

## Changing the Private Placement Playbook: General Solicitation and General Advertising Now Permitted for Certain Offerings

Summary of Adopted Amendments to Rule 506, Rule 144A and Form D		
	Prior to Amendments	As Amended
<b>Rule 506</b>	<ul style="list-style-type: none"> <li>An issuer is not permitted to offer or sell securities through any form of general solicitation or general advertising.*</li> <li>Safe harbor does not disqualify securities offerings in which certain felons and other "bad actors" are involved.</li> <li>Issuers may sell securities to up to 35 non-accredited investors who meet certain sophistication requirements.</li> </ul>	<ul style="list-style-type: none"> <li>An issuer (including a privately offered fund) is permitted to use general solicitation and general advertising to offer and sell securities under new Rule 506(c) (General Solicitation Exemption) as long as: <ul style="list-style-type: none"> <li>The issuer takes reasonable steps to verify that the purchasers of the securities are accredited investors;</li> <li>All purchasers of securities are accredited investors because they fall within one of the categories of persons that qualify as an accredited investor (under Rule 501) or the issuer reasonably believes that they fall within one of the categories at the time the securities are sold; and</li> <li>The sales otherwise satisfy the definitional, integration and resale provisions of the Regulation D safe harbor.</li> </ul> </li> <li>Existing safe harbor under Rule 506 is not otherwise affected and is redesignated as Rule 506(b) (No General Solicitation Exemption).</li> <li>Issuers that use the General Solicitation Exemption may not sell securities to any non-accredited investors; however, under the No General Solicitation Exemption, issuers may sell securities to up to 35 non-accredited investors who meet certain sophistication requirements.</li> <li>Safe harbor (either the General Solicitation Exemption or No General Solicitation Exemption) unavailable for securities offerings in which certain felons and other "bad actors" are involved.</li> </ul>
<b>Form D**</b>	<ul style="list-style-type: none"> <li>Form D due no later than 15 calendar days after first sale of securities; Form D filing is required by rule but not a condition to exemption under Rule 506.</li> <li>Form includes a single box to check indicating reliance on Rule 506.</li> <li>Form does not require certification that a Rule 506 offering does not involve certain felons and other "bad actors."</li> </ul>	<ul style="list-style-type: none"> <li>Form D due no later than 15 calendar days after first sale of securities; Form D filing required by rule, but not a condition to exemptions under Rule 506 (either the General Solicitation Exemption or No General Solicitation Exemption).</li> <li>Form includes separate boxes for issuers to check to indicate whether they are claiming the General Solicitation Exemption or, alternatively, the No General Solicitation Exemption.</li> <li>Form requires certification that a Rule 506 offering is not disqualified from relying on Rule 506 (as a result of the new "bad actor" provisions).</li> </ul>

(continued)

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	Prior to Amendments	As Amended
<b>Rule 144A</b>	<ul style="list-style-type: none"> <li>Although no express limitation against general solicitation and general advertising, offers of securities under Rule 144A limited to QIBs.</li> <li>Form D not applicable to Rule 144A offerings.</li> <li>Offerings not subject to “bad actor” disqualification.</li> </ul>	<ul style="list-style-type: none"> <li>Securities may be offered for resale to persons other than QIBs, including by means of general solicitation and general advertising, provided that the securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believes are QIBs.</li> <li>General solicitation and general advertising solely in connection with resales by financial intermediaries (initial purchasers) will not affect the validity of an otherwise proper and exempt initial sale by the issuer to the financial intermediaries.</li> <li>Form D not applicable to Rule 144A offerings.</li> <li>Offerings not subject to “bad actor” disqualification.</li> </ul>
<b>Section 4(a)(2) (formerly Section 4(2))</b>	<ul style="list-style-type: none"> <li>Offerings subject to the prohibition against general solicitation and general advertising.</li> <li>Offerings not subject to “bad actor” disqualification.</li> </ul>	<ul style="list-style-type: none"> <li>No changes. <ul style="list-style-type: none"> <li>Offerings remain subject to the prohibition against general solicitation and general advertising.</li> <li>Offerings not subject to “bad actor” disqualification.</li> </ul> </li> </ul>

\* General solicitation and general advertising are not defined under Regulation D or elsewhere. Rule 502(c) does set forth examples of general solicitation and general advertising, including “[a]ny advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio” and “[a]ny seminar or meeting whose attendees have been invited by any general solicitation or general advertising,” subject to limited exceptions, such as publication of a notice pursuant to Rule 135c. The adopting release related to new Rule 506(c) notes the SEC interpretations confirming that other uses of publicly available media, such as unrestricted websites, are also deemed to constitute general solicitation and general advertising.

\*\* Additional changes to Form D and Regulation D and changes to Rule 156 were proposed. The comment period on the proposed rule amendments was scheduled to close on September 23, 2013 but recently was extended until November 4, 2013.