Consumer Federation of America

For Immediate Release
July 10, 2013

Contact: Barbara Roper
(719) 543-9468

SEC VOTES TO PERMIT MASS MARKETING OF HEDGE FUNDS AND OTHER "PRIVATE" OFFERINGS WITHOUT PROVIDING ANY MEANINGFUL PROTECTIONS FOR INVESTORS

CFA Director of Investor Protection Barbara Roper Calls Two-Step Regulatory Process an Empty Gesture that Treats Investor Protection as an Afterthought

WASHINGTON, D.C. – The Securities and Exchange Commission voted 4-1 earlier today to allow general solicitation in "private" offerings while deferring to the future any efforts to ensure that investors in these offerings are adequately protected. "With this vote, the Commission has thrown open the doors to mass marketing of hedge funds and other so-called private offerings, knowing full well that it lacks the tools to provide effective market oversight and that the current rules are inadequate to ensure that only those with the financial sophistication to understand the risks and the wealth to withstand potential losses invest in such offerings," said CFA Director of Investor Protection Barbara Roper. "It is a sad day for the Commission when it treats investor protection as an afterthought, something it may get around to addressing in the future if it can only find the will and the time."

The Commission took three related votes:

- It voted 4-1 to adopt the JOBS Act rule to allow general solicitation in offerings conducted under Regulation D, including sales of private funds and startup companies sold based on limited information to accredited investors. "While the final rule includes some modest improvements on verification of accredited investor status, even these actions appear to be completely inadequate," Roper said. "They do not, for example, appear to clearly preclude practices, such as a reliance on self-certification for verification that would invite liar's loan practices into the Reg D market."

- It voted 5-0 to adopt a rule, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, to limit the participation of felons and other "bad actors" in Reg D offerings. "While we support this rule, and its adoption is long-overdue, it is far weaker than it should be and it does not begin to address the full range of investor risks in this poorly regulated market," Roper said.

- It voted 3-2 to propose a modest set of additional investor protections for Reg D offerings, including improvements to Form D content and filing requirements and new guidance to ensure that hedge fund solicitation materials aren't misleading. "This proposal includes some, but not all, of the investor protections that should have been incorporated in the final rule," Roper said. "We strongly support their adoption. Unfortunately, the SEC has a long history of proposing investor protection rules that it never gets around to finalizing. We hope that this time will be different, but we frankly have little reason to believe that it will," Roper added. "Moreover, this set of proposals does not include the single most important step the Commission could and should take to improve protections for investors, revising the accredited investor definition. Instead, it merely includes a request for comment on this crucially important topic," Roper continued. "No one honestly believes that having an income of $200,000 ensures that someone is automatically financially sophisticated enough to understand the risks in these offerings or wealthy enough to withstand the potential losses. Even the $1 million net worth standard fails to provide that assurance, if the money is a retirement savings nest egg that must be carefully conserved to provide income over several decades. We don't need additional information about developments in this market to know that the existing definition is completely inadequate."

As has all too often been the case, Commissioner Luis Aguilar provided the lone "no" vote on the general solicitation rule, stating that, "both the process followed in proposing the amendments and the actual amendments being considered today come at the expense of investors and place investors at greater risk."

"We couldn't agree more and we are immensely grateful to Commissioner Aguilar for his tireless efforts on behalf of investors," Roper said. "He alone has given more than lip service to the notion that the Commission has an obligation to look out for the interests of investors and that the capital formation process benefits when it fulfills that mission."

"As Commissioner Aguilar made clear in his statement, it didn't have to be this way," Roper said. "The Commission could long ago have adopted a balanced rule that benefits issuers and investors alike. Instead it has done everything in its power, including playing fast and loose with procedural requirements, to avoid addressing investor concerns. With this vote today, the Commission has shredded its credibility as an investor protection agency," Roper said. "This is a poor beginning to Chair White's term as head of the agency, and it sends a disturbing message about the Commission's likely priorities under her leadership."

* * *