



Alert

Corporate Finance and Securities Client Service Group

To: Our Clients and Friends

January 6, 2012

SEC Advisory Committee Recommends Relaxing Restrictions on Solicitation and Advertising in Private Offerings

On January 6, 2012, the Advisory Committee on Small and Emerging Companies established by the Securities and Exchange Commission (“SEC”) recommended that the SEC take immediate action to permit general solicitation and general advertising in private offerings of securities under Rule 506 of Regulation D where securities are sold only to accredited investors. Relaxing the current restrictions on general solicitation and advertising would facilitate the ability of companies to raise capital from accredited investors, who are generally viewed as able to fend for themselves. For example, relaxing these restrictions would make it easier for companies to publicize their financing plans and seek funding from investors without any pre-existing relationship.

Rule 506 of Regulation D provides a widely-used safe harbor from the registration requirements of the Securities Act of 1933 for qualifying private offerings. Under current Rule 506, neither the issuer nor any person acting on the issuer’s behalf may offer or sell securities by any form of “general solicitation or general advertising,” and securities sold pursuant to Rule 506 may only be sold to “accredited investors” or persons who, either alone or with a representative, have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of a prospective investment.

The Advisory Committee is of the view that the restrictions on general solicitation and advertising prevent many privately held small businesses and smaller public companies from gaining sufficient access to capital sources and thereby materially limit their ability to raise capital through private offerings. The Advisory Committee noted that the investor protections afforded by the existing restrictions on general solicitation and general advertising are not necessary in private offerings where the securities are sold solely to accredited investors. Because the concepts of general solicitation and advertising are vague, the prohibition increases compliance and diligence costs for issuers of securities

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who seek to avoid potential activities that might be deemed to constitute general solicitation or advertising and thereby destroy the availability of the Rule 506 safe harbor.

The Advisory Committee's recommendations are not binding. Modification to the current requirements would require either SEC approval or the enactment of legislation. In November 2011, the U.S. House of Representatives passed legislation that would permit general solicitation in Rule 506 offerings so long as all of the purchasers are accredited investors.

The SEC established the Advisory Committee in September 2011 to provide a formal mechanism through which the SEC can receive advice and recommendations specifically related to privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization.

For more information on this topic or other proposals affecting emerging companies, please contact any of the attorneys listed below or a member of Bryan Cave's [Corporate Finance and Securities](#) Client Service Group.

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