

Lawmaker Calling on SEC to Revisit JOBS Act Proposal to Lift Advertising Ban

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Sen. Carl Levin is calling on the SEC to revisit its proposal to relax advertising rules for private offerings. Per our prior blog post on the [JOBS Act](#), the regulations recently proposed by the SEC require only that hedge fund managers take “reasonable steps” to verify the “accredited” status of potential investors. In his [letter](#) to SEC Chairwoman Mary Schapiro, Levin argues that the SEC’s proposed rulemaking “provides no certainty to issuers and fails to establish methods sufficient to ensure that only accredited investors participate in the offerings.” He further notes that Congress made it clear that “self-certification” was inadequate, and that the SEC’s proposed rule needs to require “common-sense documentation and/or verification practices and procedures.”

While hedge fund and private equity funds have raised similar arguments, the other issues raised in Levin’s letter are concerning. He claims that the SEC failed to properly distinguish between issuers that engage in operational businesses and those that are merely investment vehicles, claiming that Congress did not intend to lift the ban for the latter.

He states, “Congress did not contemplate removing the general solicitation ban-without retaining any limitations on forms of solicitation-for private investment vehicles. Indeed, no argument was made during the debate of the bill that the objective was to ease the capital aggregation process for private investment vehicles. The words ‘hedge fund,’ ‘private fund,’ or ‘investment vehicle’ were not used either during the committee or floor debate in the House of Representatives. Nor did the Senate engage in any debate relating to removing these advertising and marketing restrictions completely from private investment vehicles.”

This is clearly an issue worth watching and we will provide updates as they become available.

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