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To Use or Not to Use General Solicitation and General Advertising in Private Placements?

The SEC's July 10 meeting has fundamentally changed the world of private placements by eliminating the blanket prohibition against general solicitation and general advertising in Rule 506 offerings. The SEC has adopted the rules it proposed almost a year ago (in August 2012) to implement Section 201(a) of the JOBS Act. Under amended Rule 506, a company will essentially have a choice of using Rule 506(b) to conduct a private placement subject to the current prohibition against general solicitation and general advertising ***or*** using new Rule 506(c), pursuant to which securities can be offered through general solicitation and general advertising. This may not be an easy or straightforward choice for a company contemplating a private placement.

New Rule 506(c), effective on September 23, 2013, permits a company to offer securities using general solicitation and general advertising, only if it meets all of the following conditions:

- sales must satisfy all the terms and conditions of Rules 501 ***(Definitions and Terms Used in Regulation D)*** and 502(a) and (d) ***(Integration and Limitations on Resales);***
- all purchasers of securities are accredited investors; and
- the company takes reasonable steps to verify that purchasers of its securities are in fact accredited investors.

Some companies may choose not to use Rule 506(c) because the determination of whether the steps taken are "reasonable" is based on a facts and circumstances analysis conducted by the company. A company conducting a private placement under current Rule 506(b) does not need to engage in the verification process described below and can rely on its reasonable belief that the

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THIS IS A SPECIAL ISSUE **of *Up to Date* focused solely on the new and proposed rules related to private placements under Regulation D that were issued by the SEC in July 2013. This issue also includes a summary of the SEC's July update to its report *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption.***

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purchaser satisfies one or more accredited investor criteria set forth in Rule 501(a). In addition, companies may decide not to use the new Rule 506(c), not only to avoid such verification process, but also in order to make private placements to non-accredited investors who meet the sophistication requirements of Rule 506(b).

For ongoing Rule 506 offerings that commence before the effective date of Rule 506(c), a company may choose to continue the offering after the effective date under either Rule 506(b) or Rule 506(c). If a company chooses to continue the offering in accordance with the requirements of Rule 506(c), any general solicitation that occurs after the effective date, as permitted under such rule, will not affect the exempt status of offers and sales of securities that occurred under Rule 506(b) prior to the effective date.

A significant part of the SEC's adopting release is focused on the analysis that a company must conduct to verify that a purchaser of securities in a Rule 506(c) offering is an accredited investor. ***The SEC has specifically stated in the adopting release that a company will not be deemed to have taken reasonable steps to verify accredited investor status if it only required an investor to check a box in a questionnaire or sign a form (which is an acceptable practice now under the current "reasonable belief standard" applicable to offerings under Rule 506(b)), in the absence of other information indicating accredited investor status of the purchaser.*** The SEC has embraced a principles-based method of verification and believes that a company should consider the following factors in its analysis:

- the nature of the purchaser and the type of accredited investor that the purchaser claims to be;
- the amount and type of information that the company has about the purchaser; and
- the nature of the offering (e.g., the manner in which the purchaser was solicited to participate in the offering, and the terms of the offering, such as a minimum investment amount).

These factors are interconnected and the SEC stated that "[a]fter consideration of the facts and circumstances of the purchaser and the transaction, the more likely it appears that a purchaser qualifies as an accredited investor, the fewer steps the issuer would have to take to verify the accredited investor status." To illustrate this, the SEC produced the following example: "if the terms of the offering require a high minimum investment amount and a purchaser is able to meet those terms, then the likelihood of that purchaser satisfying the definition of accredited investor may be sufficiently high such that, absent any facts that indicate that the purchaser is not an accredited investor, it may be reasonable for the issuer to take fewer steps to verify or, in certain cases, no additional steps to verify accredited investor status other than to confirm that the purchaser's cash investment is not being financed by a third party."

A company may rely on a third party that has verified a person's status as an accredited investor (assuming the company has a reasonable basis to rely on such third-party verification) or on publicly available information in filings with a federal, state, or local regulatory body (e.g., proxy statement disclosing the compensation of a purchaser who is a named executive officer of a public company or IRS Form 990 disclosing total assets of a Section 501(c)(3) organization with $5 million in assets).

