

SEC Proposes New Rules Under the JOBS Act

by KENNETH C. OH on SEPTEMBER 20, 2012

After missing several earlier deadlines, the Securities and Exchange Commission has proposed its first set of rules implementing the provisions of the Jumpstart Our Business Startups Act (JOBS Act). The proposed rules remove the long-standing prohibition against general solicitation and advertising with respect to certain securities offerings under Rule 506 of Regulation D of the Securities Act.

As we highlighted on this [business law blog](#) in recent weeks, New York and New Jersey startups looking to raise funds through the sale of securities must generally either register the securities offering with the SEC or rely on an exemption from securities registration.

As proposed by the [SEC](#), the rules would permit companies to use general solicitation and general advertising to offer securities pursuant to a Rule 506 offering, provided that all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify that the purchasers of the securities are accredited investors, at the time of the sale of the securities.

In determining the reasonableness of the steps that an issuer has taken to verify that a purchaser is an accredited investor, the proposed rules look to the facts and circumstances of the transaction. According to the SEC, this includes, among other things, the following factors:

- The nature of the purchaser and the type of accredited investor that the purchaser claims to be.
- The amount and type of information that the issuer has about the purchaser.
- The nature of the offering and the terms of the offering (e.g., the manner in which the purchaser was solicited to participate in the offering; and whether there was a high minimum investment amount).

The SEC is seeking public comment on the proposed rules for 30 days. Businesses are reminded that they must still comply with the current rules until the proposed rules become final.

If you have any questions about this case or would like to discuss the proposed rules, please contact me, [Kenneth Oh](#), or the [Scarinci Hollenbeck](#) attorney with whom you work.