

## SEC Proposes Rules Permitting General Solicitation in Certain Unregistered Offerings

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On August 29, 2012, the Securities and Exchange Commission, or SEC, issued proposed rules which would allow advertising and publicity in certain unregistered offerings. As mandated by the Jumpstart Our Business Startups Act, or JOBS Act, the proposed amendments:

- Permit general solicitation and general advertising in offerings under Rule 506 of Regulation D, so long as all investors in the offering are accredited; and
- Permit offers to persons who are not "qualified institutional buyers," or QIBs, in a Rule 144A offering, so long as all purchasers in the offering are QIBs.

In other words, offerings made in compliance with these proposed rules could be made publicly, through a website or another form of public solicitation, so long as all purchasers in the offering are accredited investors, in the case of Rule 506 of Regulation D, or are QIBs, in the case of a Rule 144A offering.

A condition to the use of general solicitation under the proposed revisions to Rule 506 is that the company take reasonable steps to verify that all purchasers are accredited. The SEC declined to require any specific type of due diligence, noting that what is reasonable could vary significantly depending on the type of offering, the nature of the purchaser and what is known about the purchaser already. The new requirement to verify accredited investor status applies only in offerings that use general solicitation. The use of general solicitation must also be noted on the Form D filed with the SEC.

The proposals are expected to be useful for many private investment funds, as well as other companies for which the time or expense of locating capital might be reduced by allowing general solicitation. In its proposal, the SEC clarified that general solicitation in accordance with Rule 506 would not prevent a fund from relying on the exclusions from the definition of "investment company" under Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940. General solicitation in compliance with Rule 506 also would not be "directed selling efforts" in the United States when a Rule 506 offering in the United States is made in conjunction with an offshore offering under Regulation S under the Securities Act of 1933.

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