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by Mark Hiraide

READY CAPITAL

While the JOBS Act makes it possible for nearly anyone to raise venture capital, it also raises the stakes for business attorneys as gatekeepers

THE FINAL stages of a major shift in federal securities laws took place in May 2016 when entrepreneurs and companies gained unprecedented access to capital. For the first time in the history of federal securities regulation in the United States, businesses may raise capital from the general public without registering a securities offering with the Securities and Exchange Commission and state securities regulators. This expansion of the funding universe is due to the Jumpstart Our Business Startups (JOBS) Act of 2012,[1] designed to spur job creation by easing regulations governing "private" securities offerings to help early-stage companies grow. The JOBS Act removed previous restrictions on advertising securities offerings. Under the new law it is significantly easier for entrepreneurial clients to fund their ventures using other people's money (OPM). However, lawyers must remain vigilant as regulators view lawyers as the gatekeepers who will fill in the regulatory void.

The JOBS Act legalized equity crowdfunding,[2] fostered private peer-to-peer lending, created a new regime for regulating mini-IPOs, and paved the way for the SEC to create new sources of liquidity for early-stage investors through secondary "venture markets." The law already has spawned new and innovative financial intermediaries dispensing capital to startup and growing businesses. It has been heralded as "democratizing" access to capital by "disintermediating" Wall Street from the process of selling securities.[3] Many hail the JOBS Act, in particular its provisions for equity crowdfunding, as allowing everyday people to invest in an asset class previously reserved for venture capitalists. Crowds of small investors now may directly fund startup businesses that pique their interest. Yet there is concern that the new regime for raising capital from unsophisticated investors lacks sufficient investor protections.[4]

The JOBS Act's elimination of the regulatory burdens on private offerings, and the associated reduction in cost, will make public capital markets attractive to many. No longer will equity financing be reserved for those few with the resources to attract and engage Wall Street investment bankers and lawyers.

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MICHAEL CALLAWAY


U.S. SECURITIES AND EXCHANGE COMMISSION
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This "Uberization" of capital markets[5] will make capital more readily accessible to every budding entrepreneur, and it will have significant ramifications for the practice of business law.

A growing awareness of access to capital by the public will lead to a demand for legal services. Lawyers have an opportunity to expand their business practices, but they will need to better understand the specialized field of securities law. The new laws and rules raise many new questions, the answers to which often are informed by years of old interpretations and customary practices in the law of corporate financing transactions. Today's business lawyers must have at least a working knowledge of the new methods and rules for raising capital under Regulation CF (crowdfunding), Regulation D, and Regulation A under Titles II, III, and IV of the JOBS Act. They must understand the interplay between federal and state securities laws. They must advise clients about the often draconian statutory liabilities under those laws. And they must be clear about their role as securities lawyers and the liabilities they assume.

When Congress enacted the Securities Act of 1933 (Securities Act) and Securities Exchange Act of 1934 (Exchange Act) and created the Securities and Exchange Commission, the business of raising investment capital—taking OPM—became subject to extensive regulation. The federal securities laws, and each state's "blue sky" securities laws, mandate that all offers and sales of securities be registered with the SEC and qualified with state securities regulators unless exempt from such registration.

Prior to the JOBS Act, the most common exemption from registration was for nonpublic securities offerings,[6] which placed strict limitations on soliciting investors and advertising the offering. The SEC and the courts had long interpreted the nonpublic offering exemption to prohibit any form of general solicitation.[7] They did not, however, set forth clear guidelines for determining what constituted a general solicitation. The Supreme Court in 1953 outlined the contours of what constitutes a private offering for purposes of the exemption. In *SEC v. Ralston Purina Co.*, the Court examined the knowledge of the investor and its relationship with the issuer as a basis for distinguishing a private offering from a public offering.[8] The boundaries, however, were far from clear. Prior to the SEC's promulgation of Regulation D in 1982, many members of the securities bar were uncomfortable rendering "no registration" opinions. Even after Regulation D, until the enactment of the JOBS Act, issuers, who in litigation bear the burden of proving an exemption from registration, typically restricted their unregistered offerings to prospective investors with whom they could demonstrate a "pre-existing substantive business relationship."[9]

