

Alerts & Publications

Guidance Regarding Rule 506 Offerings Prior to the SEC Adopting Rules Implementing the JOBS Act



April 9, 2012

The JOBS Act will have a significant impact on the way in which issuers solicit potential investors in exempt, private offerings under Securities Act Rule 506. Specifically, the JOBS Act, which was enacted on April 5, 2012, directs the SEC to amend its rules to eliminate the prohibition on general solicitation and general advertising in offerings under the Rule 506 exemption, provided that the only purchasers in such private offerings are “accredited investors.” This direction is set forth in Section 201 of the JOBS Act.[1]

Unlike the provisions of the JOBS Act relating to initial public offerings of “emerging growth companies,” the implementation of Section 201 requires SEC rulemaking. The SEC has been given a 90-day deadline to adopt these implementing rules. Fourteen law firms -- including O’Melveny & Myers -- have published a [consensus report](#) regarding the operation of Rule 506 during the period between April 5 and the SEC’s adoption of final rules. That report sets forth the understanding of the participating law firms that, until the SEC adopts final rules implementing JOBS Act Section 201:

- the current versions of Rule 506 and Rule 144A are not changed and remain in effect;
- “market participants relying on the Rule 506 and Rule 144A safe harbors will generally continue to implement customary procedures for these offerings until the SEC revises Rule 506 and Rule 144A, particularly in view of the private right of action under Section 12(a)(1) of the Securities Act”; and
- market participants are expected to continue to:
 - satisfy the applicable conditions of safe harbors such as Rule 135c, Rule 152, and Rule 155; and
 - follow the applicable terms of interpretive guidance such as:
 - [SEC Release No. 33-8828](#) (regarding the integration of concurrent public and private offerings);
 - the SEC Staff’s guidance in [Securities Act Sections Compliance and Disclosure Interpretations](#) Question 139.25; and
 - the views expressed by the Division of Corporation Finance no-action letters to Black Box Incorporated (June 26, 1990) and Squadron, Ellenoff, Plesent & Lehrer (Feb. 28, 1992).

For more information regarding this guidance, please contact your regular O’Melveny & Myers LLP attorney.

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[1] The JOBS Act directs the SEC to make similar changes to Securities Act Rule 144A.