OSB Securities Law Section
November 20, 2013

What the Buzzwords Mean for Practitioners:
General Solicitation, Bad Actors and Crowdfunding

Tom Palmer, Drea Schmidt and Claire Brown
Tonkon Torp LLP

I. SEC Lifts Ban on General Solicitation in Rule 506 Private Placements

Historically, sales of securities under the Securities Act were made either to the general public through a registered public offering or privately to qualified investors in private placements. In order to take advantage of the "private" placement exemption from registration, a basic requirement was that there could be no general solicitation or advertising to the general public. Congress, in the JOBS Act, mandated that the SEC nevertheless adopt rules eliminating the prohibition on general solicitation in certain private offerings, which it has done in final rules effective September 23, 2013.

A. Brief Overview: "Old" Rule 506

Rule 506 is the most frequently used safe harbor under the current Regulation D private placement exemption from registration. It permits offers and sales in an unlimited amount to an unlimited number of accredited investors and up to 35 sophisticated non-accredited investors. In order to take advantage of Rule 506, companies could not engage in any form of general solicitation.

(i) *General Solicitation*

General solicitation does not have a precise definition but, in order to protect investors, the SEC construed the term broadly to include newspaper advertising, television and radio, unrestricted websites, and e-mail, as well as seminars where attendees were invited using advertising.

(ii) *Accredited Investors*

Accredited investors generally include (1) registered brokers or dealers, banks, registered investment companies, insurance companies, and business development companies; (2) certain companies, trusts and employee benefit plans with assets of $5 million or more; and (3) individuals who either have a net worth of $1 million or more, excluding the value of the individual's home, or have had an individual income of $200,000 or more for the past two years ($300,000 with a spouse), and reasonably expect to have the same income in the current year.

(iii)*"Old" Rule 506 Preserved*

For issuers or their placement agents who do not need to advertise to find investors, the SEC has preserved the current rule in a redesignated section called Rule 506(b) that is unchanged except for the addition of a restriction prohibiting the use of the rule by "bad actors," discussed below. With this qualification, if companies do not want or need to advertise, they can continue to rely on the current exemptive rule to make sales to accredited investors and up to 35 non-accredited investors.

B. "New" Rule 506(c) – General Solicitation for All?

The JOBS Act mandated that the SEC amend Rule 506 to enable companies to use general solicitation and general advertising in private offerings, as long as they make sales only to accredited investors. The new exemption is set forth in Rule 506(c) and provides that issuers may engage in general solicitation and advertising in a private placement, so long as the company takes reasonable steps to verify that *all* purchasers (not offerees) of the securities are accredited investors and the issuer *reasonably believes* all the purchasers to be accredited investors. Rule 506(c).

(i) *Verification of Accredited Investor Status*

The SEC did not mandate specific methods of verification, but rather set out a principles-based approach and several non-exclusive, non-mandatory methods that may be used to verify accredited investor status. Whether the steps taken are reasonable in a particular offering is to be an objective determination by the company, or its placement agent, taking into account the facts and circumstances of each purchaser. Rule 506(c)(2). Factors to be considered under the principles-based approach include:

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

Note that an affirmative "yes" from an investor, whether checking a box online or signing an investor questionnaire in person, without more, is not enough to satisfy this standard.

Many commenters urged the SEC to state that if all investors were, in fact, accredited, then the issuer had conducted a proper investigation of accredited investor status. The SEC declined to adopt this position. Instead, the SEC made it clear that an issuer must affirmatively verify that each investor is accredited in advance of accepting an investment under Rule 506(c). Therefore, even if every ultimate investor is accredited, the exemption will not be available if the issuer has failed to comply with the verification requirement.

