

JOBS Act and REG D Rule 506

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In April 2012 the JOBS Act became law. The main purpose of the Act was to stimulate development of new businesses in order to create more jobs. As part of the stimulus plan the SEC was directed to develop rules that would make it easier for entrepreneurs to access capital in order to launch and grow businesses. Finally on July 10, 2013 the SEC announced a Final Rule designed to remove some of the barriers associated with the historical complexity for raising capital.

How Have the Rules Changed?

Prior to adoption of the new Rule it was very difficult to meet the SEC requirements in order to start and grow a business. For example, a sponsor of a stock offering would have to either register the offering with the SEC or rely upon a specific exemption from registration. Obtaining an exemption required strict adherence to the regulations limiting the type of advertising and promotional materials the sponsor could use as well as limiting the persons to whom he could offer the investment.

Section 201(a)(1) of the JOBS Act directed the SEC to remove certain limitations on general solicitation for securities offerings under Rule 506. The new final rule attempts to achieve that objective. Now a sponsor of a securities offering can make general solicitation and general advertising of that offer to everyone; provided, however, that sales are limited to “accredited investors”.

Who Is an Accredited Investor?

In addition to certain entities, a person is an accredited investor who meets one of the following standards:

- An individual net worth or joint net worth with a spouse exceeding \$1 million at the time of purchase of the securities offered;
- An individual annual income exceeding \$200,000 for each of the two most recent years or a joint annual income with a spouse exceeding \$300,000 for those years as long as there is a reasonable expectation of the same income level in the current year.

How Does One Determine Whether a Person is an Accredited Investor?

The burden is on the sponsor selling the securities to make that determination. However the final rule provides some direction by providing a nonexclusive list of methods that could be used to satisfy the verification requirement as follows:

The sponsor can review copies of IRS forms reporting the income of the purchaser and obtain a written representation from the purchaser that he/she will likely continue to earn the required minimum amount of income in the current year; or obtaining written confirmation from a CPA, attorney, registered broker dealer, or registered investment advisor stating that such entity has taken reasonable steps to verify the purchasers accredited status and is comfortable that the purchaser qualifies.

If I Want to Raise Money for My Enterprise Can I Sell to Anyone I Want?

Under the new rules you can promote the offering to anyone you wish; however, you can only sell stock to accredited investors.

When Does this Rule Take Effect?

The Final Rule becomes effective on September 23, 2013.

What Can I Do to Make Certain I Comply with the Rules?

Selling stock to the public is a complicated process fraught with a lot of legal landmines. It would be wise to develop a team of advisers who could make certain you navigate the regulations without harm. Certainly, the team should include securities lawyers as well as broker-dealers. The co-authors of this short article are members of a law firm as well as a registered broker dealer.

Should you wish to discuss this in greater detail please contact one of these persons: Barry.Michael@Focusbankers.com, Carson.Porter@Rimonlaw.com, or Frank.Vargas@Rimonlaw.com.

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The final rule and form amendments are effective on September 23, 2013

RULES

Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings

<https://www.federalregister.gov/articles/2013/07/24/2013-16883/eliminating-the-prohibition-against-general-solicitation-and-general-advertising-in-rule-506-and>

Pages 44771 – 44805 (35 pages) [FR DOC #: 2013-16883]

Disqualification of Felons and Other Bad Actors from Rule 506 Offerings

<https://www.federalregister.gov/articles/2013/07/24/2013-16983/disqualification-of-felons-and-other-bad-actors-from-rule-506-offerings>

Pages 44729 – 44771 (43 pages) [FR DOC #: 2013-16983]

PROPOSED RULES

Amendments to Regulation D, Form D and Rule 156

<https://www.federalregister.gov/articles/2013/07/24/2013-16884/amendments-to-regulation-d-form-d-and-rule-156>

Pages 44806 – 44855 (50 pages) [FR DOC #: 2013-16884]

ABOUT THE AUTHORS

Barry Michael, a FOCUS Senior Advisor and Registered Representative, has more than 30 years' experience in medical devices and the applied life sciences. Mr. Michael is an active entrepreneur as well as an independent management consultant who specializes in biomedical commercialization. Previously he held marketing and sales positions at Abbott Diagnostics as well as at Kimberly-Clark Professional Health Care. Prior to receiving an MBA from Wharton, he specialized in high technology manufacturing management at Texas Instruments, Procter & Gamble, and National Semiconductor. He also has an engineering degree from Brown University and attendance at the Navy Officer Candidate and Supply School. Mr. Michael, a veteran, served two tours in Vietnam.

Carson Porter is a Partner in Rimon PC's healthcare, litigation, and startup company practice groups. The JOBS Act and Accountable Care Organizations are emerging areas of current emphasis. Carson has extensive private practice experience as well as business experience serving as CEO to several closely-held companies, and not-for-profit experience serving as Director, Board Member, and General Counsel of several organizations. Among his many highlights, in 1975, at age 30, Carson argued and won a case before the U. S. Supreme Court, making him one of the youngest attorneys to do so. He also is a past member of the Young Presidents' Organization (YPO), World Presidents' Organization (WPO), and founder of YPO Healthcare Focus Forum which after 20 years has over 100 active members who are CEOs of healthcare business entities.

Frank Vargas, a Rimon PC Partner, has more than 25 years of practicing corporate and securities law, representing some of the largest and best known technology companies in the United States. His clients include public and private companies as well as venture and private equity funds. His investment banking background brings a unique perspective to mergers, acquisitions, and financing including structuring and valuations. As a private investor and co-founder of more than 20 companies, he understands what businesses need in order to find financing, grow, and thrive in today's market. He assists clients in finding investment capital through his large and growing contacts with venture capital, angel groups, and angel investors. He also helps clients connect with other companies in order to generate interest in joint ventures and potential acquisitions.