

SEC Open Meeting May Indicate Rulemaking Priorities

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The SEC has announced an open meeting for this Wednesday to discuss three items: (a) whether to adopt amendments to eliminate the prohibition against general solicitation and general advertising in certain securities offerings conducted pursuant to Rule 506 of Regulation D and Rule 144A under the Securities Act as mandated by the JOBS Act, proposed in August 2012; (b) whether to propose amendments to Regulation D, Form D and Rule 156 under the Securities Act; and (c) whether to adopt amendments to disqualify securities offerings involving certain “felons and other ‘bad actors’” from reliance on the exemption from Securities Act registration pursuant to Rule 506 as mandated by the Dodd-Frank Act, proposed in May 2011. See our [memo](#) regarding the rule proposal on general solicitation and Regulation D.

This renewed focus appears to be consistent with statements by SEC staff that they are primarily focused on working through JOBS Act and Dodd-Frank rulemaking that required enactment by a specified deadline in the legislation. According to the Davis Polk Regulatory Tracker and the [July Dodd-Frank Progress Report](#), the SEC has missed the statutory deadlines for adopting rules required to meet 49 rulemaking mandates. The Commission has made proposals to meet 41 requirements while 8 remain without any action.

This does not translate into 49 separate rules, however, as several provisions may be addressed at the same time through a single rulemaking release. The proposed rules include 7 provisions related to the Volcker Rule (proposed November 2011), 17 provisions related to security-based swaps (various proposals made in 2011), 11 provisions related to credit rating agencies (proposed June 2011) and 4 provisions related to asset-backed securities offerings (various proposals made in 2011). The SEC has also not taken any action on several Dodd-Frank mandates without any statutory deadlines, including corporate governance and executive compensation rulemaking requirements involving disclosure of hedging policies, clawbacks and pay ratios, in addition to a range of mandates covering systemic risk regulation for financial institutions and broker-dealer and investment adviser information.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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