

Resources

SEC Proposes Rules For Solicitation & Advertising of Securities

August 31, 2012

In order to facilitate companies' ability to raise capital through the sale of securities, Congress recently enacted the Jumpstart Our Business Startups Act (the "JOBS Act").

On August 29, 2012, the SEC released its proposed rules as required by the JOBS Act, which would permit companies issuing securities to use general solicitation and general advertising to offer securities, provided that:

- The issuer takes reasonable steps to verify that the purchasers of the securities are accredited investors.
- All purchasers of securities are accredited investors, because either:
 - o They are accredited investors as defined in existing Rule 501; or
 - o The issuer reasonably believes that they are accredited investors at the time the securities are sold.

The release declines to prescribe specific verification methods for issuers to use in determining the reasonableness of the steps they must take to verify that a purchaser is an accredited investor, but rather states that issuers and the SEC must consider the facts and circumstances of the transaction. This includes, among other things, the following factors:

- The type of purchaser and the type of accredited investor that the purchaser claims to be.
- The amount and type of information that the issuer has about the purchaser.
- The nature of the offering, meaning:
 - o The manner in which the purchaser was solicited to participate in the offering
 - o The terms of the offering, such as a minimum investment amount.

The proposed rules would preserve the existing portions of Rule 506 as a separate exemption so that companies conducting 506 offerings without the use of general solicitation and general advertising would not be subject to the new verification rule.

The proposed rules would also permit securities sold pursuant to Rule 144A to be offered to persons other than qualified institutional buyers ("QIBs"), including by means of general solicitation, provided that the securities are sold only to persons whom the seller and any person acting on the seller's behalf reasonably believe is a QIB.

For guidance related to the proposed rules, contact Jeff Gifford or Will Liebmann from Dykema Cox Smith's Corporate and Securities Practice Group.

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