(ii) *Presumptively "Reasonable" Verification Methods*

In response to many comments, the SEC provided a non-exclusive list of "reasonable" verification methods for natural persons. Rule 506(c)(2)(ii). By conducting any of the following, an issuer may be deemed to have satisfied the verification requirement:

- *Individual Income Requirement:* The issuer reviews relevant IRS reports, such as Forms W-2, Schedules K-1 or Forms 1099, for the previous two years, and also obtains a written representation from the investor that he or she expects to earn the same income in the coming year.

- *Individual Net Worth Requirement:* The issuer reviews certain forms indicating that the investor has sufficient assets, such as bank statements, brokerage statements, tax assessments, and appraisal reports, all of which must have been issued within the past three months. The issuer must also check the investor's credit report, issued by a nationwide consumer reporting agency, to confirm that the investor's liabilities do not decrease the investor's assets to such an extent that the investor fails to meet the net worth requirement. Finally, the issuer must obtain the investor's written representation that the investor has disclosed all of his or her liabilities necessary to make a determination of net worth.

- *Third-Party Verification:* If a registered broker-dealer, registered investment advisor, licensed attorney, or certified public accountant has, within the past three months, confirmed that the investor is accredited, then an issuer may rely on that professional's written representation. Commenters expect that some companies may begin offering third-party verification services in response to this part of the new rule.

- *Current Investor Verification:* If any individual has previously invested in the issuer as an accredited investor, and remains an investor, that individual can certify to the issuer that he or she is accredited.

C. Transition Issues

In transition guidance, the SEC did specify that if issuers began a Rule 506 offering before September 23rd, that issuer could have started using general solicitation under Rule 506(c) after September 23rd without affecting the exempt status of the rest of its offering that took place in reliance on what is now Rule 506(b).

D. Implications of New Rule 506(c)

(i) *No Going Back – I*

The statutory private placement exemption in Section 4(a)(2) of the Securities Act remains available, but continues to prohibit general solicitation. Companies therefore will need to strictly comply with all the requirements of Rule 506(c) because, if they use general solicitation, then Section 4(a)(2) will not be an available fallback exemption for a failed Rule 506(c) offering. *See generally* Rule 500.

(ii) *No Going Back – II*

Further, companies that use general solicitation in a Rule 506(c) offering cannot convert their Rule 506(c) offering into a Rule 506(b) offering to make sales to non-accredited investors because general solicitation is not permitted under Rule 506(b) for offerings relying on that separate exemption.

(iii) *Covered Securities*

By virtue of Section 201(a)(1) of the JOBS Act, securities issued in Rule 506(c) offerings are deemed to be "covered securities" for purposes of Section 18(b)(4)(E) of the Securities Act and state blue sky exemptions from registration. State blue sky laws that would not apply to other Rule 506 offerings will therefore not apply to Rule 506(c) offerings.

(iv) *Application to Funds*

Funds that engage in private offerings--such as hedge funds, private equity funds and venture capital funds--rely on certain exclusions from the Investment Company Act that are conditioned on the funds not making a public offering. The SEC confirmed in its adopting release that exempt offers by these funds under Rule 506(c), using general solicitation or advertising, will not jeopardize these exclusions under the Investment Company Act.

(v) *Note: Rule 144A*

The SEC also amended Rule 144A, a resale exemption used in the institutional market, to provide that offers to persons, other than qualified institutional buyers, including offers by general solicitation, are permitted as long as actual sales are made only to persons the seller or any person acting on behalf of the seller reasonably believes are qualified institutional buyers.

II. SEC Imposes "Bad Actor" Limitations on Certain Private Placements

The Dodd-Frank Act required the SEC to adopt rules prohibiting securities offerings involving "felons and other 'bad actors'" from relying on Rule 506. Dodd-Frank mandated that the new 506 bad actor rules be "substantially similar" to the disqualification provisions of Regulation A, an existing offering exemption for smaller offerings.

Before this amendment, the rules governing Rule 506 offerings were silent on bad actors. The new bad actor disqualification now applies to the "old" Rule 506, now Rule 506(b), which governs offerings that do not include general solicitation, as well as the "new" Rule 506(c) offerings where issuers may generally solicit. The bad actor prohibition is codified in new paragraph (d) of Rule 506 and was also effective September 23, 2013. Rule 506(d).

