

**Communications among Members of  
SEC Advisory Committee on Small and Emerging Companies  
Relating to Recommendation for Consideration During  
January 6, 2012 Conference Call Meeting**

**E-mail from Co-Chair Stephen Graham dated December 6, 2011 regarding  
Advisory Committee Draft Recommendation on General Solicitation**

**From:** [Stephen Graham](#)  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** Draft Recommendation to SEC  
**Date:** Tuesday, December 06, 2011 7:04:32 PM  
**Attachments:** [SEC Advisory Committee -General Solicitation.docx](#)

Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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**SECURITIES AND EXCHANGE COMMISSION  
ADVISORY COMMITTEE ON  
SMALL AND EMERGING COMPANIES**

Washington, DC 20549-3628

December [•], 2011

The Honorable Mary L. Schapiro

Chairman

U. S. Securities and Exchange Commission

100 F Street, N.E.

Washington, DC 20549-1070

Dear Chairman Schapiro:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation to the Commission. This recommendation is the first of what will be an ongoing series of recommendations to be provided by the Advisory Committee in fulfillment of its mandate.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request.

Respectfully submitted on behalf of the Committee,

Stephen M. Graham

M. Christine Jacobs

Committee Co-Chair

Committee Co-Chair

Members of the Committee:

David A. Bochnowski

A. Heath Abshure

John J. Borer, III

Sean Greene

Dan Chase

Milton Chang

Joseph "Leroy" Dennis

Stephen M. Graham

Shannon L. Greene

M. Christine Jacobs

Kara B. Jenny

Steven R. LeBlanc

Richard L. Leza

Paul Maeder

Kathleen A. McGowan

Catherine V. Mott

Karyn Smith

Dan Squiller

Charlie Sundling

Timothy Walsh

Gregory C. Yadley

Official Observers:

Enclosure

cc: Commissioner Elisse Walter  
Commissioner Luis Aguilar  
Commissioner Troy A. Paredes  
Commissioner Daniel M. Gallagher  
Meredith B. Cross  
Lona Nallengara  
Elizabeth Murphy  
Gerald J. Laporte  
Jennifer Zepralka

U.S. Securities and Exchange Commission  
Advisory Committee on Small and Emerging Companies

**Recommendation Regarding Relaxing or Modifying  
Restrictions on General Solicitation in Certain Private Offerings of Securities**

December [•], 2011

AFTER CONSIDERING THAT:

1. The Advisory Committee is of the view that private offerings of securities pursuant to Section 4(2) under the Securities Act of 1933 (the “Securities Act”) are a successful instrument for facilitating capital formation by emerging privately held small businesses and smaller public companies;
2. In offerings of securities conducted pursuant to Rule 506 of Regulation D (“Rule 506”), which is a safe harbor for private offerings of securities under Section 4(2) of the Securities Act and the most widely used Regulation D exemption, neither the issuer nor any person acting on the issuer’s behalf may offer or sell securities by any form of general solicitation or general advertising and securities sold pursuant to Rule 506 must be sold to “accredited investors” or persons who, either alone or with a representative, have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of a prospective investment;
3. The Advisory Committee is of the view that the restrictions on general solicitation and general advertising prevent many privately held small businesses and smaller public companies from gaining sufficient access to sources of capital and thereby materially limit their ability to raise capital through private offerings of securities; and
4. The Advisory Committee is of the view that the investor protections afforded by the existing restrictions on general solicitation and general advertising are not necessary in private offerings of securities whereby the securities are sold solely to accredited investors.

THEREFORE, the Advisory Committee recommends that the Commission take immediate action to relax or modify the restrictions on general solicitation and general advertising to permit general solicitation

and general advertising in private offerings of securities under Rule 506 where securities are sold only to accredited investors.

**E-mail from Co-Chair Stephen Graham dated December 7, 2011 regarding plans to schedule telephonic meeting to discuss recommendation draft sent December 6, 2011**

From: **Stephen Graham [mailto:Sent: Wednesday, December 07, 2011 8:45 AM]**

To: A. Heath Abshire; Brittany McFarlane; Catherine Mott; Charlie Sundling; Christine Jacobs; Cynthia Mendoza; Dan Chace; Dan Squiller; David Bochnowski; Erikka Robinson; Gerald Laporte; Gregory Yadley; Jay Scott; Jennifer Zepralka; Johanna Losert; John Borer; Kara Jenny; Karyn Smith; Kathleen McGowan; Laurel Lahnston; Leroy Dennis; Lona Nallengara; Milton Chang; Paul Maeder; Richard Leza; Sean Greene; Shannon Greene; Stephen Graham; Steve LeBlanc; Timothy Walsh; Venita Hall Subject: Recommendation Letter to SEC

Dear Committee Members –

Just a quick note to let you know two things:

- We will schedule a short telephonic meeting for later in the month to discuss the draft I sent to you yesterday.
- All comments you provide to me will be posted on the SEC website.

