

## INVESTMENT ADVISER ALERT

May 20, 2012

### THE JOBS ACT'S IMPACTS ON INVESTMENT ADVISERS

**IMPORTANT:** The information contained herein is illustrative, not exhaustive, is intended as broad introductions to the subject matter, and should not be viewed as legal advice. *Readers are urged not to act on the information contained in this article but to consult with an attorney.*

On April 5, 2012, the **Jumpstart Our Business Startups Act** (the “**JOBS Act**”) was signed into law. Among other things, the JOBS Act has the following impacts on investment funds.

1) The JOBS Act relaxes the 500 equity holders trigger rule for private fund offerings. The JOBS Act increases the record-holder threshold, from 500 person to 2,000 person (or 500 persons that are not “accredited investors”), which issuers were previously required to abide by pursuant to Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”) in order to qualify for private offering and avoid SEC registration and thus public company reporting requirements. Private funds relying on the exemption from registration under Section 3(c)(7) of the Investment Company Act of 1940 (the “Investment Company Act”) will be affected by this rule change. Private funds exempt under Section 3(c)(1) of the Investment Company Act are limited to 100 beneficial owners requirements pursuant to Section 3(c)(1), and thus are typically affected by this 500 record holder trigger rule.

2) The JOBS Act amends Section 12(g)(5) of the Exchange Act to provide that the definition of “held of record” for purposes of Section 12(g)(1) does not include securities held by persons who received such securities under employee compensation plans in transactions that were exempt from the registration requirements of Section 5 of the Securities Act, but directs the SEC to adopt a safe harbor for issuers in determining whether a security holder satisfies such exclusion.

3) The JOBS Act relaxes general solicitation/advertising rules in private offerings. The JOBS Act directs the Securities and Exchange Commission (the “SEC”), within 90 days of its enactment, to revise Rule 506 of Regulation D under the Securities Act of 1933 (the “Securities Act”) to remove the prohibition on general solicitation and general advertising in private offerings as long as the only purchasers are accredited investors. A private fund relying on either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act for exemption from registration as an investment company is prohibited from making a “public offering” of its

securities. Under a modified Rule 506, however, a private fund relying on Section 3(c)(1) or Section 3(c)(7) is allowed to use general solicitation and general advertising to offer securities without having to violate the prohibition on public offerings contained in the Investment Company Act (subject to the SEC's rules implementing the provisions of the JOBS Act).

4) The SEC's new rules must require that an issuer offering securities pursuant to Rule 506 of Regulation D "take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the [SEC]."

5) The JOBS Act requires the SEC to promulgate rules exempting from the restrictions of Section 12(g) securities acquired in "crowd-funding," which will allow a wider pool of smaller investors with fewer restrictions.

Prior to proposing rules implementing the provisions of the JOBS Act, the SEC is seeking public comments, a process that the SEC first utilized with the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

For further discussion of the impact of the JOBS Act on private funds, please contact our attorneys.

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