

Jumpstart Our Business Startups (“JOBS”) Act Eases Restrictions on Rule 144A and Private Offerings – ABS Considerations

President Obama signed the Jumpstart Our Business Startups Act (the “Act”) into law earlier today. The Act includes many provisions intended to facilitate capital raising and reduce regulatory burdens for certain types of issuers, but does little for the asset-backed securities market, which continues to grapple with the Dodd-Frank Act and related regulations and the looming specter of Reg AB II.

ABS issuers, underwriters and investors, however, will be interested in the sections of the Act that amend the exempt offering provisions of the Securities Act of 1933 (the “Securities Act”) and direct the Securities and Exchange Commission (the “SEC”) to revise regulations to permit general solicitation and advertising in connection with offerings that are exempt from registration under the Securities Act. To see the final version of the Act, [click here](#).

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Permission to Conduct General Solicitation and Advertising in Exempt Offerings

The Act directs the SEC to revise Rule 506 of the rules under the Securities Act, within 90 days after the date of enactment of the Act, to permit general solicitation and general advertising for offerings made in reliance on Rule 506, provided that all purchasers of the offered securities are accredited investors. Rule 506 is the safe harbor for private placements under the Securities Act that does not restrict the amount of securities offered or sold. The rules will require issuers to take reasonable steps to verify that purchasers of the securities are accredited investors, using methods determined by the SEC.

The Act also directs the SEC to revise Section (d)(1) of Rule 144A, within 90 days after the date of enactment of the Act, to provide that securities may be offered to persons other than qualified institutional buyers (“QIBs”), including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a QIB. Rule 144A is the safe harbor for private resales of securities to QIBs.

Under the Act and related revisions to the rules, issuers and underwriters will have the ability to expand greatly how they conduct exempt offerings and their ability to communicate with and advertise to potential investors. The Act may be expected to increase the availability of information about restricted offerings generally and possibly expand the investor base since issuers and underwriters can essentially advertise to the general public, so long as the actual investors are restricted to accredited investors and QIBs.

The Act also includes a corresponding effort to facilitate access to information regarding securities offered and sold in compliance with Rule 506 and increase the liquidity of such securities by providing an exemption from broker-dealer registration for certain types of trading platforms. The Act specifies that no person will be required to register as a broker or dealer solely because “that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means. . .” Such a person is also permitted to co-invest in exempt securities and provide ancillary services with respect to such securities, such as due diligence services (so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors) and provision of standardized documents to issuers and investors, so long as such person does not negotiate the terms of the issuance and issuers are not required to use the standardized documents. Such person may not, however, receive any compensation in connection with the purchase and sale of the related security and may not have possession of related customer funds or securities.

Crowdfunding, Emerging Growth Companies and Other Changes

The Act includes a new “crowdfunding” exemption that permits issuers to sell up to \$1,000,000 in securities in small increments over a 12 month period if certain conditions are satisfied, eases certain disclosure, audit and investor and analyst communications requirements for “Emerging Growth Companies” (issuers with total annual gross revenues of less than \$1 billion) and increases the threshold for determining when a private company is required to register under the Securities Exchange Act of 1934 from 500 shareholders to 2,000 shareholders, so long as fewer than 500 are non-accredited investors and excluding securities received pursuant to employee compensation plans and crowdfunding investors.

For a complete summary of all the provisions of the Act, [click here](#).