



Alerts

SEC Adopts Rules Eliminating the Prohibition Against General Solicitation in Certain Private Offerings and Disqualifying Bad Actors From Certain Offerings and Proposes New Reg D Requirements

July 17, 2013

Corporate / Financial Institutions Alert

Summary

The Jumpstart Our Business Startups Act (JOBS Act) directed the U.S. Securities and Exchange Commission (SEC) to:

- amend Rule 506 of Regulation D to permit general solicitation or general advertising in offerings made under Rule 506; and
- adopt rules which will permit offers of securities pursuant to Rule 144A, including by means of general solicitation or general advertising.

In August 2012, the SEC proposed rules to allow advertising in private placements under Rule 506 and Rule 144A.

On July 10, 2013, the SEC:

- amended Rule 506 by adding Rule 506(c) to permit general solicitation or general advertising in offerings made under Rule 506, provided that all purchasers of the securities are accredited investors; and
- adopted rules which permit offers of securities pursuant to Rule 144A, including by means of general solicitation or general advertising, provided that the securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe are qualified institutional buyers (QIBs).

The SEC also approved final rules disqualifying securities offerings from relying on Rule 506 if certain felons or other “bad actors” participate in the offering.

These rules will be effective 60 days after their respective publication in the Federal Register. Until that date, the SEC’s existing regime regulating Rule 506 and 144A offerings remains unchanged.

The SEC also proposed new Regulation D requirements which, if adopted would, among other things:

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- disqualify an issuer from using Rule 506 if it fails to timely file a Form D;
- require the filing of a Form D 15 calendar days in advance of the first use of general solicitation materials in a Rule 506 (c) offering; and
- for a two-year period following the adoption of Rule 506(c), require issuers to submit written general solicitation materials to the SEC no later than the date first used.

To read the full alert, please download it [here](#).

For more information on this issue, please contact [Tim Sullivan](#), [Michael D. Morehead](#) or your regular [Hinshaw attorney](#).

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