



Client Alert

This is the first in a series of client alerts dealing with the Jumpstart Our Business Startups Act (JOBS Act). This alert addresses the Act's requirement that the SEC eliminate the restriction prohibiting general solicitation and advertising in connection with certain private offerings.

JOBS Act: SEC Must Amend Reg D to Permit Advertising for Private Offerings to Accredited Investors

Regulation D (Rules 501 *et seq.*) is the safe harbor regulation adopted by the SEC 30 years ago for private offerings under Section 4(2) of the Securities Act of 1933. One of the principal components of Reg D (as well as its predecessor regulations and case law) is that by its very nature a "private" offering should not involve any advertising. While even the casual observer could understand this restriction prohibited television, newspaper and radio ads and cold calls, in fact, the SEC's interpretation of this restriction covered a lot more activity. In essence, the SEC believed that for the no-solicitation or advertising condition to be met, each purchaser in an offering must have a pre-existing business or personal relationship with the issuer or one of its officers or directors, or the issuer's placement agent.

This broad interpretation called into question the practices of a number of issuers. For example, it would not be uncommon for one potential investor in an offering to refer the issuer to other investors. Since these other investors did not have a pre-existing business or personal relationship with the issuer, sales to these investors might have resulted in a general solicitation and failure to meet the conditions of Reg D. The same result would occur if an issuer sold to accredited investors identified in a list of "accredited investors" purchased by the issuer.

The JOBS Act requires that not later than July 4, 2012, the SEC must revise Reg D to eliminate the prohibition on general solicitation and advertising for offerings under Rule 506 provided that all purchasers of the securities are accredited investors. The statute provides that the issuer must take reasonable steps to assure that the purchasers are accredited investors, using methods determined by the SEC.

This revision will eliminate some of these common pitfalls for issuers in private offerings. Further, companies will be able to advertise their offerings and speak with friends of friends. The only limitation is that they will be required to sell only to accredited investors (Rule 506 permits sales to non-accredited investors provided the issuer delivers to each non-accredited investor disclosure documents, including, in many cases, audited financial statements).

We expect that once Reg D is revised, many issuers will advertise their offerings on websites, through email blasts, and perhaps even through print or other media.



Alan B. Spatz
310.789.1231
aspatz@troygould.com

PRACTICE AREAS

[Business Finance](#)
[China](#)
[Corporate](#)
[Emerging Growth Companies and
Venture Capital](#)
[Entertainment and Media](#)
[Financial Services](#)
[JOBS Act Task Force](#)
[Life Sciences](#)
[Mergers and Acquisitions](#)
[Securities](#)

About TroyGould

Founded in 1970, TroyGould is a Los Angeles law firm with a diverse client base and a practice covering a broad range of business transactions, litigation, and legal counseling, with emphasis in the areas of corporate finance, mergers & acquisitions, real estate, financial services, entertainment, employment, tax, and competitive business practices.

©2012 TroyGould PC. All Rights Reserved. The information in this e-mail has been prepared by TroyGould PC for informational purposes only and not as legal advice. Neither the transmission, nor your receipt, of information from this correspondence create an attorney-client relationship between you and TroyGould PC. You are receiving this email from TroyGould PC because you have a business relationship with our firm and/or its attorneys.

TROYGOULD PC

1801 Century Park East • Los Angeles 90067 • 310.553.4441
www.troygould.com

[Unsubscribe here](#)