

# Rule 506(c) Lifts Ban on General Solicitation but Now Startups Must Select Investors Even More Carefully

By NOAH S. JOHNSON\*

**R**AISING MONEY IS A MAJOR STEP for any young company. The questions of how and from where to secure financing are at the forefront of any entrepreneur's business strategy. The answers to these questions are also strongly influenced by federal securities laws. An entrepreneur's initial instinct may be to simply start emailing and calling wealthy individuals or venture capital firms. This would seem like a perfectly logical place to start. But, by doing so, the entrepreneur may quickly run afoul of the ban against general solicitation found in Rule 506 of Regulation D under the Securities Act of 1933.<sup>1</sup> Despite the Rule's restrictions, companies have long relied on Rule 506 to raise funds because the Rule offers exemption from complex registration requirements and from complying with many requirements of state securities laws.<sup>2</sup>

While companies can rely on the Rule 506(b) exemption to offer securities for sale without registration,<sup>3</sup> Rule 506(b) includes a strict prohibition against selling securities using general solicitation.<sup>4</sup> This means offerors under 506(b) cannot talk publicly about fundraising efforts or engage

---

\* Noah S. Johnson, J.D. Candidate, University of San Francisco School of Law (2015); Political Science, B.A., University of California, Berkeley (2009). The author would like to thank the staff of the University of San Francisco Law Review, and particularly Pareesa Ashabi, for their editing assistance and fastidious attention to detail. The author would also like to thank Professor David Raynor for helping develop the article topic during the summer of 2014.

1. See 17 C.F.R. § 230.506(b)(2)(i) (2013) (limiting the number of purchasers to thirty-five in any offering under Regulation D).

2. *Id.* § 230.506(a) (stating that offers or sales of qualifying securities under this section will not be deemed public offerings and thus, are exempt from the registration requirements).

3. *Id.*

4. *Id.* § 230.502(c) (“[N]either the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising . . . .”); see *id.* § 230.506(b)(1) (requiring that offers and sales must satisfy the terms and conditions of both § 230.501 and § 230.502 to qualify for this exemption).

in any widespread advertising<sup>5</sup>—actions that entrepreneurs naturally want to pursue when raising money. In response to recent calls to modify the securities laws,<sup>6</sup> Congress passed the Jumpstart Our Business Startups Act (JOBS Act) in 2012,<sup>7</sup> which prompted the Securities and Exchange Commission (SEC) to amend Rule 506 to permit issuers to use general solicitation. The result was the adoption of Rule 506(c), which became effective on September 23, 2013.<sup>8</sup> The new 506(c) exemption allows issuers to use general solicitation to sell securities, but it also adds additional restrictions that add complexity to the capital-raising process.<sup>9</sup>

Specifically, issuers must do more extensive due diligence to ensure that investors fit the definition of an “accredited investor”<sup>10</sup> under the federal securities laws before issuing securities. The definition of an accredited investor is found in Rule 501(a) of Regulation D.<sup>11</sup> Two common examples of accredited investors are individuals who have personal income of more than \$200,000 in the past two years and who reasonably expect to make the same amount in the current year, and individuals whose net worth or joint net worth with a spouse exceeds \$1,000,000 without inclusion of their primary residence.<sup>12</sup>

This due diligence requires the issuer to incur additional costs and may also cause some investors to avoid investing because they do not want to reveal sensitive financial information. Deciding whether to issue securities under Rule 506(b) or 506(c) is a significant decision for a company. It is also necessary because companies must check a box and disclose on the SEC’s Form D<sup>13</sup> the exception they are claiming.<sup>14</sup> In order to make this decision, companies must further analyze the definition of general solicitation and the implications of avoiding or using this tactic to offer securities.

---

5. See 17 C.F.R. § 230.502(c)(1)–(2) (citing advertisements, articles, published or broadcasted communications, and meetings with general invitations as examples of prohibited solicitation).

6. *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings: A Small Entity Compliance Guide*, U.S. SEC. & EXCH. COMM’N, <http://www.sec.gov/info/smallbus/secg/general-solicitation-small-entity-compliance-guide.htm> (last modified Sept. 20, 2013) [hereinafter *Small Entity Compliance Guide*].

7. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 201(a)(1), 126 Stat. 306 (2012).

8. *Small Entity Compliance Guide*, *supra* note 6.

9. 17 C.F.R. § 230.506(c)(2)(ii) (allowing general solicitation to sell securities, but only to verified accredited investors).