Best regards,

Stephen M. Graham

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## E-mail from Member Leroy Dennis dated December 8, 2011 and response from Co-Chair Stephen Graham

December 8 Communication regarding Draft Recommendation to SEC

**From:** [Stephen Graham](#)  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** RE: Draft Recommendation to SEC  
**Date:** Thursday, December 08, 2011 6:11:43 PM

Thanks, Dennis. I look forward to discussing these ideas on our call.

**Stephen M. Graham**

**From:** Dennis, Leroy **Sent:** Thursday, December 08, 2011 3:08 PM **To:** Stephen Graham; A. Heath Abshire; Brittany McFarlane; Catherine Mott; Charlie Sundling; Christine Jacobs; Cynthia Mendoza; Dan Chace; Dan Squiller; David Bochnowski; Erikka Robinson; Gerald Laporte; Gregory Yadley; Jay Scott; Jennifer Zepralka; Johanna Losert; John Borer; Kara Jenny; Karyn Smith; Kathleen McGowan; Laurel Lahnston; Lona Nallengara; Milton Chang; Paul Maeder; Richard Leza; Sean Greene; Shannon Greene; Steve LeBlanc; Timothy Walsh; Venita Hall **Subject:** RE: Draft Recommendation to SEC

I support the draft recommendation; however, I also recommend that we suggest to the SEC that they develop guidelines for general solicitation and advertising in private offerings. For example, I don't believe it would be appropriate to allow infomercials or other similar media to sell securities. Also, the guidelines should make it clear that any statements made in such solicitation or advertising are held to the same standards of accuracy and truth as other security filings or communications to investors.

**Leroy Dennis**  
National Director of Public Policy and Regulatory Relations  
**McGladrey & Pullen, LLP**  
Certified Public Accountants

**From:** Stephen Graham

**Sent:** Tuesday, December 06, 2011 6:04 PM

**To:** A. Heath Abshire; Brittany McFarlane; Catherine Mott; Charlie Sundling; Christine Jacobs; Cynthia Mendoza; Dan Chace; Dan Squiller; David Bochnowski; Erikka Robinson; Gerald Laporte; Gregory Yadley; Jay Scott; Jennifer Zepralka; Johanna Losert; John Borer; Kara Jenny; Karyn Smith; Kathleen McGowan; Laurel Lahnston; Dennis, Leroy; Lona Nallengara; Milton Chang; Paul Maeder; Richard Leza; Sean Greene; Shannon Greene; Stephen Graham; Steve LeBlanc; Timothy Walsh; Venita Hall **Subject:** Draft Recommendation to SEC

Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to



submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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## E-mail from Member Richard Leza dated December 8, 2011 and response from Co-Chair Stephen Graham

**From:** [Stephen Graham](#)  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** RE: Draft Recommendation to SEC  
**Date:** Thursday, December 08, 2011 6:56:47 PM

Thanks, Richard.

### Stephen M. Graham

**From:** Richard Leza

**Sent:** Thursday, December 08, 2011 3:41 PM

**To:** Stephen Graham; A. Heath Abshure; Brittany McFarlane; Catherine Mott; Charlie Sundling; Christine Jacobs; Cynthia Mendoza; Dan Chace; Dan Squiller; David Bochnowski; Erikka Robinson; Gerald Laporte; Gregory Yadley; Jay Scott; Jennifer Zepralka; Johanna Losert; John Borer; Kara Jenny; Karyn Smith; Kathleen McGowan; Laurel Lahnston; Leroy Dennis; Lona Nallengara; Milton Chang; Paul Maeder; Sean Greene; Shannon Greene; Steve LeBlanc; Timothy Walsh; Venita Hall **Subject:** RE: Draft Recommendation to SEC

Stephen,

I support the proposed recommendation as written.

R

**From:** Stephen Graham **Sent:** Tuesday, December 06, 2011 4:04 PM

**To:** A. Heath Abshure; Brittany McFarlane; Catherine Mott; Charlie Sundling; Christine Jacobs; Cynthia Mendoza; Dan Chace; Dan Squiller; David Bochnowski; Erikka Robinson; Gerald Laporte; Gregory Yadley; Jay Scott; Jennifer Zepralka; Johanna Losert; John Borer; Kara Jenny; Karyn Smith; Kathleen McGowan; Laurel Lahnston; Leroy Dennis; Lona Nallengara; Milton Chang; Paul Maeder; Richard Leza; Sean Greene; Shannon Greene; Stephen Graham; Steve LeBlanc; Timothy Walsh; Venita Hall

**Subject:** Draft Recommendation to SEC

Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are

accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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## E-mail from Member Charlie Sundling dated December 8, 2011 and response from Co-Chair Stephen Graham

**From:** [Stephen Graham](#)  
**To:** [Charlie Sundling](#)  
**Cc:** Advisory Committee Members

**Subject:** Re: Recommendation Letter to SEC **Date:** Thursday, December 08, 2011 9:47:13 PM

Thanks, Charlie.

