

Private Offering Reform: Analysis and Implications

July 28, 2013 | Client Update

On July 10, 2013, the SEC adopted amendments to the Regulation D and Rule 144A private-placement safe harbors, which will eliminate the prohibition on widespread advertising and other forms of “general solicitation” or “general advertising” in private offerings under Rule 506 of Regulation D of the Securities Act of 1933 or under Rule 144A of the Securities Act of 1933, so long as all purchasers of the securities are reasonably believed to be accredited investors upon taking reasonable steps to verify as much (under Rule 506) or are reasonably believed to be qualified institutional buyers or “QIBs” (under Rule 144A).

In a companion release, the SEC also adopted amendments to Rule 506 that disqualify issuers from relying on Rule 506 if certain “felons and other bad actors” are participating in the Rule 506 offering, as mandated by the Dodd-Frank Act of 2010. Finally, the SEC proposed additional amendments to Regulation D, Form D and Rule 156 under the Securities Act of 1933, which would impose new filing and disclosure requirements on offerings made in reliance on Rule 506.

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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