A. "Bad Actor" Defined

A "bad actor" is a person, whether an entity or a natural person, that has committed any of a number of securities-related violations within a certain time period before the first sale in a Rule 506 offering takes place.

The list of disqualifying events is extensive. Rule 506(d)(i)-(viii). It includes:

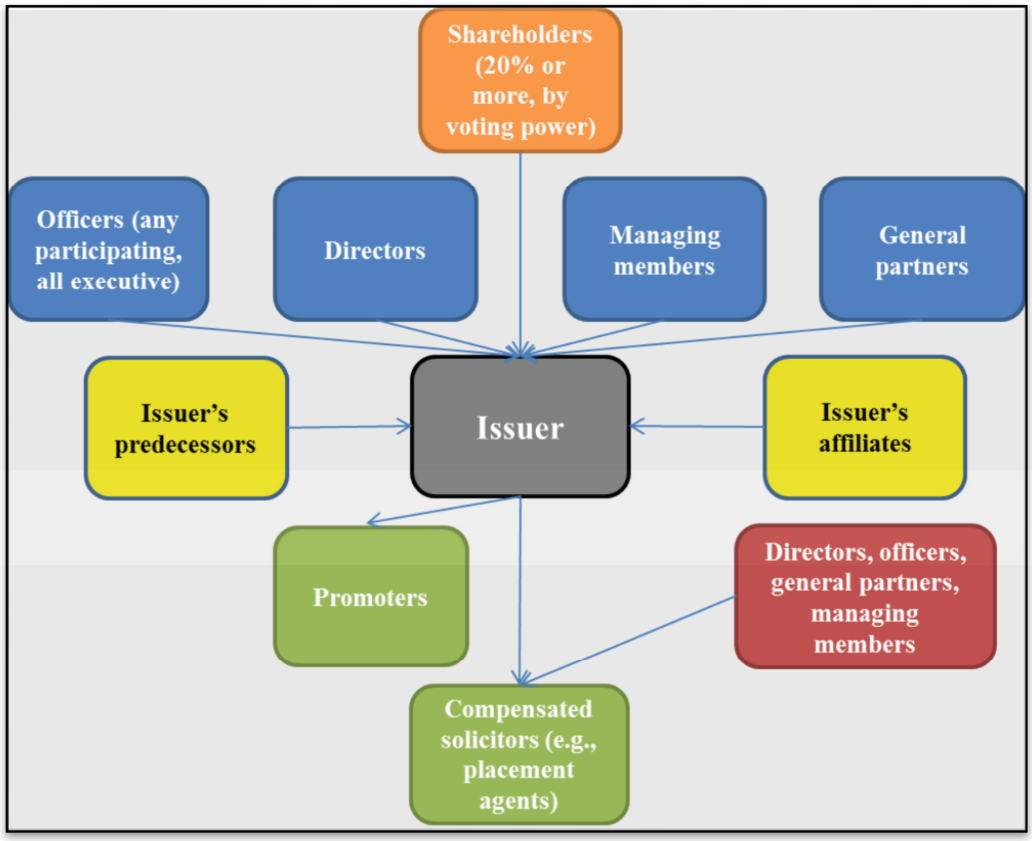
- certain securities-related criminal convictions;
- certain securities-related judgments, orders, and decrees from a court;
- final orders from a number of entities, including securities commissions and bank examiners, as well as the National Credit Union Administration and the Commodity Futures Trading Commission;
- certain SEC orders;
- suspension or expulsion from self-regulatory organizations such as the New York Stock Exchange or Nasdaq; and
- U.S. Postal Service false representation orders.

Disqualification under the new rule is generally triggered if a person has had a disqualifying event within the past five or ten years. Any "covered person," which is discussed in more detail below, who has a disqualifying event within the relevant lookback period disqualifies the issuer from relying on Rule 506 for that particular offering.