10. *Id.* (listing the different steps issuers have to complete to verify a purchaser’s status as an accredited investor).

11. *Id.* § 230.501(a).

12. *Id.* § 230.501(a)(5)–(6).

13. *Id.* § 239.500.

14. *Id.* § 230.503(a)(1).

---

## I. Definition of General Solicitation

The Rule 506(b) restriction on general solicitation states that any offerings under the Rule must comply with all the conditions of Rule 502 of Regulation D.<sup>15</sup> Under Rule 502(c), “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.”<sup>16</sup> The Rule does not provide a clear definition of general solicitation, but instead lists two examples. First, any advertisement, article, or similar media that is used to sell securities is considered general solicitation.<sup>17</sup> Second, a seminar or meeting whose attendees have been invited by advertising is also considered general solicitation.<sup>18</sup> These guidelines establish the classic violations of general solicitation. However, these two examples do not fully establish the boundaries of the SEC’s definition in more modern applications.

Further clarification of Rule 502(c) is provided in SEC Release No. 33-6455.<sup>19</sup> An analysis under Rule 502(c) requires the examination of two different factors. The first factor is whether an issuer or someone acting on its behalf is using a communication to offer or sell securities.<sup>20</sup> The second factor is to determine whether the communication is a general solicitation or general advertisement.<sup>21</sup> If either of these factors do not exist, a communication will not violate the Rule 502(c) ban.<sup>22</sup> A resolution to these questions will be a highly fact-dependent inquiry that focuses on the specific situation. However, an analysis of SEC no-action letters, releases, and statutory definitions can provide guidance on what communications are not permitted.

The threshold question under SEC Release No. 33-6455 is whether a communication is an offer under the federal securities laws.<sup>23</sup> The Securities Act § 2(a)(3) defines “offer” and “offer for sale” to include “every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.”<sup>24</sup> This definition is much broader than the definition of

---

15. *Id.* § 230.506(b)(1).

16. *Id.* § 230.502(c).

17. *Id.* § 230.502(c)(1).

18. *Id.* § 230.502(c)(2).

19. *See generally* Interpretive Release on Regulation D, SEC Release No. 33-6455, 48 Fed. Reg. 10,045 (Mar. 10, 1983) (to be codified at 17 C.F.R. pt. 231).

20. *Id.* at 10,052.

21. *Id.*

22. *Id.*

23. *See id.* at 10,052–53 (explaining what the SEC staff has found to constitute an offer within the context of general advertising in the sale of securities).

24. 15 U.S.C. § 77b(a)(3) (West 2012).

an offer under contract law.<sup>25</sup> In certain situations, simply giving materials that discuss forthcoming public offerings to reporters will be considered an offer by the SEC.<sup>26</sup> In *Securities and Exchange Commission v. Arvida Corp.*,<sup>27</sup> a real estate investment company provided a press release to the media about an upcoming business venture involving Florida real estate.<sup>28</sup> The company had not filed a registration statement.<sup>29</sup> The court held that providing the press with information caused the distribution of information concerning a public offering and “constituted an ‘offer to sell’ such securities within the meaning of Section 2(3) of the Securities Act.”<sup>30</sup> Because the definition of an offer is so broad under the SEC interpretation, companies must be careful when making any mention of securities or the sale of securities in a public manner. This is especially true when in the process of raising funds under Rule 506(b), since general solicitation is not allowed.<sup>31</sup>

## II. General Solicitation Through Websites and Social Media

Because so many actions can be considered offers for the sale of securities under the SEC definition, the next step is to analyze whether certain actions will constitute general solicitation in different business contexts. One context that comes up frequently for startups is informing investors of capital-raising through a public website, company social media account, or social media account of a high-ranking employee.<sup>32</sup> Discussing an offering through electronic channels that are accessible to anyone is almost always considered an offer through general solicitation.<sup>33</sup> A series of SEC releases established that posting information about a securities offering on an unrestricted website is general solicitation.<sup>34</sup> In the first release, the

---

25. See RESTATEMENT (SECOND) OF CONTRACTS § 24 (1981) (“An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”).

26. SEC v. Arvida Corp., 169 F. Supp. 211, 215 (S.D.N.Y. 1958).

27. *Id.*

28. *Id.* at 213.

29. *Id.* at 214.

30. *Id.* at 215.

