

sophistication, wealth or institutional character of the investor.³²

IV. Similar Exemptions Adopted by Other States

While the exemption being proposed today is based on a California statute, the Commission is proposing also to provide the same exemption for each state that enacts a transaction exemption incorporating the same standards used by California.³³ This would be done either at such time as the Commission may determine to adopt Rule 1001, or if a state adopts such exemption later, the Commission will adopt a coordinated exemption upon notification by the state. The Commission requests comment on whether this proposed approach to adopting the Rule 1001 exemption for any state exemptions with the same requirements as the California exemption is appropriate. Where states determine to provide comparable exemptions that vary from the specific details of the California law, the Commission would expect to propose for comment an exemption comparable to that provided in Rule 1001.

V. General Solicitation Under Regulation D and ULOE

The California exemption permits broad dissemination of information about a proposed offering—called the “general announcement”—including specific information about the offering, such as the price of the securities to be offered. This ability to reach out to a broad audience to find possible interest, while formally offering and selling only to qualified purchasers that may be found through that process, appears to have the potential to significantly enhance the usefulness of an exemption that limits sales to specified classes of purchasers.

As noted, however, this public dissemination is one of the features of the California exemption that makes it difficult to fit within the Regulation D exemption, since Regulation D prohibits general solicitations, other than under the Rule 504 seed capital rule. Similarly, ULOE, an official policy guideline of the North American Securities Administrators Association, Inc. (“NASAA”)³⁴ that was adopted in

coordination with the Commission’s adoption of Regulation D, also prohibits general solicitations in these offerings.³⁵ The inability to reach out broadly to find possible qualified investors for Regulation D exempt offerings hampers the utility of the exemption and may raise the costs to companies of trying to do these exempt offerings; California’s new exemption demonstrates the potential benefits of reexamining the costs and benefits of such prohibition.

Against the backdrop of this new approach in California, the Commission is considering whether amendments to Regulation D should be proposed that would similarly facilitate better use of the exemptions and lower the costs for companies by revising or eliminating the prohibition against general solicitation for Rule 505 and 506 offerings.

Comment is requested on whether the Commission should explore with NASAA the possibility of proposing such a change to Regulation D and ULOE. If NASAA will not follow this approach, would it still be worthwhile for the Commission to implement the change even if there were not significant state uniformity?

If the Commission makes proposals to permit some form of general solicitation in Rule 505 and 506 exempt offerings, a number of approaches could be considered. For example, a limited approach similar to the one adopted in California could be implemented. This allows a written communication to be broadly disseminated, but specifically limits the information allowed to be included. Would this approach be sufficiently helpful in allowing companies to locate potential investors for a private offering, or are the limitations overly restrictive? Other approaches would permit more extensive communications to be disseminated, including more extensive written and oral communications,³⁶ but could include some limitations, such as on the methods of dissemination or the classes of issuers entitled to use the provision. For example, would dissemination methods that are designed to reach only accredited investors be workable? Should any

issuers be entitled to disseminate broadly to locate potential investors, or should this be limited to specific classes of companies, such as only non-reporting issuers, only small business issuers, or only reporting issuers? Are there other approaches that the Commission should consider?

Comment generally is requested on whether the Commission should consider altering the general solicitation prohibition. Given that all purchasers must continue to meet the requirements of Regulation D, and all information required by the regulation must be provided prior to purchase, would the ability to broadly disseminate to locate potential investors compromise investor protection interests?

Finally, the Commission requests comment as to whether the question of general solicitation in Regulation D or other private offerings should be addressed through legislative changes to the Securities Act rather than through Commission rulemaking. For example, should the Commission seek specific authority under the Securities Act to exempt private offerings that include general solicitations, provided that sales are made only to qualified purchasers? More generally, should the Commission recommend general exemptive legislation that would allow it greater flexibility to address these or even broader kinds of issues?

VI. General Request for Comment

Any interested persons wishing to submit written comments on the proposed Section 3(b) exemption as explained in this release, or the questions regarding general solicitation, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment is requested from the point of view of the public interest, the states, and the companies that would be affected; comments should address any possible effects on investor protection resulting from the proposed exemption. The Commission further requests comment on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act³⁷ and Section 23 of the Exchange Act.³⁸ Comment letters should refer to File Number S7-15-95. All comments received will be available for public inspection and copying in the

District of Columbia, Puerto Rico, Mexico and several of the Canadian provinces.

³⁵ State statutes and rules based on NASAA’s ULOE exempt offers or sales of securities made in compliance with Rules 501–503, 505 and/or 506 of Regulation D [17 CFR 230.501–230.503, 230.505 and 230.506 respectively], including the prohibition of general solicitations found in Rule 502(c).

³⁶ See, e.g., Release No. 33–7188, a companion release proposing to permit “test the waters” activity in anticipation of a registered initial public offering, and Rule 254 of Regulation A [17 CFR 230.254].

³⁷ 15 U.S.C. 77s(a).

³⁸ 15 U.S.C. 78w(a).

³² See, e.g., Section 4(6) of the Exchange Act [15 U.S.C. 78d(6)], Securities Act Rule 506 [17 CFR 230.506], and Securities Act Rule 701 [17 CFR 230.701].

³³ Several states currently are considering enacting exemptions comparable to the California law, but the Commission is unaware of any that have been adopted as of the date of this release.

³⁴ NASAA is an association of securities commissioners from each of the 50 states, the