

Relaxing The Ban On General Solicitation

by Joe Wallin on January 23, 2012 in [Angel Financing](#), [Angel Investors](#), [Capital](#), [Investors](#), [Rule 506](#), [SEC](#), [Seed](#), [Venture Capital](#), [Venture Funds](#)



[Raising capital](#) is tough and using all of the free social media resources available to you is tempting. However, under current law, if you are a [startup](#) trying to raise capital, you have to be extremely careful how you go about it.

If you plan on using the most common securities law exemption for startups, Securities and Exchange Commission (SEC) **Rule 506**, you can't post to the world at large on Twitter, LinkedIn, or Facebook, that your company is trying to raise funds.

SEC Rules

One of the conditions of Rule 506 is the ban on general solicitation. The ban on general solicitation is described in accompanying Rule 502 and provides:

Limitation on manner of offering. Except as provided in [Rule 504\(b\)\(1\)](#), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

1. Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and
2. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Thus, if you post on Facebook, or LinkedIn, or Twitter that your company is raising funds, then your announcement to the world would violate the rules of your exemption, and you could get in plenty of trouble.

For example – Last year the SEC initiated proceedings against two individuals who launched a campaign to buy a company through solicitation of prospective investors on Facebook and Twitter without first registering the securities with

the SEC and making the disclosures that accompany registration. You can read the story on the [Securities Exchange Commission](#) website.

Unbalanced [General Solicitation Rules](#)

This law banning general solicitation makes life more difficult for startups. Startups suffer an asymmetrical disadvantage compared to those with capital who are looking to make investments.

Think about it, if you have money to invest, you can tell the world about it, and companies will come to you seeking your investment. But if you are a company wishing to attract investment capital, the SEC limits you as to who, when, and how you tell the world about it.

The ban on general solicitation for startups slows down companies that are trying to raise capital and makes raising capital more difficult. This is unfortunate since according to studies done by the [Kauffman Foundation](#), new companies create the bulk of the new jobs in this country.

Is Change On The Way?

Congress is attempting to address the issue. The House passed a bill repealing the ban on general solicitation. But the Senate has yet to act.

On January 6, 2012, the SEC's Advisory Committee on Small and Emerging Companies chimed in. You can read their full recommendation (embedded) below. But the punchline was:

THEREFORE, the Advisory Committee recommends that the Commission take immediate action to relax or modify the restrictions on general solicitation and general advertising to permit general solicitation and general advertising in private offerings of securities under Rule 506 where securities are sold only to accredited investors.

The full recommendation of the committee can be found by here: <http://www.scribd.com/doc/78919694>

For More Info on Raising Capital:

- [EARLY HOMO SAPIENS, STARTUPS, PERSISTENCE HUNTING & CONGRESS](#)
- [GROWING AND FINANCING YOUR COMPANY THROUGH CHALLENGING TIMES](#)
- [WHAT SIZE VENTURE FUND WILL BE REQUIRED TO REGISTER WITH THE SEC?](#)

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