31. See 17 C.F.R. § 230.502(c) (2013).

32. See, e.g., Naval Ravikant & Kevin Laws, *Why You Need to Pay Attention to General Solicitation*, TECHCRUNCH (Sept. 21, 2013), <http://techcrunch.com/2013/09/21/why-you-need-to-pay-attention-to-general-solicitation/>.

33. Use of Electronic Media for Delivery Purposes, SEC Release No. 33-7233, 60 Fed. Reg. 53,458, 53,464 (Oct. 13, 1995) (“The placing of the offering materials on the Internet would not be consistent with the prohibition against general solicitation or advertising in Rule 502(c) of Regulation D.”).

34. See *id.*; Use of Electronic Media, SEC Release No. 33-7856, 65 Fed. Reg. 25,843, 25,851–52 (May 4, 2000) (“When we first considered whether exempt offerings could be conducted over

SEC stated that placing offering materials on an “Internet Web Site” would violate the prohibition against general solicitation in Rule 502(c) of Regulation D.<sup>35</sup> This position has been affirmed in subsequent SEC releases and even holds true when financial information is collected as evidence of the accredited status of a person who is attempting to access the offered materials.<sup>36</sup>

The prohibition against advertisements and similar media found in Rule 502(c) also extends to social media accounts online.<sup>37</sup> Even if a company can show it has an existing relationship with certain individuals who follow it on social media, thus eliminating the chance of general solicitation charges,<sup>38</sup> the possibility that a user will share or repost a message means that a social media message could easily be transmitted to a public audience and expose the company to liability. In a recent example, real estate investment company Prescient Capital Partners, Ltd. (Prescient Capital) used social media and online videos to solicit investors.<sup>39</sup> The company would pool funds from investors, called “loan participants,” to make short-term loans to commercial real estate ventures.<sup>40</sup> The company would then disburse the interest payments from the loans back to the loan participants.<sup>41</sup> However, the SEC found that Prescient Capital did not have adequate procedures in place to establish that investors were accredited in accordance with Rule 506(b).<sup>42</sup> The SEC found that Prescient Capital “made general solicitations of investors by means of mail, email, social media, and Internet websites and videos,” and that these types of solicitations “were prohibited by Rules 506(b)(1) and 502(c) of Regulation D.”<sup>43</sup>

As a result of these violations, the SEC imposed sanctions on Prescient

---

the Internet, we concluded that an issuer’s unrestricted, and therefore publicly available, Internet web site would not be consistent with the restriction on general solicitation and advertising. Specifically, the 1995 Release included an example indicating that an issuer’s use of an Internet web site in connection with a purported private offering would constitute a ‘general solicitation’ and therefore disqualify the offering as ‘private.’”).

35. See Use of Electronic Media for Delivery Purposes, 60 Fed. Reg. at 53,464.

36. *Id.*

37. In the Matter of Prescient Capital Partners, Ltd. & Steven C. Young, SEC Release No. 33-9363, 2012 WL 4356702, at \*1, \*2 (Sept. 24, 2012) (“During the relevant period, Respondents made general solicitations of investors by means of mail, email, social media, and Internet websites and videos. These solicitations were prohibited by Rules 506(b)(1) and 502(c) of Regulation D.”).

38. See *infra* Part III.

39. See *In the Matter of Prescient Capital Partners*, 2012 WL 4356702, at \*1.

40. *Id.* at \*2.

41. *Id.*

42. *Id.*

43. *Id.*

Capital that required disgorgement of \$28,987 in profits.<sup>44</sup> The *Prescient Capital* case shows that the SEC considers social media posts and online videos used as advertisements as potential violations of the ban against general solicitation.

Existing SEC guidance recognizes a difference between publicly available information on the Internet and communications that are targeted to a specific individual.<sup>45</sup> According to the SEC, “[m]ore targeted communication methods are comparable to traditional mail because the sender directs the information to a particular person, group or entity.”<sup>46</sup> Conversely, “[i]nformation posted on a Web site, however, is not sent to any particular person, although it is available for anyone to search for and retrieve.”<sup>47</sup> This guidance from 1998 pre-dates the use of social media such as Facebook, which was launched in 2004,<sup>48</sup> but does suggest that targeted messaging through Facebook or LinkedIn would not be considered equivalent to public posting on the Internet. The SEC generally allows targeted solicitation to potential investors if the offeror has a preexisting relationship with the individual.<sup>49</sup> The full contours of acceptable targeted solicitation are explored below.

### III. Targeted Communication to Individuals and Businesses

Whether a targeted communication is considered a general solicitation hinges on the relationship between the company and the person being approached.<sup>50</sup> If the company has a substantive preexisting relationship with the party before a communication is sent, the SEC does not consider targeted

---

44. *Id.* at \*3.

45. Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, SEC Release No. 1125, 63 Fed. Reg. 14,806, 14,807 (Mar. 27, 1998).

46. *Id.*

47. *Id.*

48. *Facebook Fast Facts*, CNN.COM, <http://www.cnn.com/2014/02/11/world/facebook-fast-facts/> (last updated Jan. 30, 2015).

49. *See generally* Woodtrails-Seattle, Ltd., SEC No-Action Letter, 1982 WL 29366, at \*1 (Aug. 9, 1982). No-Action Letters are statements issued by the SEC in response to a formal inquiry from a party. If the party’s request is granted, then the Commission will be recommended not to take enforcement action against the party according to the specific facts outlined in the letter. No-Action Letters are not binding precedent and apply only to the individual case they address. *See No-Action Letters*, U.S. SEC. & EXCH. COMM’N, <http://www.sec.gov/answers/noaction.htm> (last modified Sept. 21, 2012).

50. *See Woodtrails-Seattle, Ltd.*, 1982 WL 29366, at \*1 (using the duration of the relationship between Woodtrails and the investors in question prior to the solicitation as grounds for finding the communication as consistent with Rule 502(c)).

communication a form of general solicitation.<sup>51</sup> The “substantive preexisting relationship” standard is established from a series of no-action letters.<sup>52</sup> As stated by the SEC, “[i]n determining what constitutes a general solicitation the Division has underscored the existence and substance of prior relationships between the issuer or its agents and those being solicited.”<sup>53</sup>

The standard is met if there is a preexisting business relationship between the parties such that the offeror can determine that the offeree has suitable expertise in financial matters that the offeree is capable of evaluating the risks of the investment.<sup>54</sup> As an example, this question arose when a California limited partnership desired to sell limited partnership interests to a group of investors.<sup>55</sup> All of the investors had previously engaged in business with the same company by investing in other limited partnership investments.<sup>56</sup> Each purchaser also previously met specific financial qualification standards.<sup>57</sup> The SEC affirmed that the company could solicit this pool of investors and allowed the company to send targeted mail to three hundred and thirty people.<sup>58</sup>

#### **IV. Conferences, Demo Days, and Pitch Events**

One common way for startups to present their company, and potentially secure financing, is by attending events such as “demo days” and “pitch events.”<sup>59</sup> A demo day allows a company to demonstrate the product or service that it offers and speaks generally about the direction of the company.<sup>60</sup> There is no explicit expectation that the company will discuss

---

51. *See id.* (determining that relationships built within the last three years satisfy Rule 502(c)).

52. *See id.* at \*1 (“In arriving at this position, we note that (1) each of the proposed offerees has a pre-existing business relationship with the general partner of Woodtrails . . . .”); E.F. Hutton & Co. Inc., SEC No-Action Letter, 1985 WL 55680, at \*1 (Dec. 3, 1985) (“In determining what constitutes a general solicitation the Division has underscored the existence and substance of prior relationships between the issuer or its agents and those being solicited.”).

53. *E.F. Hutton & Co.*, 1985 WL 55680, at \*1.

54. *See generally Woodtrails-Seattle, Ltd.*, 1982 WL 29366, at \*2.

55. *Id.* at \*1.

56. *Id.*

57. *Id.*

58. *Id.*

59. *See, e.g.*, John Cook, *My 3 Favorite Pitches From TechStars Demo Day, and a Few From Robert Scoble Too*, GEEKWIRE (Nov. 1, 2012), <http://www.geekwire.com/2012/favorite-pitches-techstars-demo-day-robert-scoble/>; Joshua Steimle, *7 Rules for Winning at Startup Pitch Events*, FORBES (Nov. 21, 2014), <http://www.forbes.com/sites/joshsteimle/2014/11/21/7-rules-for-winning-at-startup-pitch-events/>.

60. *See* Kyle Russell & Cat Zakrzewski, *Our Nine Favorite Companies from the 500 Startups Demo Day*, TECHCRUNCH (July 29, 2014), <http://techcrunch.com/2014/07/29/our-nine-favorite-companies-from-the-500-startups-demo-day/>.

capital-raising efforts.<sup>61</sup> On the other hand, a pitch event is a meeting where emerging companies talk about the potential growth of the company and specifically discuss capital-raising efforts, or solicit investors.<sup>62</sup> Both of these situations raise the question of whether companies can participate without violating the ban on general solicitation.

