



Reminder: The Ban on General Solicitation in Rule 506 and 144A Offerings Will Soon Be Lifted

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Beginning **on September 23, 2013**, issuers may engage in general solicitation and advertising in conjunction with Rule 506 offerings, and resellers may do likewise in Rule 144A resales. Pursuant to new Rule 506(c), general solicitation and advertising will be permitted in Rule 506(c) offerings, provided that (1) all purchasers are reasonably believed to be “accredited investors,” as defined in Rule 501 of Regulation D and (2) the issuer takes *reasonable steps* to verify that all purchasers are accredited investors. Whether the steps taken to verify accredited investor status are “reasonable” will require an objective determination by the issuer, in the context of the particular facts and circumstances of each purchaser and transaction. The Securities and Exchange Commission (“SEC”) has, however, provided issuers with four methods that issuers may use to satisfy the verification requirement as it applies to natural persons.

To the extent that they engage in public advertising or other general solicitation methods, issuers relying on Rule 506(c) will not be able to fall back on the Section 4(a)(2) exemption under the Securities Act for offerings of securities not involving a public offering. Securities sold pursuant to Rule 506(c), however, will be “covered securities,” exempt from state registration requirements. Notably, Rule 506(b) remains as a separate exemption, and issuers may choose to rely on Rule 506(b), without any general solicitation, if the issuer wants to sell to non-accredited investors and/or avoid the Rule 506(c) verification requirements. For Rule 506 offerings that commenced before September 23, 2013, the issuer may choose to continue the offering in accordance with either Rule 506(b) or Rule 506(c). Any general solicitation that occurs after September 23, 2013 will not affect the exempt status of offers and sales of securities that occurred prior to the effective date in reliance on Rule 506(b).

In conjunction with the lifting of the ban on general solicitation in Rule 506 offerings, the SEC adopted new Rule 506(d), which disqualifies securities offerings involving certain felons and other bad actors from reliance on Rule 506. Rule 506(d) applies to bad acts that occur after September 23, 2013, which is the rule’s effective date. Sales made after that date will be subject to the disqualification and mandatory disclosure provisions of Rule 506(d) and new Rule 506(e). Rule 506(e), which applies to all Rule 506 offerings, requires issuers to provide each investor, a reasonable time prior to sale, with written disclosure of events that would have triggered disqualification but occurred before September 23, 2013.

For summaries of the rule amendments related to general solicitation and bad actor disqualification, as well as the SEC’s proposed amendments to Regulation D, Form D and Rule 156, please see our [client alert](#)¹ dated July 12, 2013.

¹ <http://www.agg.com/SEC-Lifts-General-Solicitation-Ban-and-Imposes-Bad-Actor-Disqualifiers-07-12-2013/>

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