

HOW PASSAGE OF THE JOBS ACT IMPACTS REGULATION D

PRIVATE PLACEMENT AND GENERAL SOLICITATION REGULATIONS

**MANAGED FUNDS ASSOCIATION
MAY 2012**



The JOBS Act and Regulation D

Executive Summary

On April 5, 2012, President Obama signed the JOBS Act into law. Enactment and implementation of the new law will allow the alternative investment industry to better communicate information about their businesses with investors, potential investors and the broader public.

Prior to this legislation, hedge funds and other alternative investments were prohibited by law from engaging in any type of activity that could be interpreted as a general solicitation or general advertising for sales or offers of fund interests. (See: [Regulation D](#))

As a result of this prohibition, fund managers refrain from a wide range of public and other communications to avoid any potential regulatory violation.

For more on the history of Regulation D, please see slide 9 of this presentation.

Following the Security and Exchange Commission's (SEC's) implementation of the JOBS Act, alternative investment managers and others conducting private offerings, will have increased certainty when communicating with investors and the broader public, allowing them to share more information and promote greater understanding and transparency surrounding the industry.

This presentation provides a brief overview of the important regulatory changes prescribed in the JOBS Act and how they will benefit investors, regulators and the general public. It also provides a brief history of regulation governing general solicitation and advertising in the alternative investment industry.

Contents

| | |
|-----------------------------------|---|
| What's Changed | 1 |
| Increasing Transparency | 4 |
| Industry Support for the JOBS Act | 6 |
| Additional Background About Reg D | 8 |



What's Changed?

Changes to Regulation D under the JOBS Act

- On April 5, 2012, President Barack Obama signed the Jumpstart Our Business Startups (JOBS) Act into law.
- The JOBS Act includes a provision directing the SEC to amend Rule 506 of Regulation D and remove the ban on general solicitation and advertising for firms conducting private offerings in reliance on Rule 506.
- Under the JOBS Act, these companies and investment firms may still only sell interests to accredited investors, but they will be able to engage in general solicitation and general advertising to promote awareness of their offerings and increase transparency.

The SEC has 90 days following enactment to develop the rule implementing this amendment.





Increasing Transparency

How the JOBS Act Will Increase Transparency

- Currently, restrictions in place under what is known as Regulation D (or Reg D) and other requirements force fund managers and others conducting private offerings to take a cautious approach and strictly limit communication about their businesses.
- For example, private fund managers generally do not respond to press inquiries, even to correct inaccurate reports, to avoid any potential regulatory violation.
- Managers also limit the scope of their comments at industry events and avoid providing information about their businesses through publicly available media, including websites. Many internet reports on hedge funds can be inaccurate.
- Enabling managers to communicate about their businesses is an important step in educating a wider audience about the industry - improving transparency and providing substantial benefit to investors, regulators and the public.





Increasing Transparency

How the JOBS Act Increases Transparency

The amendment to Reg D in the JOBS Act furthers the policy objectives of the Dodd-Frank Act by leading to increased communication and information about hedge funds, beyond information provided in other regulatory filings. For example:

- Managers can provide accurate information to media or a third party.
- Investors can benefit from increased communication and information about a fund manager.
- Regulators gain additional resources to monitor industry trends, understand hedge fund activity, and conduct oversight.



Industry Support for Section 201 of the JOBS Act

MFA Advocacy:

In 2010, the Dodd-Frank Act established a comprehensive framework for the registration of private fund managers that enhances existing regulations and enables policy makers to obtain information about private funds for oversight purposes.

For over 20 years, MFA has advocated for regulations that strengthen the financial system and investor protections, while ensuring investors and regulators have appropriate information.

As implementation of the Dodd-Frank Act proceeds, MFA has encouraged policymakers to focus on identifying additional measures that would promote investment and enhance economic growth.

On January 6, 2012, MFA submitted a comment letter petitioning the Securities and Exchange Commission (SEC) to eliminate the ban on general solicitation and advertising.



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Industry Support for Section 201 of the JOBS Act

Changes to Reg D Enhance Regulation of Private Fund Offerings

In its [petition to the SEC](#), MFA outlined how eliminating the ban on general solicitation would enhance the regulation of private fund offerings by:

- Reducing the legal uncertainty resulting from the current regulation of private fund offerings;
- Increasing transparency of the hedge fund industry;
- Facilitating capital formation and reducing administrative costs;
- Maintaining strong investor protections;
- Reducing regulatory oversight costs





Additional Background About Regulation D



Understanding Regulation D

The History of Regulation D



Congress enacted the [Securities Act of 1933](#) to strengthen investor protections. Its main goals are to ensure that investors receive proper information about the securities they purchase and prohibit deceit and fraud in the actual sale of securities.

The SEC works to protect investors by requiring securities to be registered.

In certain cases, however, when investors, firms or companies meet specific requirements, the laws and rules provide exemptions or a safe harbor from registration. The SEC adopted Regulation D in 1982 to provide such a framework for permissible safe harbor.



Understanding Regulation D

How it Applies to Funds - Rule 506:

The most significant rule under Reg D is Rule 506, which allows firms to raise an unlimited amount of money for private placement, provided they follow certain requirements. Some examples are:

- The company may not use general solicitation or advertising to market the securities;
- The company may sell its securities to an unlimited number of "accredited investors" and up to 35 other purchasers;
- The company must be available to answer questions by prospective purchasers;
- Purchasers receive "restricted" securities, meaning that the securities cannot be sold for a period of time without registering them.

More information on the requirements outlined in Rule 506 is available [here](#).



Understanding Regulation D

Accredited Investors:

Even though companies and investment firms are provided safe harbor through Reg D, they still generally have to restrict their selling to what the SEC defines as accredited investors and qualified institutional buyers. Some basic examples of **accredited investors** are:



Groups such as charities, non-profit organizations, corporations, etc. with total assets in excess of \$5 million;



Banks, insurance companies and investments firms;



Employee benefit plans (corporate pension plans);



An individual whose net worth, or joint net worth with the person's spouse, exceeds \$1 million at the time of the purchase, excluding the value of their primary residence;



Individuals with a yearly income of \$200,000 or higher in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.



Managed Funds Association

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