The means used by the company to solicit purchasers may be relevant in determining the reasonableness of the steps that a company should take to verify accredited investor status. The SEC has pointed out that "[a]n issuer that solicits new investors through a website accessible to the general public, through a widely disseminated email or social media solicitation, or through a newspaper, will likely be obligated to take greater measures to verify accredited investor status than an issuer that solicits new investors from a database of pre-screened accredited investors created and maintained by a reasonably reliable third party."

Recognizing the difficulty of determining what steps would be reasonable to verify an accredited investor's status of a natural person and in response to comments, the SEC has provided the following examples of non-exclusive and non-mandatory methods that a company may use to verify that a natural person purchasing its securities in a Rule 506(c) offering is an accredited investor (assuming that the company does not have knowledge that such person is not an accredited investor):

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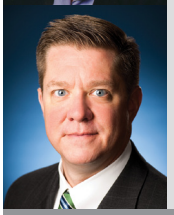

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- reviewing any IRS form that reports the purchaser's (or with the purchaser's spouse in the case of a person who qualifies as an accredited investor based on joint income with that person's spouse) income for the two most recent years (including, but not limited to, Form W-2, Form 1099, Schedule K-1 to Form 1065, and Form 1040) and obtaining a written representation from the purchaser (or with the spouse) that he or she has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year;
- reviewing one or more of the following types of documentation dated within the prior three months and obtaining a written representation from the purchaser (or with the purchaser's spouse in the case of a person who qualifies as an accredited investor based on joint net worth with that person's spouse) that all liabilities necessary to make a determination of net worth have been disclosed:
  - ***with respect to assets:*** bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, and appraisal reports issued by independent third parties; and
  - ***with respect to liabilities:*** a consumer report from at least one of the nationwide consumer reporting agencies; or
- obtaining a written confirmation from one of the following persons or entities that such person or entity has taken reasonable steps to verify that the purchaser is an accredited investor within the prior three months and has determined that such purchaser is an accredited investor:
  - a registered broker-dealer;
  - an investment adviser registered with the SEC;
  - a licensed attorney who is in good standing under the laws of the jurisdictions in which he or she is admitted to practice law; or
  - a certified public accountant who is duly registered and in good standing under the laws of the place of his or her residence or principal office.
- in regard to any person who purchased securities in a Rule 506(b) offering as an accredited investor prior to the effective date of 506(c) and continues to hold such securities, for the same issuer's Rule 506(c) offering, obtaining a certification by such person at the time of sale that he or she qualifies as an accredited investor.

Given the facts and circumstances analysis that a company has to perform in order to determine whether the purchaser of its securities in a Rule 506(c) offering is an accredited investor, on the one hand, and the privacy concerns of individual investors, on the other hand, it's unclear whether general solicitation and general advertising in Rule 506 private placements will become a mainstream trend. ■ [Return to Table of Contents]

Private Funds Will Also Be Able To Engage in General Solicitations

On July 10, the SEC adopted rules to implement Section 201(a) of the JOBS Act. Under amended Rule 506, companies will have the choice of using Rule 506(b) to conduct a private placement subject to the current prohibition against general solicitation and general advertising ***or*** using new Rule 506(c), pursuant to which securities can be offered through general solicitation and general advertising. In the adopting release, the SEC confirmed that private funds are permitted to engage in general solicitation in compliance with new Rule 506(c) without losing either of their Section 3(c)(1) or 3(c)(7) exclusions under the Investment Company Act of 1940.

Private funds generally utilize Section 4(a)(2) and Rule 506 to offer securities in their funds to investors without registration and primarily rely on one of the following two exclusions to avoid being defined as an "investment company" under the Investment Company: Section 3(c)(1) or Section 3(c)(7). Section 3(c)(1) of the Investment Company Act excludes from being an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities. Section 3(c)(7) exempts issuers whose securities are owned solely by qualified purchasers and which are not making and do not presently propose to make a public offering of its securities. Accordingly, prior to the adoption of the final rules on June 10, some commentators argued that private funds would not be able to engage in general solicitation under proposed Rule 506(c) without losing their ability to rely on the Section 3(c)(1) or Section 3(c)(7) exclusions.

