



## SEC Releases FAQs on the Bad Actor Disqualification Rule – Private Investment Funds Perspective

*December 5, 2013*

Yesterday, the SEC released “Compliance and Disclosure Interpretations” with respect to the bad actor disqualification rule under Rule 506 of Regulation D under the Securities Act of 1933 that clarify certain aspects of the rule that became effective on September 23, 2013.

Most significantly, the SEC narrowed the definition of “affiliated issuer” for the purposes of Rule 506(d) to include only affiliates of the issuer that issue securities in the same offering as the issuer (e.g., parallel funds and feeder funds), including offerings subject to integration pursuant to Rule 502(a) of Regulation D.

Additionally, the SEC confirmed that disqualification under Rule 506(d) is not triggered by actions taken in jurisdictions other than the United States.

Notably, the SEC also provided guidance on various disqualification and disclosure issues regarding compensated solicitors under Rule 506(d) and Rule 506(e):

- An issuer must provide the Rule 506(e) disclosure to each investor regarding all compensated solicitors involved in the offering at the time of such investor’s investment (not just to those investors who were solicited by the compensated solicitor that is the subject of the disclosure).
- In a continuous offering, Rule 506(e) disclosure is not required with respect to compensated solicitors that are no longer involved in the offering.
- If a compensated solicitor or its covered control persons become subject to a disqualifying event while an offering is ongoing, an issuer may continue to rely on Rule 506 for that offering if the engagement with the compensated solicitor is terminated and the compensated solicitor does not receive compensation for future sales made in that offering. Moreover, if the disqualifying event affected only particular covered control persons of the compensated solicitor, an issuer may continue to rely on Rule 506 for that offering as long as the disqualified persons were terminated or no longer performed roles that would cause them to be covered persons under Rule 506(d).

The above provides only an overview of certain noteworthy interpretations. The full text of the interpretations can be found on the SEC’s website at

<http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#260-05>.

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

*This memorandum is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).*

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