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## Removing the Ban on General Solicitations Gaining Momentum

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Privately held small businesses may soon face one less obstacle when it comes to finding potential sources of capital. Currently, capital raising efforts for these businesses, and anyone acting on their behalf, are constrained by a prohibition under the Securities Act of 1933 (Securities Act) on general solicitation and general advertising for all private offerings. But in recent months, the House of Representatives and a new advisory committee to the Securities Exchange Commission (SEC) have proposed that for most private offerings this prohibition should no longer apply. A removal of such general solicitation restrictions would clearly facilitate the raising of early-stage capital "on-line."

In early November of 2011, the House passed the Access to Capital for Job Creators Act (H.R. 2940) by a large and bi-partisan majority of 413-11. If the bill becomes law, the SEC would be required within 90 days to revise Rule 506 of Regulation D to permit general solicitation and general advertising for a private offering, as long as all purchasers are accredited investors. Rule 506, which contains no limits on offering size, is the most widely relied upon rule used for private offerings that are exempt from registration under Section 4(2) of the Securities Act. Immediately after H.R. 2940 passed, an identical version (S. 1831) was introduced in the Senate by Senator John Thune, but has not been voted upon yet.

The SEC established the new Advisory Committee on Small and Emerging Companies (ACSEC) in September 2011 to provide advice regarding the SEC's rules, regulations, and policies; and, on January 6 of this year, the ACSEC made its first recommendation: that the SEC immediately relax or modify its restrictions to permit general solicitation and general advertising in private offerings under Rule 506 in which all purchasers are accredited investors. The ACSEC went so far as to state that the investor protections afforded by the existing restrictions on general solicitation and general advertising are not necessary in private offerings involving only accredited investors.

Considering the legislative support of the House and the priority of the recommendation by the ACSEC, we may see a change allowing general solicitation and general advertising for certain private offerings sometime this year (although this being a presidential election year, this potential change may be stuck in limbo until after the election). The SEC could remove the prohibition if it were to follow the recommendation of its own ACSEC, or such a change could be mandated by the Access to Capital for Job Creators Act if signed into law by the president. We will continue to provide timely updates as developments occur.

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