B. "Covered Person" Defined

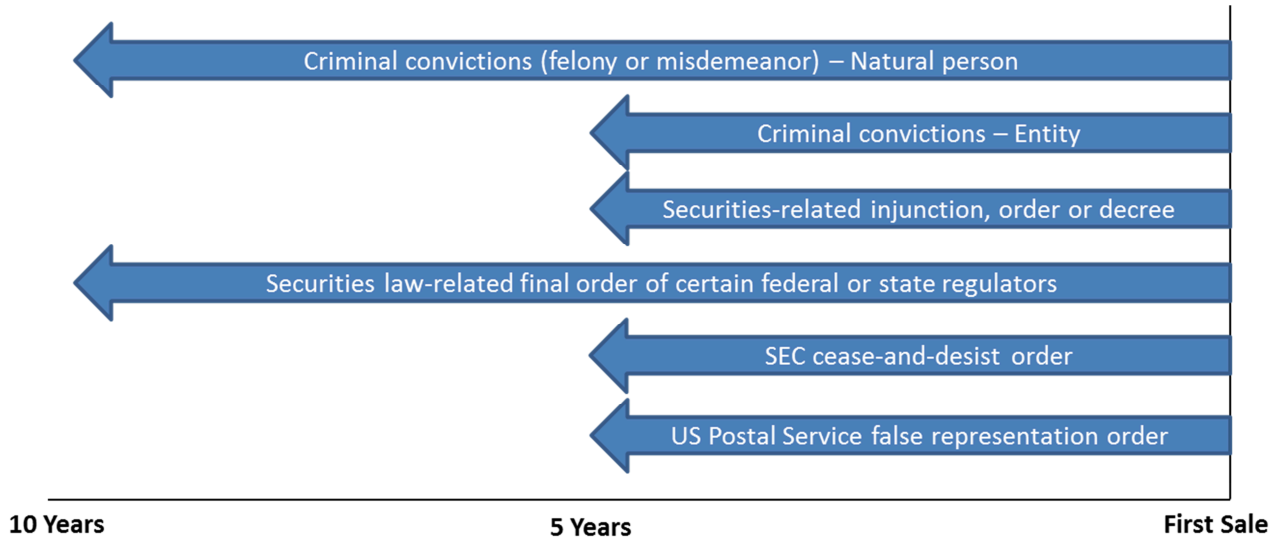
The list of persons who fall under the new bad actor rule, or "covered persons," is also extensive. Issuers seeking to engage in a Rule 506 offering must make certain inquiries of *all* covered persons *before* the first sale in the offering takes place in order to ensure that no covered persons are bad actors. In general terms, issuers are required to conduct this inquiry of anyone who will be involved in the offering in a meaningful way, including directors; executive and certain other officers; general partners; managing members; large shareholders; promoters; and anyone who will be compensated in connection with the Rule 506 offering, such as placement agents. The bad actor inquiry also extends to directors, officers, general partners and managing members of compensated solicitors. Finally, if the issuer is a pooled investment fund, then the scope of required inquiry also extends to the investment manager of the issuer, as well as any directors, executive officers, officers participating in the offering, general partners and managing members of the investment manager. Rule 506(d).

The following diagram illustrates the scope of the persons covered by the rule:



C. Lookback Periods

Different bad acts involve different periods of time during which those acts operate to disqualify covered persons from participation in a Rule 506 offering. Below is a chart summarizing some of the violations, as well as their relevant "lookback" periods.



After a lookback period has expired, that violation no longer classifies the person as a bad actor. However, if, at the time of the first sale, an SEC suspension, license revocation, bar from association with any entity or from participation in a penny stock offering, suspension or expulsion from the NYSE or Nasdaq, or temporary restraining order or preliminary injunction stemming from an ongoing investigation of a US Postal Service false representation order is in effect, the person subject to such a restriction is defined as a bad actor.

