

## SEC Adopts Rules to Permit Advertising of Certain Private Offerings to Raise Capital



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The Securities and Exchange Commission (SEC) recently adopted new rules to lift the existing ban on general solicitation and general advertising for certain "private offerings" of securities. These private offerings allow companies to avoid the SEC's time consuming and costly registration process for "public offerings" of securities. The new rules, which become effective on Sept. 23, 2013, are expected to transform how startup and other companies (issuers) privately raise capital by allowing issuers to solicit potential investors by issuing a press release or advertising via newspaper, radio or the Internet. Previously, these types of solicitations were prohibited in private offerings, thereby requiring startup companies to often rely on private communications with friends, family and other pre-existing relationships.

Under the new rules, however, issuers seeking to generally solicit potential investors may only sell their securities to "accredited investors," which include natural persons meeting certain income or net worth requirements. For example, an individual would qualify as an accredited investor if he or she has annual income that exceeded \$200,000 in each of the two most recently completed years (e.g., 2011 and 2012) and a reasonable expectation of the same income level in the current year (e.g., 2013). An individual can also qualify as an accredited investor if his or her net worth, or joint net worth with a spouse, exceeds \$1 million at the time of purchase, excluding the value (and any related debt) of a primary residence. The new rules also require that the issuer take reasonable steps to verify that the investors are accredited, which may include receiving tax returns to verify income or a written confirmation from a registered broker-dealer or SEC-registered investment adviser to verify net worth.

Lastly, the SEC also adopted new rules to disqualify felons and other "bad actors" from being participants in these and other private offerings under Rule 506 of Regulation D, which participants may include, among others, promoters, directors, officers and persons owning 20 percent of the issuer. Given the various conditions to privately raising capital, please consult with us, or another New Jersey attorney practicing securities law, before commencing any offerings.

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