In rejecting this position, the SEC explained that Section 201(b) of the JOBS Act provides that "offers and sales exempt under [the new Rule 506(c)] shall not be deemed public offerings under the *federal securities laws* as a result of general advertising or general solicitation. As the Investment Company Act is a federal securities law, the effect of Section 201(b) is to permit offers and sales of securities under Rule 506(c) by private funds relying on the exclusions from the definition of 'investment company' under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act." ■ [Return to Table of Contents]

SEC Adopts "Me Too" Amendments for Rule 144A

As part of amendments to Regulation D, and as required by the JOBS Act, the SEC adopted an amendment to Rule 144A to provide that securities sold under that Rule may be ***offered*** to persons other than qualified institutional buyers, often referred to as QIBs, including by means of general solicitation or general advertising, provided that securities are ***sold*** only to persons that the seller and any person acting on behalf of the seller reasonably believe are QIBs.

Rule 144A is a "safe-harbor" from the Securities Act registration requirements that is often used by public and private companies to quickly raise capital through sale of debt and preferred securities. Securities are purchased from the issuer by an initial purchaser, typically an investment bank, pursuant to the Securities Act Section 4(a)(2) private placement exemption, and then resold pursuant to the Rule 144A exemption. Prior to the amendment, it had been unclear whether general solicitations were permitted under Rule144A. This amendment clarifies that general solicitations are permitted provided that sales are made only to QIBs or persons reasonably believed to be QIBs.

This amendment will become effective on September 23, 2013. The Adopting Release provides that for ongoing Rule 144A offerings that commenced before the effective date, offering participants will be entitled to conduct the portion of the offering following the effective date of the amended rule using general solicitation, without affecting the availability of Rule 144A for the portion of the offering that occurred prior to the effective date. Footnote 172 to the Adopting Release also makes it clear that the use of a general solicitation permitted in Rule 144A resales from the initial purchaser to QIBs will not affect the availability of the Section 4(a)(2) private placement exemption or the Regulation S offshore offering exemption for the sale of the securities from the issuer to the initial purchaser.

Lastly, in response to some comments, the SEC reaffirmed its view, previously expressed in the Proposing Release, that concurrent offshore offerings that are conducted in compliance with Regulation S will not be integrated with domestic unregistered offerings that are conducted in compliance with Rule 506 or Rule 144A, as amended. ■ [Return to Table of Contents]

No Rule 506 Offerings for Bad Boys: Felons and Other "Bad Actors"

On July 10, the SEC revamped the way private placements under Rule 506 of Regulation D can be conducted by permitting general solicitation and general advertising in offerings where all purchasers are accredited investors and by disqualifying felons and other **"bad actors"** from ***all*** Rule 506 offerings (i.e., irrespective of whether the offering involves or does not involve general solicitation and general advertising). New SEC "bad actor" rules, effective on September 23, 2013, implement Section 926 of the Dodd-Frank Act and were originally proposed two years ago (May 25, 2011).

Under new Rule 506(d), "Bad Actor" Disqualification, an issuer will not be able to rely on the Rule 506 exemption from registration under the Securities Act of 1933 if the issuer or any other "covered person" is or was involved in a disqualifying event.

COVERED PERSONS

"Covered persons" under Rule 506(d) include:

- the issuer, any predecessor of the issuer, or any affiliated issuer;
- directors, executive officers, other officers participating in the offering, general partners, or managing members of the issuer;
- beneficial owners of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;
- promoters connected with the company at the time of such sale;
- investment managers of a pooled investment fund;
- persons compensated (directly or indirectly) for soliciting investors; and
- directors, executive officers, or other officers participating in the offering, of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor.

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Burn, Baby, Burn—Reg D Inferno*

A recent report issued by SEC's Division of Economic and Risk Analysis in July 2013 shows that Regulation D remained "hot" as a means to raise capital—even before the recent amendments to that rule take effect. The report updates a 2012 SEC report that analyzed Form D filings from the beginning of 2009 through the first quarter of 2011. The updated report contains information through the end of 2012 and provides additional analysis.

Among the highlights of the report:

- Capital raised through Regulation D offerings continues to be sizeable—$863 billion reported in 2011 and $903 billion in 2012. By contrast, public equity offerings raised less than $250 billion in each of those years.
- Since 2009, hedge funds reported raising $1.3 trillion through Regulation D offerings. Private equity funds reported $489 billion; non-financial issuers reported $354 billion. Foreign issuers account for 19% of the total amount sold.
- Since 1993, the number of Regulation D offerings fluctuates directly with the S&P 500, suggesting that the health of the private market is closely tied to the health of the public market (and thereby contradicting the view that the private capital markets step in during times of public market stress).
- Rule 506 accounts for 99% of amounts sold through Regulation D. More than two-thirds of non-fund issuers could have claimed a Rule 504 or 505 exemption based on offering size, indicating that issuers value the Blue Sky law preemption allowed under Rule 506.
- More capital was raised in Regulation D offerings in 2012 than in public equity offerings or Rule 144A offerings; public debt offerings raised slightly more capital than Regulation D, but, as the authors noted, public debt offerings include many refinancing of existing debt, while approximately two-thirds of Regulation D offerings represent new equity capital.