Note that there is a meaningful due process element in the triggering events that lead to bad actor disqualification. The triggering events result from the conclusion of an adjudication of some sort, and generally do not result from an investigation or preliminary proceeding.

D. The Only Defense: "Reasonable Care"

Recognizing the difficulty of attaining absolute certainty that no bad actors are involved in an offering, the SEC adopted a standard under Rule 506(d) that applies if an issuer did not know about a bad actor and could not have known, even after exercising reasonable care. Rule 506(d)(2)(iv). In that instance, the issuer has satisfied its obligations under the new bad actor rule. However, determining whether an issuer has taken reasonable care may be difficult because the SEC purposely left the description of "reasonableness" vague in order to allow for differences in the circumstances of issuers.

At a minimum, an issuer must make a factual inquiry into whether its offering is disqualified from Rule 506 due to bad actors. *Instructions to* Rule 506(d)(2)(iv). A factual inquiry could involve questionnaires, certifications, covenants, or contract terms between an issuer and any covered persons. The appropriateness of using any or all of the methods listed depends on the issuer, its relationship to the covered persons, the cost of compliance, and the potential risk associated with having a bad actor involved in the offering. The SEC specifically noted that issuers with continuous or long-lived offerings, for whom ongoing factual inquiries would be costly and disruptive, could update their factual inquiries periodically and satisfy the reasonable care standard, in the absence of any facts that would indicate that they should monitor one or more covered persons more closely.

E. Waivers Potentially Available

The Director of the Division of Corporation Finance at the SEC can grant a waiver of the Rule 506 disqualification for "good cause shown." Rule 506(d)(2)(ii). The SEC has indicated that it may grant a waiver in certain circumstances, such as after a change in control, a change of supervisory personnel, or if the covered person did not receive notice and opportunity for a hearing before the disqualifying event. The authority issuing the disqualifying order can also sometimes grant a waiver. If, for example, a state regulator issuing an order that would disqualify someone from participating in a Rule 506 offering decides that Rule 506 disqualification is not necessary, the SEC noted that it will respect the regulator's decision.

F. Transition Issues

The new rule will only disqualify offerings if the triggering event occurs after September 23, 2013. Rule 506(d)(2)(i). However, issuers must still disclose whether any covered persons

had disqualifying events that predate September 23, 2013. In that instance, issuers must disclose prior to the first sale whether there is anything in the history of any covered person that, had it occurred after September 23, 2013, would have disqualified the issuer from relying on Rule 506 under the bad actor rules. Again, issuers are excused from failure to disclose if they exercised reasonable care in investigating all covered persons.

G. Implications

(i) *Inquire Before Offering*

Unless the SEC waiver process proves to be more efficient and flexible than anticipated, there appears to be no practical way to insulate an offering from a bad actor while still permitting that person to continue in the role that triggers his or her status as a covered person. Issuers planning to rely on the Rule 506 exemption should identify all current bad actors and remove them from any position that could compromise the exemption in advance of the planned offering.

Issuers or their counsel should create and circulate bad actor questionnaires to all covered persons, including proposed placement agents, and have all of those questionnaires returned and reviewed in advance of the first offer in a Rule 506 offering. In addition, issuers should review all publicly available information on all covered persons, including FINRA and SEC records, to ensure to the extent possible that the information presented in the covered person's questionnaire is accurate. Placement agents or their counsel should conduct similar inquiries of issuers before accepting placement agent assignments. Placement agent agreements will need to be updated accordingly.

(ii) *Continuous Bad Actor Investigations*

Issuers should require all covered persons to certify to the issuer that all information in the bad actor questionnaire is correct. In addition, issuers should require covered persons to immediately report to the issuer any updates to any disqualifying event information, including pending matters and ongoing investigations.

