

JOBS Act: The SEC Belatedly Adopted Amendments to the
Private Offering Rules

Congress passed the Jumpstart our Business Startups (JOBS) Act in April 2012, a game-changing piece of legislation, which directed the SEC to adopt rules permitting general solicitation and advertising in private offerings of securities by July 2, 2012. The SEC finally took action to remove the ban on general solicitation and advertising in connection with the private placement of securities under Rule 506 of Regulation D and resales of securities under Rule 144A. We believe these changes will have a significant positive economic impact.

The rules were finally adopted on July 10, 2013 and in addition to the adoption of the rules relating to general solicitation and advertising, the SEC adopted bad actor provisions for Rule 506 offerings as required by Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). The bad actor provisions give the SEC authority for an issuer to be disqualified from using the Rule 506 exemption in connection with a private offering of securities if the issuer or certain related persons have committed certain bad acts.

In addition to the new rules, the SEC issued a series of proposals relating to the proposed amendment of Regulation D and Form D to enhance the SEC's ability to monitor and analyze Rule 506(c) offerings and to provide guidance to private funds on applying the antifraud provisions of the federal securities laws to such funds' sales literature. The SEC plans to monitor the use and implementation of Rule 506(c) and undertake a review of market practices in Rule 506(c) offerings and the impact of these amendments on capital formation.