In recent years, organized groups of individuals with high net worth (angel investors) have been a source of early-stage capital, but attracting the attention of angel investors is nearly impossible without some initial seed capital to validate or prove a business model or product. The only other alternative for raising capital—soliciting the public—required registering the securities offering with the SEC, the same process undertaken by companies going public through an initial public offering (IPO). Registration is cost-prohibitive for most early-stage companies.[10] Even if a company could afford the legal and audit fees charged for public offerings, after the dot-com crash in the early 1990s, the public equity markets became inhospitable for early-stage small (less than $50 million) IPOs. Changes in market regulation, including the decimalization and deregulation of commissions, shrinking profits of smaller investment banking firms, increased regulation of those investment banking firms by the Financial Industry Regulatory Authority (FINRA) in response to microcap stock frauds, and other structural changes to the industry, resulted in the exodus of regional investment banking underwriters to small public offerings.[11]

The Securities Act's restrictions on soliciting investors—well-intentioned in the aftermath of the stock market crash of 1929 and the Great Depression—made the ambition of successfully raising capital for startups unattainable for most people. It relegated entrepreneurs to raising seed capital from friends, family, and others with whom the entrepreneur had the requisite relationship.[12] Small issuers were frequently unable to comply with Securities Act provisions because of a combination of exorbitant costs, unworkable resale provisions, ambiguity, and taint of prior illegal stock sales.

Consequently, an entrepreneur's parents, family, and friends, and the geographic neighborhood in which one lived were significant factors in determining who received funding, who became owners of a business, and what demographic eventually accumulated capital and wealth in this country. To close the capital gap for early-stage financing, stimulate job growth, and address issues of unequal access to capital, in 2012, President Obama signed into law the JOBS Act. In relaxing the restrictions on soliciting investors, the new law reflects the advent of the Internet, modern communication technology, and social media, which made the 90-year-old restrictions on advertising securities offerings increasingly impractical.

The JOBS Act dramatically changed the rules relating to private securities offerings by creating three new methods of conducting public offerings that are exempt from SEC registration. These offering exemptions are found in Titles II, III, and IV of the JOBS Act and are often referred to by these JOBS Act titles. The differences among the three exemptions relate to the size of the offering, investor qualifications, and manner in which the securities may be offered. The new exemptions from registration afforded by Title II and Title IV allow unrestricted general solicitation of investors; in effect, they permit unregistered public offerings. Title III provides a new exemption for selling securities through crowdfunding. All three exemptions preempt certain aspects of state blue sky securities law regulation.

Title II: Rule 506(c) of Regulation D

Title II of the JOBS Act dramatically changed the rules for raising capital from accredited

State Blue Sky Laws

"Blue sky laws" are state laws regulating the offer and sale of securities. The term originated from the Supreme Court's description of fraudulent securities as "speculative schemes which have no more basis than so many feet of 'blue sky.'"[1] Although many states have adopted some form of the Uniform Securities Act drafted by the National Conference of Commissioners of Uniform State Laws, others, including California, have not adopted the uniform act and have their own unique securities law. Many of these state securities laws provide the state securities regulator with the authority to deny a securities offering based on the merits of the terms of the securities. California is one such "merit review" state, and the commissioner of the Department of Business Oversight must make a finding that an offering is "fair, just and equitable" before she will issue a permit to allow sale of the securities in California. A principal feature of the JOBS Act is its preemption of blue sky laws for certain securities offerings. However, federal preemption under the JOBS Act is limited. In most cases, it does not preempt state regulation of offers and sales by shareholders (i.e., secondary transactions) or state broker-dealer registration requirements. Similarly, each state blue sky statute provides investors with statutory civil rescission remedies that are not subject to federal preemption.

[1] Hall v. Geiger-Jones Co., 242 U.S. 539, 550 (1917).

investors who, in the case of an individual, is a person with 1) an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year, or 2) a net worth in excess of $1 million excluding home equity.[13] Title II amended Rule 506 of Regulation D by adding new paragraph c, which eliminated completely the prohibition on general solicitation. This means that a company can widely advertise its offering as long as it takes "reasonable steps to verify" that investors are accredited, "using such method as determined by the Commission."[14] Issuers must have a reasonable belief that all purchasers are accredited investors.[15] Prior to Title II of the JOBS Act, which went into effect in September 2014, issuers customarily relied on self-certifications, or check-the-box certifications as to accreditation. Self-certifications will not satisfy the new verification requirement applicable to public offerings under Rule 506(c).