Sent from my iPhone

On Dec 8, 2011, at 1:29 PM, "Charlie Sundling":

Stephen et. Al, Recommendation looks great. Legislation on this specific topic (solicitation of private placements) currently working its way through congress. I believe has passed house and currently in with senate. Most folks I speak with believe it will pass.

Regards,  
Charlie

**From:** **Stephen Graham [mailto:Sent: Wednesday, December 07, 2011 8:45 AM]**

**To:** Advisory Committee Members and SEC Staff

**Subject:** Recommendation Letter to SEC

Dear Committee Members –

Just a quick note to let you know two things:

- We will schedule a short telephonic meeting for later in the month to discuss the draft I sent to you yesterday.
- All comments you provide to me will be posted on the SEC website.

Best regards,

Stephen M. Graham

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## E-mail from Member Dan Squiller dated December 8, 2011

**From:** [Dan Squiller](#)  
**To:** [Stephen Graham](#)  
**Cc:** Advisory Committee Members and SEC Staff  
**Subject:** RE: Draft Recommendation to SEC **Date:** Thursday, December 08, 2011 5:50:03 PM

Stephen,

The draft recommendation is good. I also received input from TechAmerica and they support this proposal as well. Dan



**From:** Stephen Graham  
**Sent:** 06 December, 2011 16:04  
**To:** Advisory Committee Members  
**Subject:** Draft Recommendation to SEC

Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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**E-mail from Member David Bochnowski dated December 9, 2011**

From: Stephen Graham]  
Sent: Friday, December 09, 2011 7:34 PM  
To: Laporte, Gerald; Nallengara, Lona; Zepralka, Jennifer  
Subject: FW: Draft Recommendation to SEC

FYI

Stephen M. Graham

Fenwick & West LLP

-----Original Message-----

From: David Bochnowski  
Sent: Friday, December 09, 2011 4:09 PM  
To: Stephen Graham  
Subject: Re: Draft Recommendation to SEC

Thanks, Steve. The draft fairly represents our discussions and I am comfortable with the draft.

Dave

>>> "Stephen Graham" <  
12/06/11 6:04 PM >>>  
Dear Committee Members -

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

Stephen M. Graham

Fenwick & West LLP

## E-mail from Member Kathleen McGowan dated December 9, 2011 and response from Co-Chair Stephen Graham

**From:** [Stephen Graham](#)  
**To:** Advisory Committee Members  
**Subject:** RE: Draft Recommendation to SEC  
**Date:** Friday, December 09, 2011 10:22:01 AM

Thanks, Kathleen. I don't disagree.

### Stephen M. Graham

**From:** Kathleen McGowan  
**Sent:** Friday, December 09, 2011 6:55 AM  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** RE: Draft Recommendation to SEC

Stephen,

I support the proposal as stated, however, additional language maybe be required to insure a certain basic "level of quality" of the solicitation to accredited investors.

Thank you,  
Kathleen

**From:** Stephen Graham  
**Sent:** Tuesday, December 06, 2011 7:04 PM  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** Draft Recommendation to SEC  
Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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## **E-mail from Member Gregory Yadley dated December 12, 2011**

**From:** Yadley, Gregory C.  
**Sent:** Monday, December 12, 2011 8:17 PM  
**To:** Advisory Committee Members and SEC Staff  
**Subject:** Re: Recommendation Letter to SEC

I support the draft recommendation.

I'm not sure you intend this initial recommendation to go beyond a statement that the "prohibition" is unnecessary in Rule 506 offerings. However, I agree with my colleague's suggestion that relaxation of the rules include guidelines for disclosure where general solicitation and advertising are used. For example, consideration of what may be included and what should be excluded in the initial solicitation should be considered. Proposed Rule 507 provides a starting point.

Regards,

Greg

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## E-mail from Member Shannon Greene dated December 14, 2011

**From:** [Shannon Greene](#)  
**To:** Advisory Committee Members and SEC Staff  
**Date:** Wednesday, December 14, 2011 12:07:35 PM

Looks good to me.

**Shannon L. Greene**  
CFO/Treasurer Tandy Leather Factory

**From:** Stephen Graham

] **Sent:** Tuesday, December 06, 2011 6:04 PM

**To:** Advisory Committee Members and SEC Staff

**Subject:** Draft Recommendation to SEC

Dear Committee Members –

Attached for your review and comment is a draft of our proposed recommendation to the SEC regarding relaxing the general solicitation rules for Rule 506 offerings where all purchasers are accredited. Please provide any comments to me before the end of this week. It is my intent to submit a final recommendation to the SEC before the end of next week.

Best regards,

**Stephen M. Graham**

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