

JOBs Act/General Solicitation Cheat Sheet for Startups

September 23, 2013

Starting September 23, 2013, startups who choose to operate under new rules will be able to generally solicit (or advertise) their securities offerings if they take additional steps to verify the accredited investor status of each investor. The first step is to choose whether to use the new rules allowing advertising (Rule 506(c)) or stick with the old rules (Rule 506(b)) with no advertising.

Under 506(c) (New Rules with General Solicitation)

DO:

- Promote your financing on social media Twitter, Facebook, LinkedIn
- Send email blasts to relevant email lists about your offering
- Speak about your offering at demo days, pitch events, public events
- Talk to the press and bloggers about your securities offering
- Accept smaller investment amounts from a large number of shareholders up to a maximum of 2,000 accredited investors (i.e. raise \$10,000 each from 1,000 doctors)
- [Verify the accredited investor status](#) of each participating investor before closing, including by:
 - Written confirmation from a lawyer, CPA, broker-dealer or investment advisor
 - Verifying income or net worth through financial documents¹
- Stay up to date on status of [proposed additional rules on 506\(c\)](#) offerings, including:
 - Advance Form D Filing, filing of advertising material with SEC; legends requirements
 - Not yet effective and may change or never be adopted
 - If they are adopted, there will be a transition period or grandfather clause
- Use technology platforms for compliance and to extract shareholder value
- Limit advertising materials to broad, non-sensitive, non-controversial statements
- Have each key employee, 20% shareholder, director, and officer, new investor, broker, solicitor or other “promoter” complete a [Bad Actor Questionnaire](#).

DO NOT:

- Start advertising without speaking to a qualified securities lawyer (check on [new rules](#))
- Start advertising before you are sure about 506(c) (**there is no going back to 506(b)**)
- Allow any unaccredited investors to invest
- Make any untrue statements, misrepresentations or omissions (anti-fraud applies) re the offering
- Include sensitive, confidential or controversial information in public advertisements
- Include “puffery” or other boisterous or off the cuff statements in advertisement

¹ Individual investors may not want to provide personal financial information startups so a 3rd party certification (from a lawyer, CPA or platform) is more likely. Pre-existing investors of a company do not re-verify.

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Under 506(b) (Old Rules – No General Solicitation)

DO:

- Conduct private offerings with friends and family
- Reach out to individual investors through personal introductions
- Confirm a substantive pre-existing relationship with every prospective investor to whom you speak
- Confirm accredited investor status via self-certification (i.e. investors to check the box)
- Have each key employee, 20% shareholder, director, and officer, new investor, broker, solicitor or other “promoter” complete a [Bad Actor Questionnaire](#).

DO NOT:

- Talk about your financing at any [public demo days or pitch events](#) (i.e. do not mention that you are fundraising, do not talk about financial projections or business models)
- Allow the press or bloggers to speak about your offering
- Send email blasts about your offering
- Talk about your offering on social media
- Participate in business plan competitions open to the public
- Make any material misrepresentations or omissions (anti-fraud applies) re: the offering

The foregoing is intended to provide a quick overview for startups seeking to raise capital for discussion with company legal counsel. For detailed coverage please view our [General Solicitation Webcast](#) in collaboration with [General Assembly](#) and [Cooley LLP](#) or its [transcript](#) and stay tuned to ongoing coverage on the [SeedInvest Blog](#).

The information herein is not a substitute for professional legal advice and is intended to facilitate discussion between issuers and their legal counsel. Nothing herein shall create an attorney-client relationship, nor is it a solicitation to offer legal advice. If you ignore this warning and convey confidential information in a private message or comment, there is no duty to keep that information confidential or forego representation adverse to your interests. Seek the advice of a licensed attorney in the appropriate jurisdiction before taking any action that may affect your rights.