Rule 506 of Regulation D has become the cornerstone of the regulatory regime for nonregistered offerings. The rule provides bright line "safe harbor" rules to establish an exemption from SEC registration. In 1996, Congress addressed the duplication of dual federal and state securities regulation in the National Securities Markets Improvements Act of 1996,[16] and preempted state blue sky registration or qualification of federal covered securities, i.e., those offered in compliance with Rule 506 of Regulation D. In addition to federal preemption, the absence of any limitation in Rule 506 on the offering amount and number of investors as well as absence of specific disclosure requirements for accredited investors made Rule 506 the most commonly used private offering exemption. Today, 99 percent of all private offerings under Regulation D are conducted pursuant to Rule 506. Moreover, amounts raised through unregistered securities offerings have outpaced the level of capital formation through registered securities offerings during recent years. In 2014, there were 33,429 Regulation D offerings reported on Form D filings, accounting for more than $1.3 trillion raised.[17] The JOBS Act adds securities offered pursuant to Title III and Title IV to the list of securities preempted from state regulation.

The new rules provide a nonexclusive safe harbor for an issuer to satisfy its verification requirement by obtaining tax returns to verify income, or bank or brokerage statements and a credit report to verify net worth. However, many investors are unwilling to furnish confidential tax returns and brokerage statements. Fortunately, the issuer is not required to use the safe-harbor methods of verification. In assessing whether an issuer has taken reasonable steps to verify that investors are accredited, the SEC takes a principles-based approach that does not depend on bright-line rules but relies rather on the particular facts and circumstances of each purchaser and transaction to determine whether the steps taken are "reasonable." Under this principles-based approach, the documentation, if any, that an issuer should obtain from a potential investor will depend on answers to questions such as:

- How much information about the prospective purchaser does the issuer already have? The more information the issuer has indicating that the person is an accredited investor, the fewer verification steps it may have to take to comply with the rule's requirements. For example, membership in an established angel investor group is information that may affect the likelihood of the person being an accredited investor.
- How did the issuer find the prospective investor? A person that the issuer located through publicly accessible and widely disseminated means of solicitation may need to undergo a greater level of verification scrutiny than a person who may have been prescreened as an accredited investor by a reasonably reliable third party.
- Are the terms of the offering such that only a person who is truly an accredited investor could participate? The ability of a purchaser to satisfy a minimum investment amount requirement that is sufficiently high such that only accredited investors, using their own cash, could reasonably be expected to meet it is relevant in deciding what other steps are needed to verify accredited investor status.[18]

Lastly, the SEC envisioned a role for third parties that may wish to enter into the business of verifying the accredited investor status of prospective investors on behalf of issuers and allowed for such third-party verification under the principles-based approach as long as the issuer has a reasonable basis to rely on such third party.[19]

Securities sold pursuant to Rule 506 of Regulation D must contain restrictions on transferability, and the issuer must exercise reasonable care to assure that the purchasers of the securities do not intend to act as underwriters by engaging in a distribution of the securities purchased.[20] Issuers should affix a legend on the share certificates setting forth the restrictions on transferability and make reasonable inquiry to determine if the investor is acquiring the securities for himself and not for other persons.[21] The JOBS Act Title II amendments to Regulation D also implemented a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act that directed the SEC to make the Rule 506 exemption unavailable for offerings in which certain disqualified persons ("bad actors") participate, subject to a "reasonable care" exception.[22] There is no dollar limit on offerings under Rule 506 and very few other limitations.

The old Rule 506, which prohibits general solicitation but allows issuers to include up to 35 nonaccredited investors, remains available in paragraph (b) of Rule 506. Issuers relying on the old rule also need not verify that investors are accredited, as required by new Rule 507(c). Moreover, recently issued Compliance and Disclosure Interpretations by the staff of the SEC Division of Corporation Finance expand the availability of the old rule. These interpretations clarify that in appropriate circumstances communications in a closed network among members of an informal, personal network of individuals with experience investing in private offerings will not be deemed to be a general solicitation. Issuers may now conduct offerings on angel investor networks and make presentations at demo days and venture fairs without risk that such activities will be deemed to be a

