, similar to disclosures required for registered funds (such as a legend disclosing, among other things, that past performance does not guarantee future results). We support the required disclosures but strongly believe that more needs to be done by the SEC to address performance advertisements by private funds. While performance information in mutual fund advertisements are subject to standardized methodologies, the SEC does not propose that private fund performance information be subject to similar content restrictions at this time. The SEC does not state that such a requirement is not warranted, but rather, that it would be difficult to develop because methodologies can vary for a number of reasons, such as the type of fund, assumptions underlying the calculations, and investor preference. Thus, the SEC determined not to propose standardized calculation methodologies for private fund performance without further study. We continue to believe that, instead of permitting private funds to advertise performance while the SEC studies the matter, that it should prohibit private fund performance advertisements *until* it can address

³ See Letter from IDC to SEC regarding Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings; File No. S7-07-12, available at <http://www.sec.gov/comments/s7-07-12/s70712-128.pdf>.

this issue. We believe that this approach would better serve investors. At the very least, the SEC should undertake this study as soon as possible.⁴

The SEC proposes to monitor and study the development of private fund advertising and undertake a review to determine whether any further action is necessary, rather than require at this time that private issuers file advertising materials for substantive review by a regulator, such as the Financial Industry Regulatory Authority. We continue to believe that substantive reviews by a regulator could mitigate potential investor confusion as well as the risk of misleading advertisements by private funds, and urge the SEC to pursue this means for investor protection.

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If you have any questions about our comments, please contact me at (202) 326-5824.

Sincerely,



Amy B.R. Lancellotta
Managing Director
Independent Directors Council

cc: The Honorable Mary Jo White
The Honorable Luis A. Aguilar
The Honorable Daniel M. Gallagher
The Honorable Kara M. Stein
The Honorable Michael S. Piwowar

Norm Champ
Director
Division of Investment Management

Keith F. Higgins
Director
Division of Corporation Finance

⁴ Other standards for performance presentation, such as Rule 482 under the Securities Act of 1933 and the Global Investment Performance Standards (GIPS) created by the CFA Institute, may serve as starting points.