(iii) *After Discovering a Bad Actor, Consider Disclosing Elsewhere*

Even though the bad actor rule only applies to Rule 506 offerings, issuers should consider disclosing known bad actors in other offerings. For example, in an offering relying on the statutory exemption under Section 4(a)(2), the involvement of a bad actor could be "material" to investors considering participation in the offering even though the bad actor would not affect the availability of the statutory exemption.

(iv) *Particularly Challenging: Continuous Offerings*

Issuers conducting continuous offerings under Rule 506, such as funds, should prepare themselves for a much more challenging compliance environment. These issuers will not only need to regularly re-send new bad actor questionnaires to covered persons, but will need to periodically re-examine publicly available information on all covered persons to ensure that none have become bad actors.

(v) *Check the Box on Form D*

When submitting a Form D notice filing, issuers must now elect either Rule 506(b) or 506(c). Although this election may be amended later, as mentioned above, issuers may not switch from 506(b) to 506(c) if they have accepted an unaccredited investor into the offering, and may not switch from 506(c) to 506(b) if they have generally solicited.

III. SEC Proposes Amendments to Form D

After proposing rules permitting general solicitation in certain private placements, the SEC received many comments voicing concern that allowing general solicitation could lead to increased instances of fraud. In response to concerns about increased fraud, the SEC proposed extensive amendments to Form D, some of which would apply only to new Rule 506(c) offerings and some of which would apply to all Rule 506 offerings. The proposed changes may be so burdensome, however, that, if adopted as proposed, they could discourage issuers from relying on Rule 506.

A. Additional Forms D

The SEC has proposed to require issuers to file a Form D at several different points during a Rule 506 offering. Under the proposed rules, issuers seeking to engage in a Rule 506 offering would need to file a Form D:

1. *Fifteen days in advance of any general solicitation in a Rule 506(c) offering.* This would theoretically provide the SEC and state regulators with additional information about any future offerings that will involve general solicitation. Note that this requirement would preclude issuers relying on Rule 506(b) from switching to an offering relying on Rule 506(c) in the event the issuer inadvertently engaged in general solicitation.

2. *Fifteen days after the first sale in a Rule 506 offering.*

3. *Thirty days after terminating a Rule 506 offering.* This filing would be required whether the offering closed, or whether it was terminated as "unsuccessful." Given that issuers may be reluctant to disclose publicly that an offering was not successful, the proposed rule requiring a closing Form D could operate to discourage issuers from undertaking Rule 506 offerings.

B. Additional Disclosures on Form D

The most expansive of the proposed amendments involves additional required disclosure on Form D. Proposed Item 3 on Form D, for example, would require an issuer conducting an offering in reliance on Rule 506(c) to disclose the name and address of any person who directly or indirectly controls the issuer. This is broader and more subjective than the required disclosure of "control persons" in public offerings.

As a further example, proposed Item 5 broadens disclosure for Rule 506(c) offerings in another potentially significant way. Currently, an issuer can "Decline to Disclose" in its Form D information about its revenues or, in the case of a fund, its net asset value. The proposed rule would change this option to "Not Available to the Public." According to the proposing release, issuers who disclose revenue or net asset value information in general solicitation materials are not eligible to select the "Not Available to the Public" option. Because general solicitation has historically been interpreted to include communications to a large number of prospective investors with which the issuer or its agent does not have any "substantive pre-existing relationship," issuers who conduct a general solicitation in this manner would be required disclose their revenues or net asset value on a Form D. It appears that this would be the case even if they only transmit the information after potential investors have signed a confidentiality agreement,

It is also notable that the use of proceeds disclosure in proposed Item 16, which is extremely detailed, requires more information than Item 504 of Regulation S-K, which governs disclosure of the use of proceeds in connection with registered public offerings. Proposed Item 16 would require issuers other than pooled investment funds to disclose the percentage of offering proceeds that will be used to:

- repurchase or retire the issuer's existing securities;
- pay offering expenses;
- acquire assets, other than in the ordinary course of business;
- finance acquisitions of other businesses;
- pay for working capital needs; or
- discharge indebtedness.