Tackling the Resale Problem

By preempting state blue sky regulation of tier 2 Regulation A+ offerings, the SEC paved the way for the creation of secondary trading in Regulation A+ securities in markets recently coined "Venture Exchanges." However, further regulatory action will be required to make an active market for Regulation A+ securities a reality. To facilitate a secondary market, the SEC amended Exchange Act Rule 15c2-11 to permit an issuer's ongoing reports filed under tier 2 of Regulation A+ to satisfy a broker-dealer's obligations to review and maintain certain information about an issuer's quoted securities. However, because all offers and sales of securities, even those by shareholders, are regulated by federal and state securities laws, the secondary offer and sale by the shareholder must also comply with state blue sky laws unless such state laws are preempted. Regulation A+ preempts the primary sale of securities by the issuer. The secondary sale by the shareholder is not subject to preemption. The Fixing America's Surface Transportation Act, enacted in December 2015, provides a partial solution for secondary sales to accredited investors. It codified a resale exemption, commonly known as the "Section 4(1½)" exemption, for private resales of restricted securities to accredited investors, and it preempted state blue sky law regulation of these secondary transactions.

general solicitation.[23] On the other hand, the staff also clarified that one method of establishing the absence of a general solicitation—showing a preexisting "substantive business relationship" with prospective investors—requires that the issuer possess sufficient information to evaluate the offeree's financial circumstances and sophistication. Self-certification, without any other information about the prospective offeree, is not enough to be considered substantive.

Despite the staff's recent efforts to provide guidance on issues arising under the JOBS Act, answers to many questions require resorting to years of SEC staff interpretation and judicial precedent. For example, in response to the question, "What information can an issuer widely disseminate about itself without contravening Regulation D's prohibition on general solicitation?" the staff responded that factual business information that "does not condition the public mind or arouse public interest in a securities offering" will not violate the rule.[24] To understand the response, however, one must look to the SEC staff's long-time guidance on when such communications will be deemed an "offer"[25] and be aware that courts have interpreted the term for securities law purposes broadly beyond the common law concept of an offer.[26]

Title IV: Regulation A+

Title IV of the JOBS Act is commonly known as "Regulation A+" and has also been dubbed a "mini-IPO." Once qualified, the offering may be sold to anyone. There is no requirement that the investor be accredited or sophisticated, no restriction on the means of solicitation, and no federal restriction on transferability of the securities. Effective since June 2015, it amends the former SEC Regulation A by increasing the old offering limit of $5 million to $50 million. An offering under the new Regulation A requires an offering circular containing specific disclosures similar to those made in an IPO prospectus, and the offering is subject to SEC review and qualification of the offering circular. The offering circular must include financial statements consisting of the prior year's balance sheet and income statements for the most recent two years. The SEC review process for Regulation A+ offerings is similar to the registration process for a registered IPO. The staff of the SEC's Division of Corporation Finance reviews all Regulation A+ offering circulars and approximately 30 days from the filing date of the offering circular on Form 1-A, the staff will issue its written comments. The company responds to these staff comments by filing a series of amendments to the offering circular until all staff comments are resolved. Only then will the SEC declare the offering statement "qualified." No sales of securities may be made until the SEC declares the statement qualified. In most cases, the time period from SEC filing to the effective date is at least 60 days and in many cases much longer.

A principal benefit of Regulation A+ is its "test the waters" provisions. An issuer may solicit indications of interest before and after an offering circular is filed. While no sale commitments may be accepted until the offering circular is qualified by the SEC, there are few restrictions on the content of test-the-waters materials. Through a social media campaign, for example, companies may ask potential investors for their contact information and the dollar amount of their investment interest by asking them to reserve shares for purchase when, and if, the SEC qualifies the offering. If there is sufficient interest, upon qualification of the offering by the SEC, the issuer may then formally offer and accept subscriptions from those prospective investors who had previously expressed interest in the offering.

Regulation A+ has two tiers: tier 1, with a maximum offering limit of $20 million, and tier 2 with a maximum offering limit of $50 million. The principal difference between them is that tier 2 offerings preempt state securities laws. The SEC left intact state blue sky regulation of tier 1 offerings under Regulation A+. Another difference between the two tiers is tier 2 offerings require a financial statement audit, and the issuer must file with the SEC ongoing annual, semiannual, and current reports. Also, nonaccredited investors in a tier 2 offering may not invest more than the greater of 10 percent of their net worth or annual income in any single Regulation A+ offering. Finally, because there is no preemption of state securities laws with tier 1 offerings, audited financial statements in most cases will be necessary even though the SEC does not require financial statements to be audited in tier 1 offerings. This provision is necessary because many states require audited financial statements in order to qualify the offering in the state.

