



## Hedge Fund Association Asks SEC for Clear Rules on Verifying Investor Accreditation

*Industry Trade Organization Asks for Provision in JOBS Act Rules to Limit Fund Managers' Liability Should They Take Reasonable, Pre-Defined Steps to Confirm Whether Investors are Accredited*

NEW YORK – September 13, 2012 – [The Hedge Fund Association](#), (the HFA), an international not-for-profit organization representing investors, hedge funds and service providers, today asked the Securities and Exchange Commission (SEC) in a comment letter to specifically tell private fund managers what they will need to do to safely verify whether investors are accredited, should they want to advertise after the rules in the Jump Start Our Business Start-ups Act (JOBS Act) are finalized. The HFA also praised the entire proposed rule to lift the hedge fund advertising ban as a significant step to modernize securities laws that maintains the investor protections available under the current system. At the same time, they encouraged the regulator to coordinate with the Commodity Futures Trading Commission (CFTC) to harmonize any new rules with the Commodity Exchange Act (CEA).

While the organization lauded the good intent of the SEC's proposed standards for verifying investor accreditation, they pointed out that their end result might go against the original intent of the JOBS Act; to increase employment by making it simpler for private companies to raise money from investors. As the proposed regulations ask for managers only to take "reasonable steps" without defining which steps are sufficient, they could create administrative burdens and uncertainties for private issuers who intend to comply but cannot ever be positive whether they have done so.

"The SEC's pragmatism is notable in its 'reasonable steps' standard, but managers need to know that what they are doing is legal before they will take advantage of new opportunities given by this law," said Richard Heller, chairman of the HFA's Regulatory and Government Advisory Board and author of the letter on behalf of the HFA.

According to the HFA, the SEC should define a "safe harbor," or a provision within the regulation which will eliminate managers' liability under the law in connection with verifying investor accreditation should they perform those activities within certain defined standards. Ideally, says the group, in order to comply it should be sufficient for an asset manager to receive a signed subscription agreement from an investor in which that person unequivocally affirms that he or she is an accredited investor. This agreement should also include a detailed description of the reason why the investor made that claim. Implementing a more restrictive "safe harbor" provision than this, the group warns, could create administrative burdens for private securities issuers and deter privacy-conscious investors.

"At the same time as lack of legal clarity can cripple businesses with uncertainty, clear laws which demand too much of investors and issuers can dampen the interest in allocating capital to private companies while greatly adding to fund managers' operating expenses," said Mitch Ackles, President of the Hedge Fund Association. "In drafting final regulations, we ask the SEC to keep this in mind and to remember the original intent behind JOBS Act – to invigorate the economy," he added.

To download a copy of the HFA's comment letter to the SEC, please [click here](#).

### **About The Hedge Fund Association**

The Hedge Fund Association ([theHFA.org](#)) is an international not-for-profit organization made up of hedge funds, funds of funds, family offices, high net worth individuals and service providers. In the U.S., the HFA has chapters in the Northeast, Southeast, Midwest and on the West Coast. Internationally, the HFA has expanded to include chapters in Europe, Asia, Latin America, and the Cayman Islands. HFA works on behalf of the entire hedge fund industry, including over 9,500 hedge funds in the U.S. and abroad which collectively manage more than \$2 trillion in assets, as well as sophisticated investors and industry service providers.

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