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No Rule 506 Offerings for Bad Boys: Felons and Other "Bad Actors" (continued from page 4)

DISQUALIFYING EVENTS

Rule 506(d) "disqualifying events" include the following:

- ***criminal convictions,*** within ***ten*** years before the sale of securities (or ***five*** years, in the case of issuers, their predecessors, and affiliated issuers) in connection with the purchase or sale of any security; involving the making of any false filing with the SEC; or arising out of the conduct of an underwriter, broker, dealer, or other financial intermediary;
- ***court injunctions and restraining orders,*** entered within ***five*** years before such sale, in connection with the purchase or sale of any security; involving the making of any false filing with the SEC; or arising out of the conduct of an underwriter, broker, dealer, or other financial intermediary;
- ***final orders*** of a state securities commission; a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission; an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:
  - bar the person from associating with a regulated entity; engaging in the business of securities, insurance or banking; or engaging in savings association or credit union activities; or
  - are based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ***ten*** years before such sale;
- ***SEC disciplinary orders*** suspending or revoking a person's registration as a broker, dealer, municipal securities dealer, or investment adviser; placing limitations on the activities of such person; or barring such person from being associated with any entity or from participating in the offering of any penny stock;
- ***SEC cease and desist orders,*** entered within ***five*** years before such sale, that orders the person to cease and desist from committing or causing a violation of any scienter-based anti-fraud provision of the federal securities laws (e.g., Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 or Section 5 of the Securities Act of 1933).
- ***suspensions or expulsions*** from membership in, or suspension or a bar from association with a member of, a registered national securities exchange for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;
- ***SEC stop orders*** in connection with a registration statement or orders suspending the Regulation A exemption, issued within ***five*** years before such sale; or investigation to determine whether a stop order or suspension order should be issued; or
- ***U.S. Postal Service false representation orders,*** entered within five years before such sale, or being subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the U. S. Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

EXCEPTIONS

Rule 506(d) disqualification does not apply if:

- the triggering event occurred before the effective date of the new rules;
- the SEC waives the disqualification;
- before the relevant sale, the court or regulatory authority that entered the relevant order, judgment, or decree advises in writing that Rule 506(d) disqualification should not arise as a consequence of such order, judgment, or decree; or
- the company establishes that it did not know and, ***in the exercise of reasonable care,*** could not have known that a disqualification existed.

DISCLOSURE OF PRE-EXISTING DISQUALIFYING EVENTS

The company must furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered Rule 506(d) disqualification but occurred before the effective date of new rules. The failure to furnish such information timely will not prevent a company from relying on Rule 506 exemption from registration if the company establishes that it did not know and, ***in the exercise of reasonable care,*** could not have known of the existence of the undisclosed matter or matters.

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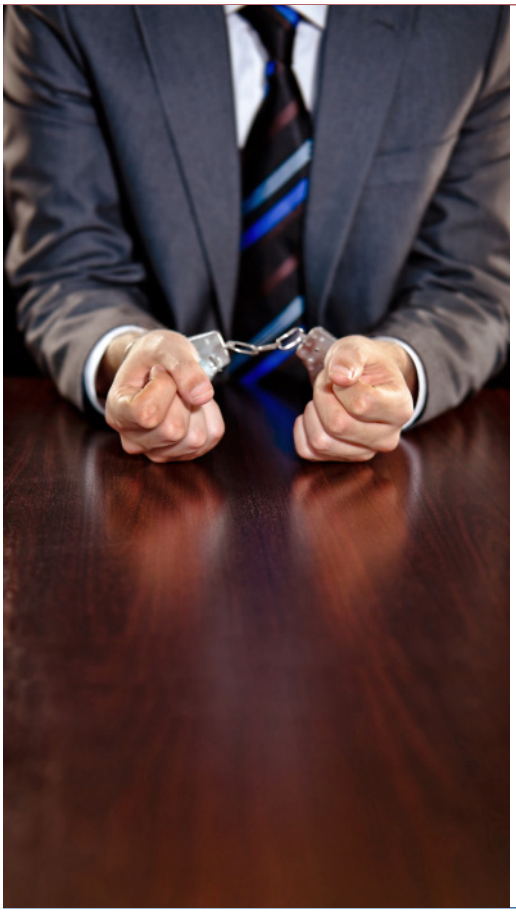
Burn, Baby, Burn—Reg D Inferno* (continued from page 4)