The ongoing SEC reporting required of companies conducting tier 2 Regulation A+ offerings is considered to be a "lite" form of the periodic reporting required of companies that conduct registered offerings. Unlike companies registering their securities offerings under the Securities Act on Form S-1, an issuer selling securities under the Regulation A exemption from registration does not become subject to the full regulatory regime under Section 12 of the Exchange Act, which automatically applies to issuers registering an offering under the Securities Act.[27] Companies conducting registered offerings must file periodic reports—annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K—proxy statements and beneficial ownership reports by the company's officers, directors and 10-percent shareholders.

The annual financial statement audit required of tier 2 Regulation A+ issuers need not be performed by auditors who are registered with the Public Company Accounting Board, which is a requirement for audits of SEC-registered companies. The six-month semiannual report required of Regulation A+ issuers need only contain financial state-

Solving the Facebook Problem

A privately held company automatically becomes subject to the full SEC regulatory regime under the Exchange Act once it elects to register its initial public offering under the Securities Act. A privately held company may also be required to register under the Exchange Act, if its assets and shareholder base grows to a certain size. One of the more important changes included in the JOBS Act was to increase these Exchange Act registration thresholds to mitigate what has been known as the Facebook problem, a problem confronting many startups with large numbers of stockholders. Prior to the JOBS Act, Section 12(g) of the Exchange Act required that a company with more than $10 million in total assets register any class of securities held by more than 500 shareholders of record, whether accredited or not. This Exchange Act registration triggers all of the SEC's regulations governing publicly traded companies, including, among others, periodic reporting, insider security transaction reporting, proxy statement filing, and short-swing insider trading prohibitions. The JOBS Act raised the thresholds for registration (and termination) of registration for a class of securities under the Exchange Act. As a result, an issuer that is not a bank, bank holding company, or savings and loan holding company is required to register a class of equity securities if it has more than $10 million total assets and the securities are held of record by either 2,000 or 500 persons who are not accredited investors. The JOBS Act also directed the SEC to revise the definition of "held of record" to exclude securities held by persons who received the securities under an employee compensation plan in transactions exempted from registration under the Securities Act. This last requirement addressed the Facebook problem. Prior to its IPO, Facebook, having more than $10 million in assets and more than 500 stockholders, decided to register its IPO under the Securities Act because it would have been required to register its common stock under the Exchange Act in any event.

ments that management certifies are prepared in accordance with generally accepted accounting principles in the United States. There is no requirement that the six-month financial statements in the semiannual report be reviewed by an independent auditor, as required for quarterly reports of SEC-registered companies. The ongoing reporting regime for tier 2 Regulation A+ issuers also includes a "lite" current events requirement to report certain specified events, including fundamental changes in the issuer's business, changes in control of the issuer, a departure of the principal executive officer, principal financial officer, or principal accounting officer, and any unregistered sales of 10 percent or more of outstanding equity securities.[28]

Restrictive securities laws in effect for the 90 years prior to the JOBS Act made it difficult to start and finance businesses for those who did not have access to capital sources or friends and family to provide funding. The JOBS Act enables anyone to reach out to capital sources and raise equity capital. But the "disintermediation" of Wall Street places a heavier burden on the business attorney. Without professional financial intermediaries, such as investment bankers, it will be up to business attorneys to navigate the new securities rules and regulations to ensure that they and their clients follow the right path. ■

[Editor's note: In a subsequent issue of Los Angeles Lawyer, *Part 2 of this article on the JOBS Act will discuss Title III Crowdfunding and how attorneys can counsel clients to raise capital while managing the securities law liability to their clients and themselves.]*

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[1] Jumpstart Our Business Startups (JOBS) Act, Pub. L. No. 112-106, §§301–05, 126 Stat. 306, 315–23 (2012) (codified in scattered sections of 15 U.S.C.).

[2] Equity crowdfunding involves investments in "securities," as the term is defined under the Securities Act of 1933 (Securities Act) and Securities Exchange Act of 1934 (Exchange Act). *See* §2(a)(1), 15 U.S.C. §77b(1); §3(a)(10), 15 U.S.C. §78c(a)(10). A "security" includes not only stocks, bonds, limited partnership and limited liability company membership interests, but also any "investment contract" that is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party…." SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946). Prior to the JOBS Act, private offering exemptions from the Securities Act's registration requirement did not allow for equity crowdfunding, which, by definition, involves a public offering to the crowd.

