



April 5, 2012

**Re: The JOBS Act – Authorizes General Solicitation and Advertising in Rule 506 Private Placement Offerings**

Dear Clients and Friends-

There will be a fundamental change in the manner in which an issuer can raise funds in private placements of securities conducted under Rule 506 promulgated under the Securities Act of 1933 (the "1933 Act"). Under current law, the issuer or anyone acting on the issuer's behalf is prohibited from engaging in general solicitation or advertising when raising funds in a Rule 506 private placement offering. The Jumpstart Our Business Startups Act (the "JOBS Act") enacted on April 5, 2012, requires the Securities and Exchange Commission (the "SEC") to eliminate the prohibition against general advertising or solicitation currently contained in Rule 506, provided that all purchasers in the offering are accredited investors. The JOBS Act requires the SEC to revise the Rule within 90 days.

**Rule 506 of Regulation D**

Rule 506 is a safe harbor from the registration provisions of the 1933 Act, and is a commonly utilized private placement exemption. The Rule is available to companies of all sizes and there is no dollar limit on the amount of funds that may be raised in a Rule 506 offering. Pursuant to pending SEC proposed regulations, the Rule 506 exemption would not be available to certain issuers who or whose officers or other affiliates have engaged in certain bad acts such as securities law violations. One of the advantages of a Rule 506 offering is that the offering does not have to be registered with the SEC thus avoiding the additional costs and delays incurred in connection with the registration process.

**General Advertising and Solicitation**

Under the new Rule, issuers would be able to solicit investors through general advertising or solicitation provided that all of the purchasers in the offering qualify as accredited investors. As in the past, the issuer would not be required to register the offering under the 1933 Act but only file a Form D with the SEC.

Under the current Rule, if an issuer engages in any general solicitation or advertising, the offering would violate the registration requirements of the 1933 Act, and as a result, among other things, each investor in the offering would be entitled to rescind the investment and to demand a return of the investment. General solicitation or advertising includes placing advertisements in newspapers or on the Internet regarding the offering or holding general seminars to which the public is invited. The SEC staff's position had been that each potential investor who is approached by the issuer in connection with the private placement must have had a pre-existing personal or business relationship with the issuer. This prohibition limited the number of potential investors that could be contacted by the issuer and thus the prospects for the capital raise.

### **Accredited Investors**

Accredited investors include entities such as corporations or partnerships that have in excess of \$5 million of total assets as well as individuals with a net worth, or a joint net worth with spouse, in excess of \$1 million (exclusive of primary residence). The JOBS Act provides that the SEC is to provide reasonable steps to be taken by the issuer to verify that the purchasers of the securities in a Rule 506 offering are accredited investors. Under current practice, such actions include having each potential investor complete a questionnaire pursuant to which the investor would provide net worth and other information in order to permit the issuer to reasonably believe that the investor is accredited at the time of the investment.

### **Conclusion**

The new Rule should provide much greater flexibility for issuers to successfully raise capital in Rule 506 private placement transactions, and hopefully result in increased employment by these companies.

Please feel free to contact us if you have any questions about this matter.

Sincerely,

LURIO & ASSOCIATES, P.C.