

## Proposed Rule FOR Use of General Solicitation in Private Offerings

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On August 29, 2012 the Securities and Exchange Commission proposed a rule to amend Rule 506 of Regulation D. If the amendment is adopted, new Rule 506(c) would permit general solicitation for offerings made pursuant to Rule 506, provided that all purchasers of the securities are accredited investors. The proposed rule also requires that in such offerings the issuer must take reasonable steps to verify that purchasers of the securities are accredited investors.

If adopted, new Rule 506(c) will permit the use of general solicitations to offer and sell securities, provided that:

the issuer take reasonable steps to verify that the purchasers of the securities are accredited investors;

- at the time of the sale of securities either: (i) the purchasers of securities are in fact accredited investors because they come within one of the enumerated categories of persons that qualify as accredited investors, or (ii) the issuer reasonably believes that they do; and
- all other terms and conditions of Rule 501 and Rules 502(a) and 502(d) must be satisfied.

The SEC did not further define what steps would be “reasonable,” but said that would be an objective determination based on the particular facts and circumstances of each transaction. The SEC listed the following examples of factors that could be considered in determining the reasonableness of the steps to verify that a purchaser is an accredited investor:

- 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 issuer has about the purchaser; and
- the nature of the offering, such as 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.

The SEC highlighted a few areas in its discussion of these factors. The SEC acknowledged that the practical difficulties can be greater in verifying accredited investor status of natural persons due to the natural person's privacy concerns about the disclosure of personal financial information. Further, the more information an issuer has in its possession regarding an accredited investor's status as such, the fewer steps that would be necessary to verify that person's status in connection with the purchase of securities. Also, if the solicitation was conducted through a database of pre-screened accredited investors created and maintained by a reliable third party, then the issuer may be able to rely on the third-party verification (so long as the issuer has a reasonable basis to do so).

The SEC is requesting comment on the proposed rule for 30 days. The financial community anxiously awaits the adoption of the final rule in order to make use of general solicitation. The Congressional mandate to permit general solicitation initially created a flurry of excitement in the financial community by the Jumpstart our Business Startups Act when the Act was enacted on April 5, 2012. Let's hope the SEC can put the final rule permitting general solicitation on the fast track to adoption once the comment period closes.