[3] *See, e.g.*, Chance Barnett, *SEC Democratizes Equity Crowdfunding With JOBS Act Title IV*, Forbes (Mar. 25, 2015), *available at* http://www.forbes.com; *Crowdfunding: Decentralizing, Disintermediating, Disrupting*, Crowdfunder Insider (Apr. 28, 2013), *available at* http://www.crowdfundinsider.com; Jumpstart Our Business Startups Act Frequently Asked Questions About Crowdfunding Intermediaries, U.S. Sec. & Exchange Comm'n (May 7, 2012), https://www.sec.gov (last visited Oct. 26, 2016).

[4] *See, e.g.*, Robert C. Pozen, *JOBS Act: Jumpstarting Business or Bilking Investors?*, Brookings Inst. (Apr. 3, 2012), *available at* https://www.brookings.edu; The JOBS Act Fails Investors and Entrepreneurs, N. Am. Sec. Admins. Ass'n (Apr. 5, 2012) http://www.nasaa.org.

[5] *The Uberization of Money*, Wall St. J., Nov. 4, 2015, *available at* http://www.wsj.com.

[6] 15 U.S.C. §77d(a)(2).

[7] SEC v. Ralston Purina Co., 345 U.S. 119 (1953); Final Rule: Nonpublic Offering Exemption, SEC Release No. 33-4552 (Nov. 6, 1962).

[8] Ralston Purina, 346 U.S. 119.

[9] David B.H. Martin, Jr. and L. Keith Parsons, *The Preexisting Relationship Doctrine Under Regulation D: A Rule Without Reason?*, 45 Wash. & Lee L. Rev. 1031 (1988).

[10] Two surveys cited by the SEC last fall concluded that the average initial compliance cost associated with conducting an IPO is $2.5 million, followed by an ongoing compliance cost for issuers, once public, of $1.5 million per year. The SEC staff notes that these estimates should be interpreted with the caveat that most firms in the IPO Task Force surveys likely raised more than $1 million. *See* IPO Task Force, Rebuilding the IPO On-Ramp (Oct. 20, 2011), *available at* http://www.sec.gov.

[11] *See* David Weild and Edward Kim, *Market structure is causing the IPO crisis—and more*, Grant Thornton (June 2010), *available at* http://www. weildco.com.

[12] *See*, *generally*, Rutherford B Campbell, Jr., *The Plight of Small Issuers Under the Securities Act of 1933: Practical Foreclosure from the Capital Market*, Duke L.J. 1139 (1977).

[13] 17 C.F.R. §230.501.

[14] JOBS Act, §201(a)(1).

[15] *See* 17 C.F.R. §230.501(a) (accredited investors are persons that the issuer reasonably believes come within the specified categories).

[16] National Securities Markets Improvements Act of 1996, Pub. L. No. 104-290,110 Stat. 3416 (1996).

[17] Scott Baugess, et al., Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2014, SEC Div. of Econ. and Risk Analysis (Oct. 2015), *available at* https://www.sec.gov.

[18] Keith F. Higgins, Dir., Div. of Corp. Fin., Keynote Address at the 2014 Angel Capital Association Summit, Wash., D.C. (Mar. 28, 2014), *available at* https://www.sec.gov.

[19] Final Rule: Eliminated the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, SEC Release No. 33-9415 (July 10, 2013).

[20] 15 U.S.C. §77b(a)(11).

[21] 17 C.F.R. §230.502(d).

[22] 17 C.F.R. §230.506(d).

[21] *See* Compliance and Disclosure Interpretations (CDIs), Securities Act Rules, §§256.23 – 256.33 (Aug. 6, 2015), *available at* https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm [hereinafter CDIs]. For information regarding policies and procedures for establishing a preexisting substantive relationship with prospective offerees over the Internet, *see* Citizen VC, Inc., SEC No-Action letter (Aug. 6, 2015), *available at* http://www.sec.gov/divisions/corpfin/cf-noaction/2015/citizen-vc-inc-080615-502.htm.

[24] *See* CDIs, Question 256.24.

[25] *See* 17 C.F.R. §230.169; Securities Offering Reform, SEC Release No. 33-8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] at 44731.

[26] *See, e.g.*, Diskin v. Lomasney & Co., 452 F. 2d 871 (2d. Cir. 1971).

[27] *See* 15 U.S.C. §78o(d); 15 U.S.C. §78m.

[28] *See* 17 C.F.R. §230.257.