SEC Rule 502(c) explicitly prohibits offering securities at a seminar or meeting where attendees have been invited by advertising.<sup>63</sup> Under federal securities law, discussing financing or raising capital (as a company is generally will at a pitch event) is an offer for the sale of securities and is thus prohibited under Rule 506(b).<sup>64</sup> If a startup wishes to raise funds at pitch events, it should consider raising funds under the Rule 506(c) exception because the startup can take advantage of general solicitation by speaking to a large group, and instead do due diligence once investors come forward.<sup>65</sup> It is conceivable that in a very limited number of circumstances a pitch event could be specifically designed to not violate the ban on general solicitation. However, such an event could not be advertised or open to the public, and all the companies making pitches would require a substantive preexisting relationship with all attendees.<sup>66</sup> Only one such example of a pitch event has been approved by an SEC no-action letter.<sup>67</sup>

Conversely, demo days focus primarily on a company's products and services rather than attempts to raise capital.<sup>68</sup> If a company only discusses their products, it is reasonable to conclude that participating in a demo day will not meet the definition of an offer for securities. However, if specific financial information is discussed, or future potential growth based on capital-raising efforts enters the discussion, a company may meet the broad SEC definition of an offer for the sale of securities.<sup>69</sup> Under the definition of

---

61. *See id.* (describing that the expectation at the 500 Startups demo day was to hear about the startup's products, rather than their capital-raising efforts).

62. *See, e.g., Angel Elevator Pitch*, VC TASKFORCE, <http://vctaskforce.com/content/view/1268/> (last visited Jan. 22, 2015) (announcing a pitch event hosted by the VC Taskforce in Palo Alto, where entrepreneurs were invited to network, present their companies, and learn how to raise early-stage capital).

63. 17 C.F.R. § 230.502(c)(2) (2013).

64. *See id.* § 230.506(b)(1).

65. *Id.* § 230.506(c).

66. Michigan Growth Capital Symposium, SEC No-Action Letter, 1995 WL 264883, at \*1, \*4, (May 4, 1995).

67. *Id.* at \*1 (“[T]he Division concurs in your view that for purposes of Rule 502(c) of Regulation D, the Symposium, including the participation of the presenter companies, involves no general solicitation or general advertising.”).

68. *See Russell & Zakrzewski, supra* note 60.

69. SEC v. Arvida Corp., 169 F. Supp. 211, 215 (S.D.N.Y. 1958).



an offer in *SEC v. Arvida Corp.*,<sup>70</sup> furnishing information that arouses the public's interest in a company offering securities is a violation of the ban on general solicitation.<sup>71</sup> Because of this, companies raising money under Rule 506(b) must be cautious about the type of information discussed at demo days.

## V. Startups May Turn to Rule 506(c)

One consequence of Rule 506(c) as part of the JOBS Act is that it provides an explicit avenue for companies to use general solicitation for private placement financing.<sup>72</sup> Before the enactment of Rule 506(c), demo days were a relatively common method for startups to raise awareness about their business idea. These events arguably toed the line of an offer for sale of securities established by *Arvida*,<sup>73</sup> however with no SEC enforcement actions coming down, the practice continued to flourish. Now that Rule 506(c) presents an explicit way to use general solicitation, startups may be required to conduct more due diligence on their investors if they choose to attend a demo day.<sup>74</sup>

General solicitation is allowed under Rule 506(c) as long as the purchasers of the securities meet the statutory requirement.<sup>75</sup> However, Rule 506(c) requires that an issuer must take reasonable steps to verify that purchasers of securities in any Rule 506(c) offering are accredited investors.<sup>76</sup> An issuer is presumed to have taken reasonable steps towards verifying an accredited investor based on income if they review any Internal Revenue Service (IRS) form that reports the purchaser's income for the two most recent years (such as a Form W-2 or Form 1099) and also obtain a written

---

70. *Id.* (“[T]he furnishing to the press by representatives of the issuer and the underwriters of written and oral communications concerning the forthcoming public offering of the issuer’s securities, thereby causing the public distribution of such information through news media, constituted an ‘offer to sell’ such securities within the meaning of Section 2(3) of the Securities Act.”).

71. 17 C.F.R. § 230.506(b)(1) (2013).

72. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 201(a)(1), 126 Stat. 306 (2012) (“[T]he Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors.”).

73. *See generally Arvida*, 169 F. Supp. 211.

