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SEC Issues Guidance on Rule 506 “Bad Actor” Provisions

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On December 4, 2013, the Division of Corporate Finance of the Securities and Exchange Commission (the “**SEC**”) issued **Compliance and Disclosure Interpretations** (“**C&DIs**”) regarding the **“bad actor” rules** adopted by the SEC, which generally disqualify securities offerings involving certain felons and other “bad actors” from reliance on Rule 506 of Regulation D. The rules are codified as Rules 506(d)–(e) under the Securities Act of 1933, as amended (the “**Securities Act**”), and became effective on September 23, 2013. Under Rule 506(d), if one of an enumerated list of covered persons in relation to an offering of securities is subject to a “disqualifying event” that occurred on or after September 23, 2013, then the issuer is generally disqualified from relying on Rule 506 of Regulation D. In addition, pursuant to Rule 506(e), if a covered person is subject to a matter that would have been a disqualifying event had it occurred on or after September 23, 2013, then the issuer must furnish to each purchaser, a reasonable time prior to selling securities in reliance on Rule 506, written disclosure of such matter.

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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