In total, there are 22 disclosure requirements on the proposed Form D, six of which are new. These include the number and type of accredited investors, and the number of natural persons; the amount of money raised from accredited and non-accredited investors; the types of general solicitation used or to be used, if applicable; and, for Rule 506(c) offerings, the methods of verification the issuer used to confirm accredited investor status.

C. Harsh Consequences for Failure to File

Currently, although issuers are required to file a Form D in conjunction with a Rule 506 offering, there is no real penalty for failure to file. The proposed rules seek to change this, imposing a one-year disqualification period if an issuer, its predecessor, or an affiliate failed at any time within the past five years, probably beginning after the effective date of the proposed rule, to comply with the Form D filing requirement in a Rule 506 offering and did not remedy such failure within 30 days. The issuer could only again rely on Rule 506 for a subsequent private placement one year after a corrective Form D was filed. As proposed, although failure to file would not disqualify that particular offering from relying on Rule 506, even an inadvertent or immaterial failure to file, if not cured within 30 days, would result in prospective disqualification.

D. General Solicitation: Legend and Content Requirements

The SEC also proposed content and legend requirements for general solicitation materials. As proposed, issuers using general solicitation would need to include the legends substantially similar to the following on all written materials:

- The securities may be sold only to accredited investors, which for natural persons, are investors who meet certain minimum annual income or net worth thresholds.

- The securities are being offered in reliance on an exemption from the registration requirements of the Securities Act and are not required to comply with specific disclosure requirements that apply to registration under the Securities Act.

- The Commission has not passed upon the merits of or given its approval to the securities, the terms of the offering, or the accuracy or completeness of any offering materials.

- The securities are subject to legal restrictions on transfer and resale, and investors should not assume they will be able to resell their securities.

- Investing in securities involves risk, and investors should be able to bear the loss of their investment.

Private funds will also need to include a legend disclosing that the securities being offered are not subject to the protections of the 1940 Act, as well as other detailed disclosures about the usefulness and accuracy of any historical performance data, if disclosed.

While these legend requirements are fairly standard, they do implicate an issuer's ability to use general solicitation in a forum with limited available space, such as certain forms of social media. It is not clear whether providing a link to these legends in written materials available online, rather than including the legends themselves, would satisfy the proposed rule.

E. Proposed Temporary Rule

The SEC, to facilitate monitoring the use of general solicitation, has also proposed a temporary, two-year rule, Rule 510T, requiring issuers to submit all general solicitation material to the SEC on or before the date of its first use. This material will not be made public by the SEC through, for example, disclosure on EDGAR. However, it is not clear whether an individual could obtain access to this information via the Freedom of Information Act.

F. Note: Proposed Amendment to Rule 156

The proposed rules would change Rule 156 under the Securities Act to extend the prohibition on materially misleading sales literature to include private funds. Currently, Rule 156 only addresses the use of such literature by registered investment funds. Fraud in sales literature by private funds is already unlawful under the Securities Act, and the proposed amendment neither expands nor alters this, but rather codifies something that is already understood.

G. Implications

(i) *Advance Form D: Artificial Delay*

If the SEC mandates filing a Form D in advance of general solicitation, as proposed, it could create an artificial delay in many offerings. Issuers, once deciding to engage in general solicitation, would file a Form D stating this fact, and then would need to wait for 15 days before actually commencing the offering. This would also make it difficult for issuers to change an offering from Rule 506(b) to Rule 506(c) without delaying the offering, and would make it impossible for issuers to carry out such a change in the event that an issuer has inadvertently engaged in general solicitation.

(ii) *Problems of Additional Disclosure*

It is unlikely that issuers will want to publicize that they plan to conduct an offering by filing a Form D in advance of the offering, even if the advance Form D does not include specific offering details. Issuers are also unlikely to want to file a Closing Form D – which would become publicly available on EDGAR – after an unsuccessful offering, disclosing that the offering was unsuccessful.