- There have been more than 40,000 Regulation D offerings by non-financial issuers since 2009 with a median offer size of less than $2 million.
- Form D filings report that more than 234,000 investors participated in Regulation D offerings in 2012, of which 91,000 participated in offerings by non-financial issuers, more than double the number of investors participating in hedge fund offerings.
- Nonaccredited investors were present in only 10% of Regulation D offerings (suggesting that the recent amendments permitting general solicitations, provided that there are no sales to non-accredited investors, should have little adverse effect).
- Only 13% of Regulation D offerings since 2009 reported using a broker-dealer or finder, which usage may decline after general solicitation becomes permissible.
- Nearly 10% of all SEC reporting companies raised capital through Regulation D offerings during the period 2009-1011, and about 6% in 2012.

The authors noted that the actual amount of capital raised through Regulation D offerings may be higher than reported because there is no requirement to file a final From D showing the total raised and, further, some issuers do not file a Form D at all.

The bottom line is that the recent Regulation D amendments permitting general solicitation will likely add additional fuel to this already hot market. [Return to Table of Contents]

** With humble apologies to The Trammps and their 1976 hit, "Disco Inferno."*



No Rule 506 Offerings for Bad Boys: Felons and Other "Bad Actors" (continued from page 5)

REASONABLE CARE

In connection with "reasonable care" requirements, a company will not be able to establish that it has exercised reasonable care unless it has made a factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the company and the other offering participants. For example, the SEC anticipates companies to have "an in-depth knowledge of their own executive officers and other officers participating in securities offerings gained through the hiring process and in the course of the employment relationship, and in such circumstances, further steps may not be required in connection with a particular offering."

The SEC suggested that "factual inquiry by means of questionnaires or certifications, perhaps accompanied by contractual representations, covenants and undertakings, may be sufficient in some circumstances, particularly if there is no information or other indicators suggesting bad actor involvement." The SEC also clarified that for continuous, delayed, or long-lived offerings, "reasonable care includes updating the factual inquiry on a reasonable basis," which can be "managed through contractual covenants from covered persons to provide bring-down of representations, questionnaires and certifications, negative consent letters, periodic re-checking of public databases, and other steps, depending on the circumstances."

Companies that are contemplating a Rule 506 private placement need to establish internal procedures for conducting a factual inquiry into whether "bad actors" may be involved in its offering. ■

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The SEC Proposed Extensive Additional Requirements for the General Solicitation of Investors Under Rule 506(c)

In addition to adopting the final rules governing general solicitation and advertising in connection with certain securities offerings where all purchasers are accredited investors, on July 10, 2013, the SEC also proposed new rules that in the SEC's words are intended:

> *to enhance the Commission's ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise in connection with permitting issuers to engage in general solicitation and general advertising under new paragraph (c) of Rule 506.*

All of the excitement and all the hoopla over the past few days about the adoption of new general solicitation and advertising rules has been somewhat tempered by concern that these proposed rules will adversely impact the use of general solicitation in Rule 506(c) private placements under Regulation D.

REGULATION D AND FORM D

With respect to Regulation D and Form D, the proposals would, if adopted:

Add New Rule 510T Requiring Issuers to Submit to the SEC General Solicitation Materials. New Rule 510T would require issuers, on a temporary basis, to submit (not "file" or "furnish") to the SEC any written general solicitation materials used in a Rule 506(c) offering no later than the date the materials are first used in connection with the offering. The SEC did not, however proposed that these materials, when filed with the SEC, be publicly available. The rule would expire two years after its effective date. The SEC believes that the collection of these materials will facilitate its assessment of market practices through which issuers solicit purchasers in Rule 506(c) offerings. Prior to the effectiveness of Rule 510T, the SEC will make available an intake page on the SEC's website to allow issuers, investors, and other market participants to voluntarily submit any written general solicitation materials used in connection with a Rule 506(c) offering.