74. 17 C.F.R. § 230.506(c)(2)(ii) (“The issuer shall take reasonable steps to verify that purchasers of securities sold in any offering under paragraph (c) of this section are accredited investors.”).

75. *See id.* § 230.506(c)(2)(i) (“All purchasers of securities sold in any offering under paragraph (c) of this section are accredited investors.”).

76. *Id.* § 230.506(c)(2)(ii).

representation from the purchaser that they have a reasonable expectation of reaching the necessary income level during the current year.<sup>77</sup> Additionally, an issuer is presumed to have taken reasonable steps to verify an accredited investor based on net worth in excess of \$1,000,000 by examining documents such as bank statements or tax assessments and also receiving a consumer report listing the person's liabilities.<sup>78</sup> An issuer can also receive a written confirmation from a person or entity that has taken reasonable steps themselves to verify an accredited investor's status.<sup>79</sup> This includes a certification from a broker-dealer, registered investment adviser, or attorney.<sup>80</sup> The Rule states that these are "non-exclusive and non-mandatory methods" to verify an individual's status as an accredited investor, but it is not clear what other procedures would be sufficient to avoid action by the SEC.<sup>81</sup> In the absence of further guidance through SEC releases or enforcement actions, companies are advised to follow one of the enumerated verification methods mentioned above and listed under 506(c)(2)(ii).<sup>82</sup>

One disadvantage of Rule 506(c) is that some investors, particularly high net worth individuals, may not want to divulge sensitive financial information to a company. Turning over tax returns or bank statements will reveal financial information that individuals wish to keep private. This may also be exacerbated by the fact that new companies taking advantage of Rule 506(c) naturally want to solicit individuals with whom they do not have a preexisting relationship. This means that a potential investor may not yet sufficiently trust a company enough to turn over sensitive financial information.

Because Rule 506(c) recently came into effect on September 23, 2013,<sup>83</sup> it is too early to tell which exception will be the preferred means of raising capital for young companies. The decision between utilizing Rule 506(b) and 506(c) may depend on how critical it is for a company to use general solicitation as a fundraising tactic. If the founders of a company are industry insiders with a long list of contacts, they may have access to enough individuals or venture capital firms to raise money without general

---

77. *Id.* § 230.506(c)(2)(ii)(A).

78. *Id.* § 230.506(c)(2)(ii)(B).

79. *Id.* § 230.506(c)(2)(ii)(C).

80. *Id.*

81. *Id.* § 230.506(c)(2)(ii)(D).

82. *Id.* § 230.506(c)(2)(ii).

83. *Small Entity Compliance Guide*, *supra* note 6 ("On July 10, 2013, the SEC adopted amendments to Rule 506 of Regulation D and Rule 144A under the Securities Act to implement the requirements of Section 201(a) of the JOBS Act. The amendments are effective on September 23, 2013.")

solicitation. If the founders are relative newcomers, they may be willing, or even forced, to comply with the more stringent due diligence standards of Rule 506(c) in exchange for the benefit of seeking capital using general solicitation.<sup>84</sup>

Larger fundraising efforts under Rule 506(c) have taken place since its passage.<sup>85</sup> In June 2014 the investment arm of 500 Startups, a venture capital fund and startup incubator based in Mountain View, California, used Rule 506(c) to raise money for a \$100 million fund named Startups III.<sup>86</sup> The fund uses an outside company named SeedInvest to screen investors to ensure they are accredited.<sup>87</sup> The potential investors send the necessary documentation to SeedInvest and once they are verified, they can have access to 500 Startups's offerings through the SeedInvest platform.<sup>88</sup>

The decision to use Rule 506(b) or 506(c) as a basis for financing will rest on the specific circumstances of each company. In the meantime, the startup community will continue to watch the SEC carefully for signals on how the ban against general solicitation will be enforced.

---

84. See 17 C.F.R. § 230.506(c)(2)(ii).

85. Tom Cheredar, *500 Startups is Crowdfunding its New \$100M Fund, with Help from SeedInvest*, VENTUREBEAT (June 26, 2014), <http://venturebeat.com/2014/06/26/500-startups-public-fundraising-100m/>.

86. *Id.*

87. Josh Ong, *500 Startups Taps SeedInvest to Publicly Fundraise for \$100 Million Fund III*, THE NEXT WEB (June 26, 2014), <http://thenextweb.com/insider/2014/06/26/500-startups-taps-seedinvest-publicly-fundraise-100-million-third-fund/>.

88. *Id.*