

>>>FAIRVIEW FLASH REPORT - UPDATE<<<
JOBS ACT PROVISION FOR PRIVATE FUNDS

WHAT HAPPENED?	<p>On August 29, 2012, the SEC proposed amendments to its rules to allow general solicitation and general advertising in securities offerings conducted pursuant to Rule 506 of Regulation D or Rule 144A under the Securities Act of 1933 (Securities Act).</p>
WHAT DOES THIS MEAN?	<p>New Rule 506(c) would allow general solicitation and general advertising subject to the following conditions:</p> <ul style="list-style-type: none">• Issuer takes reasonable steps to verify investors are accredited.• All purchasers of securities are accredited investors because they qualify as accredited investors under existing Rule 501 or the issuer reasonably believes they are accredited at the time of sale. <p>In determining the reasonableness of the steps for verifying that an investor is accredited, the Proposing Release states that issuers are to consider :</p> <ul style="list-style-type: none">➤ The type of purchaser and the type of accredited investor that the purchaser claims to be;➤ Information that the issuer has about the purchaser; and,➤ The nature and terms of the offering. <p>Under the proposed rules, securities sold pursuant to Rule 144A could be offered to persons other than QIBs, including by means of general solicitation, provided that the securities are sold only to persons whom the seller and any person acting on behalf of the seller reasonably believe is a QIB. “Reasonable belief” is not defined in the SEC’s Proposing Release.</p>
WHAT ELSE MAY HAPPEN?	<ul style="list-style-type: none">• Proposed Amendment to Form D – Revised Form D would have a separate box to claim the new Rule 506(c) exemption.• Private funds relying on Section 3(c) for exclusions from the definition of an investment company would be able to advertise without losing their exemption.• The CFTC has not yet indicated whether exemptions may continue to be relied upon by advisors to private funds that are conducting Rule 506(c) offerings. <p>Amendments to Rule 506 and Rule 144A are not yet effective. The SEC is soliciting comments on questions raised in the Proposing Release.</p>