

Better Late Than Never: SEC Releases New Advertising and Solicitation Rules

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The SEC has finally released its long-awaited proposed rules to eliminate the prohibition against general solicitation and general advertising for securities offerings relying on Rule 506. As mandated by the [JOBS Act](#), the rules specifically address offerings directed to accredited investors.

Under the new rules as proposed, advisers to hedge funds may promote securities using general solicitation and general advertising, so long as:

- The fund takes “reasonable steps” to verify that the investors are “accredited”; and
- All investors are –or the fund reasonably believes they are – “accredited” under existing Rule 501. Under the rule, a natural person qualifies as an accredited investor if he or she has individual net worth – or joint net worth with a spouse – that exceeds \$1 million at the time of the purchase, excluding the value of the primary residence of such person. Or, if he or she has income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.

Of course, the interesting question is how the “reasonableness” test is satisfied. According to the SEC, to meet this standard, advisers would have to consider all facts and circumstances, and, among other things, the following:

- The type of purchaser and accredited investor the investor claims to be.
- The amount and type of information that the fund has about the investor.
- The nature of the offering, meaning: The manner in which the investor was solicited and the terms of the offering, such as a minimum investment amount.

This does not help a lot, does it? To me it just looks like a very articulate description of the time-tested “smell test.” Let’s see what kind of feedback the agency receives during the 30-day comment period.

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