



SEC Adopts Rules to Eliminate Prohibition Against General Solicitation and Advertising in Certain Private Securities Offerings; Also Proposes New, Related Investor Protection Requirements – Private Investment Funds Perspective

July 10, 2013

Today, the SEC adopted amendments to Rule 506 of Regulation D under the Securities Act of 1933 that eliminate the ban on “general solicitation” and “general advertising” of private securities offerings conducted under those rules, as was mandated by the Jumpstart Our Business Startups Act (JOBS Act). Since private investment funds typically rely on Rule 506 in connection with their fundraisings in the United States, this will potentially allow for greater flexibility in the United States fundraising process by significantly relaxing existing regulatory restrictions.

The SEC originally proposed the rule changes on August 29, 2012. ([Click here](#) to see our Memorandum dated August 31, 2012 discussing the proposed rule changes.) The adopted rules mirror those proposed in that they require all purchasers of securities in private offerings that engage in a general solicitation to be accredited investors and they require the issuer to take reasonable steps to verify that all purchasers of such securities are accredited investors (and provide a non-exclusive list of methods that issuers may use to satisfy the verification requirement as it applies to natural persons). In conjunction with the ban lift, the SEC today also adopted rules barring felons and other “bad actors” convicted of securities fraud from participating in private securities offerings.

Also in light of the ban being lifted, the SEC today proposed a number of related investor protection requirements for private fund offerings that engage in a general solicitation. The requirements being proposed include:

- Requiring issuers to file a more detailed Form D (which will include a breakout of investor type) with the SEC at least 15 days prior to beginning a general solicitation and then amend their Form D within 30 days after the offering is closed or abandoned. It is also proposed that an issuer who fails to comply with the Form D requirements will be disqualified from making an offering for a period of one year.
- Applying Rule 156 under the Securities Act of 1933, the mutual fund advertising rule, to private funds.
- Requiring, on a temporary basis, that issuers submit any written general solicitation materials to the SEC.

- Requiring all written general solicitation materials to contain legends identifying risks and indicating that sales are limited to accredited investors.

It should be noted that Rule 4.13(a)(3) under the Commodity Exchange Act (an exemption from registration for commodity pool operators that use commodity interests on a limited basis) and Rule 4.7 under the Commodity Exchange Act (which provides certain relief for registered commodity pool operators), which many sponsors of private investment funds are relying on or intend to rely on following recent changes in regulation of commodities pool operators and commodity trading advisors as a result of the Dodd-Frank Act, each include a restriction against general solicitation, and, absent further guidance from the Commodities Futures Trading Commission to the contrary, would effectively prohibit advertising for the relevant private investment funds. Sponsors of private investment funds will also need to ensure that any general solicitation activity does not violate securities law requirements in other jurisdictions where fund interests are offered.

While the lifting of the general solicitation ban has historic implications, there would appear to be substantial additional requirements and limitations for offerings engaging in a general solicitation that will continue to require caution with regard to publicity associated with the activities of private investment funds.

The adopted rule changes will become effective 60 days following their publication in the Federal Register (which is expected shortly) and the proposed rules provide for a 60-day comment period following such publication. Additional information can be found on the SEC's website at <http://www.sec.gov/news/press/2013/2013-124.htm>.

Please contact the partner in the private funds group that you work with or Lisa Klar (lisa.klar@stblaw.com; 212-455-3635) if you have any questions.

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