



Guidance on General Solicitation and General Advertising in Rule 506 Offerings Following Enactment of the JOBS Act

On April 5, 2012, President Obama signed the Jumpstart Our Business Startups Act (the “JOBS Act”), easing some significant regulatory restraints on capital formation.¹ Among other provisions, the JOBS Act directs the SEC to amend its rules to repeal the ban on general solicitation and general advertising in offerings under Rule 506 of Regulation D when sales are only to accredited investors. The JOBS Act also directs the SEC to make comparable changes to Securities Act Rule 144A.

Certain portions of the JOBS Act are immediately effective, such as Title I, which creates a new regulatory “on-ramp” for “emerging growth companies” going public, with confidential SEC staff review of draft IPO registration statements, scaled disclosure requirements, and fewer restrictions on “test the waters” and research communications around the time of securities offerings. However, Title II, which directs the SEC to amend its rules to remove the ban on general solicitation and general advertising in Rule 506 and Rule 144A offerings as discussed above, does not become effective until the SEC adopts its final rules.

We participated in drafting *The JOBS Act and General Solicitation: Impact on Private Offerings During the Period Prior to SEC Rulemaking – 14 Law Firm Consensus Report*, which concludes that, until the SEC adopts final rules as directed by Title II of the JOBS Act, market participants relying on the Rule 506 and Rule 144A safe harbors will generally continue to implement customary procedures for these offerings.² The report also concludes that market participants will continue to satisfy conditions of applicable safe harbors such as Securities Act Rules 135c, 152 and 155, as well as comply with applicable SEC and staff guidance regarding the integration of concurrent private and public offerings.

Go to www.mofo.com/jumpstart for the latest developments regarding the JOBS Act.

¹ See our client alert on the JOBS Act, available at <http://www.mofo.com/files/Uploads/Images/120326-The-JOBS-Act.pdf>.

² The 14 Law Firm Consensus Report is available at http://www.mofo.com/files/Uploads/Images/General_Solicitation-Multi-Law-Firm-QAs.pdf.

Author

Anna T. Pinedo
(212) 468-8179
apinedo@mofo.com

David Lynn
(202) 778-1603
dlynn@mofo.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life sciences companies. We've been included on *The American Lawyer's* A-List for eight straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com. © 2012 Morrison & Foerster LLP. All rights reserved.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.