(iii) *One-Year Disqualification a New Burden*

Issuers will likely consider the one-year disqualification from relying on Rule 506 for failure to comply with the Form D filing requirements burdensome and disproportionately harsh as a penalty for failure to comply with a notice filing originally intended only for informational purposes.

(iv) *Additional Due Diligence Required*

After effectiveness of the new rules, placement agents (and possibly issuers) will need to conduct due diligence on compliance with the filing requirements for Form D in prior private offerings for which a Regulation D exemption is claimed in order to confirm the availability of a Rule 506 safe harbor for a proposed offering. As proposed, an issuer who failed to file a Form D prior to the effective date of the rule would not be disqualified from relying on Rule 506. However, the SEC has solicited comments on that issue, and may adopt a harsher stance in the final rule.

IV. SEC Proposes Regulation Crowdfunding

On October 23, 2013, the SEC proposed rules governing the offer and sale of securities through "crowdfunding." If adopted, these rules would allow issuers to raise capital by selling small amounts of equity to large groups of people via regulated, online crowdfunding platforms.

A. Crowdfunding: A New Exemption from Registration

As proposed, the new "crowdfunding exemption" would allow domestic, non-public companies to sell securities through a registered crowdfunding platform without needing to

formally register with either the SEC or state securities regulators. However, there will be substantial ongoing disclosure requirements.

Companies could raise up to $1,000,000 during any 12-month period in reliance on this particular exemption. If a company conducts a separate capital raise relying on a different exemption, such as through a traditional private placement, the proposed rules do not require issuers to aggregate the amounts raised. This means that there are ways for crowdfunding issuers to potentially raise more than $1,000,000, although not through crowdfunding alone.

B. Crowdfunding: General Solicitation Not Permitted

The crowdfunding rules are completely separate from the rules that allow general solicitation or advertising for Rule 506 private placements. Although many commenters have encouraged the SEC to allow crowdfunding issuers to advertise, the SEC has explicitly refused to do so. Instead, issuers seeking to crowdfund can issue "tombstone" releases, telling potential investors that they are conducting an offering; providing information about the identity of the issuer, the amount of the raise, and the type of securities offered; and directing investors to the crowdfunding platform where the issuer's securities are listed.

C. Crowdfunding: Bad Actor Rules Apply

Bad actor disqualification rules similar to those barring participation in Rule 506 private placements discussed above will apply to crowdfunding offerings. This means that any covered person connected with an issuer who is a bad actor will disqualify the issuer from issuing securities pursuant to the proposed crowdfunding exemption.

D. Crowdfunding: Other Points to Note

Currently, companies can raise money online from the "crowd" either by pre-selling goods or services through a site such as Kickstarter; by soliciting donations through a site like Indiegogo; or by selling to accredited investors through a restricted platform such as WeFunder or FundersClub. The proposed crowdfunding rules would allow companies to accept equity investments from non-accredited investors, although the rules would limit the amounts any individual investor could invest based on income and net worth. Because of the perceived vulnerability of non-accredited investors, the SEC has also proposed to apply significant liability provisions for fraud on both issuers of securities seeking to raise money pursuant to the crowdfunding exemption and the platforms that make such sales possible.

Sources and Resources

JOBS Act: Jumpstart Our Business Startups Act, Pub.L. No. 112-106 (2012).

Dodd-Frank Act: Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. No. 111-203 (2010).

Regulation D: 17 CFR §230.455-508.

Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 78 Fed. Reg. 44,771 (July 24, 2013).

Disqualification of Felons and Other "Bad Actors" From Rule 506 Offerings, 78 Fed. Reg. 44,729 (July 24, 2013).

Proposed Amendments to Regulation D, Form D and Rule 156, 78 Fed. Reg. 44,806 (July 24, 2013).

Proposed Regulation Crowdfunding, 78 Fed. Reg. 66,427 (Nov. 5, 2013).

www.tonkon.com