

SEC PROPOSES TO LIMIT REGULATION D PUBLIC OFFERING

The SEC is concerned about the effects of new Rule 506(c), general solicitation in Regulation D offerings. The Commission has proposed rules that will limit the use of new Rule 506(c) by issuers. For its part, the SEC says it is merely trying to “enhance [its] ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise in connection with permitting issuers to engage in general solicitation and general advertising” under Rule 506(c).

The current Form D filing requirement is not a condition to obtaining a Regulation D exemption, and non-compliance will not result in a violation of the Securities Act.

Proposed amendments to Regulation D and Form D will:

- require advance filing of Form D for offerings made by general solicitation under Rule 506(c);
- require written general solicitation materials used in Rule 506(c) offerings to include certain legends and other disclosures;
- require the submission, on a temporary basis, of written general solicitation materials used in Rule 506(c) offerings to the Commission;
- automatically disqualify issuers from using Rule 506 for future offerings of any kind under Regulation D until one year after the required Form D filings are made, if the issuer or its predecessors or affiliates failed to comply with the Form D filing requirements for a Rule 506 offering during a five year “look-back” period;
- require the filing of a “closing” amendment to Form D after termination of a Rule 506 offering expand the information requirements in Form D for Rule 506 offerings;
- require an issuer to include additional information about offerings conducted in reliance on Regulation D

The Commission has also requested comment on the definition of “accredited investor” for natural persons. No amendments have been proposed to the accredited investor definition at this time, but the Commission is accepting related comments and considering modifications.

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