
SEC Proposes Eliminating Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings

Date: 09/19/12

The Securities and Exchange Commission (“SEC”) recently proposed amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933 (“Securities Act”) to implement Section 201(a) of the Jumpstart Our Business Startups Act (“JOBS Act”).

- Section 201(a)(1) of the JOBS Act directs the SEC to eliminate the prohibition against general solicitation and general advertising in offerings made under Rule 506, so long as all purchasers of the securities are accredited investors, and further instructs the SEC to “require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the [SEC].”

▪

Section 201(a)(2) of the JOBS Act calls for the revision of Rule 144A(d)(1) “to permit offers of securities pursuant to Rule 144A to persons other than qualified institutional buyers (‘QIBs’), 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 QIBs.”

The SEC’s proposed rule suggests substantive amendments to Rule 506 and Rule 144A to implement these mandated changes, as well as revisions to Form D requiring issuers to indicate whether they are using general solicitation or general advertising in a Rule 506 offering.

Attorneys

- Charles A. Gilman
- John J. Schuster
- Mary A. Stokinger