Compliance with Rule 510T would not be a condition of the Rule 506(c) exemption. Instead, Rule 507(a) would be amended to provide that Rule 506 would be unavailable for an issuer if the issuer, or any of its predecessors or affiliates, has been subject to any order, judgment or court ecree enjoining such person for failing to comply with Rule 510T.

Amend Rule 503 of Regulation D to Require:

- For issuers that intend to engage in general solicitation pursuant to Rule 506(c), the filing of a Form D no later than 15 calendar days ***in advance*** of the first use of general solicitation. Currently, Rule 503 requires that the Form D be filed within 15 ***after*** the first sale.
- The filing of a Form D amendment within 30 calendar days after the termination of a Rule 506 offering. Currently, Rule 503 does not require the filing of such a closing Form D.

Amend Rule 507 to Disqualify Issuers from Using Rule 506 for New Offerings for Failing to Comply with Their Form D Filing Requirements.

The proposed rules automatically disqualify an issuer from using Rule 506 in any ***new*** offering for one year if the issuer, or any predecessor or affiliate of the issuer, did not comply, within the last five years, with all of the Form D filing requirements in a Rule 506 offering. The one year disqualification period would not start to run until the required Form D filings had been made and would not affect offerings of an issuer that are ongoing at the time of the filing non-compliance. In addition, the five year look-back period would not extend back beyond the effective date

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The SEC Proposed Extensive Additional Requirements for the General Solicitation of Investors Under Rule 506(c) (continued from page 6)

of the new disqualification rule. The rule would also provide that if a required Form D or amendment was filed within 30 days after its due date, it would not be considered late for purposes of the new disqualification rule. The cure period will not be available if the issuer previously failed to comply with a Form D filing deadline in connection with the same offering.

Currently, issuers are precluded from relying on Rule 506 in connection with a failure to file a Form D only if the issuer, or any of its predecessors or affiliates, have been subject to a court order enjoining such person for failure to comply with Rule 503, which requires the filing of a Form D.

Add New Rule 509 Requiring Issuers to Include Legends in Certain Offering Materials. A new proposed Rule 509 would require issuers to include certain legends in any written communication that constitutes a general solicitation in any offering conducted in reliance on Rule 506(c) and require additional disclosures for private funds, such as private equity, venture capital, and hedge funds, in general.

The generally applicable legends will look familiar to securities law practitioners and would include statements regarding sale only to accredited investors, reliance on an exemption from the registration requirements of the Securities Act, and transfer restrictions under applicable securities laws.

Private funds would be required to include additional legends indicating that the securities offered are not subject to the protection of the Investment Company Act of 1940 and additional disclosures in any written general solicitation materials that include performance data.

Compliance with these additional disclosure requirements would not be a condition of the Rule 506(c) exemption. Instead, Rule 507(a) would be amended to provide that Rule 506 would be unavailable if the issuer, or any of its predecessors or affiliates, have been subject to any order, judgment, or court decree enjoining such person for failing to comply with Rule 509.

Amend Form D to Require Additional Information Primarily in Connection with Offerings Conducted in Reliance on Rule 506, such as:

- The issuer's publicly accessible website address.
- For offerings conducted under Rule 506(c), the name and address of any person directly or indirectly controlling the issuer.
- Information about the size of the issuer (revenues or net asset value) where such information is otherwise publicly disclosed (currently, "decline to disclose" is an option on Form D with respect to this type of information).
- Additional information about the number and types of accredited investors investing.
- Additional information about the use of proceeds from offerings conducted under Rule 506.
- If a registered broker-dealer was used in connection with the offering, whether any general solicitation materials were filed with FINRA.
- In the case of pooled investment funds advised by investment advisers registered with, or reporting as exempt reporting advisers to, the SEC, the name and SEC file number for each investment adviser who functions directly or indirectly as a promoter of the issuer.
- For Rule 506(c) offerings, the methods used to verify accredited investor status and the types of general solicitation/advertising used.

RULE 156 AMENDMENTS

In addition, the SEC also proposed to amend Rule 156 to apply the guidance in that rule to the sales literature of private funds. Generally, Rule 156 presently provides guidance on the types of information in investment company sales literature that could be misleading for purposes of the federal securities laws. ■

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QUESTIONS: If you have a question regarding the issues raised in this newsletter, you may obtain additional guidance from the authors and other members of our Public Companies Group.

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