



The JOBS Act and Its Regulatory Implications

Presented by
Michael de León Hawthorne
Thompson Coburn LLP

BISA Regulatory and Compliance Advisory Webinar
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What is the JOBs Act?

- Jumpstart Our Business Startups Act (JOBs Act)
- Enacted in an effort to revitalize the U.S. economy and encourage investments in small businesses
- Effective September 23, 2013, but parts of the JOBs Act have not been implemented

Is the Act meeting its intended goals?



What is the JOBS Act?

- Title 1 – IPO On-Ramp
- Title 2 – General Solicitation – Rule 506(c)
- Title 3 – Crowdfunding
- Title 4 – Rule 144A – increased thresholds to \$50 million
- Titles 5 & 6 – Threshold for being public company/registered and deregistered



Today's Agenda

- Rules 506(c) and 144A
- Form D changes
- “Bad Actor Rules”
- Crowdfunding
- Insurance
- Market conditions



Rule 506(c)

- General solicitation
- Sales to only accredited investors (AI)
- Reasonable steps to verify AI status
- File Form D – 15 days prior to any offer
- Private offerings have historically been private; now they look like PUBLIC OFFERINGS
- No accepted practices or developed case law



Crowdfunding

- Intermediary must register with the SEC as a broker or as a funding portal (final rules need to be adopted)
- No commission to intermediaries
- SEC – “take such measures to reduce the risk of fraud....”
- Waiting for final rules (proposed rules dated October 23, 2013); cannot use yet, cannot sell securities
- Costs of compliance
- Crowdfunding as a new registration exemption (amounts under \$1 million in any 12 months)



Insurance

- Fraud insurance
- D&O insurance (Review Directors coverage and entity coverage)
- Entity coverage
- Meaningful amounts
- Government investigations coverage
- Need monies to defend yourself; insurance is one of the safest ways to insure you can mount a defense
- Government is unlikely to be able to seize monies from the insurance policies that are paying defense fees



Forfeiture Laws – Government Power

- Friday, January 16, 2015
- The Washington Post – “Equitable Sharing”
- “[attorney general] ... on Friday barred local and state police from using federal law to seize cash, cars and other property without warrants or criminal charges.”
- Three-decade war over drugs BUT NOT just “drugs” – Forfeiture Laws
- Since 2008, 55,000 seizures – over \$3 billion

Forfeiture Laws

Unsecured note





Forfeiture Laws

- Forfeiture is an affront to property rights
- 5th Amendment – due process
- AUSA example of seizures:
 - *SoMoLend Holdings v. State of Ohio Division of Securities*;
YouTube crowdfunding example



Forfeiture Laws

- In general, can seize with a warrant or criminal charges, and joint Federal task forces
- Do not agree to a warrantless search
- CALL your attorneys



Whistleblowers

- SEC Office of the Whistleblower
- What does this mean?
- Turn your employees against the employer
- Very difficult to fire them
- States and other agencies have other similar laws (e.g., IRS)



SEC Division of Enforcement

- Created August 1972
- Apply for Whistleblower awards
- Confidentiality protection
- Office of the Whistleblower
- Cash awards 10-30% of monies collected
- No retaliation allowed
- Created by Congress on July 21, 2010, in Section 922 of the Dodd-Frank Act; final rules August 12, 2011



SEC 2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program

- A Whistleblower got \$30 million, largest ever
- Corrective actions important to do
- First action under anti-retaliation provision (\$2.2 million to settle)
- 3,620 Whistleblower tips (20% increase in two years)
- 40% who received awards were current or former employees; 20% contractors or consultants
- 80% of such employees raised concerns internally first



SEC Current Proceeding

- Going after a scheme regarding 20 mining companies
- Also litigated administrative proceeding against the outside counsel and the audit firm
- Violations of Rule 2-02(b)(1) of Regulation S-X and improper professional conduct under Rule 102(e) of the Commission's Rules of Practice



Sale of Securities

- Section 4(a)(2), formerly 4(2) – (private deal)
- Regulation D safe harbor
- Form D



SEC Chair Mary Jo White

- More admissions of guilt; a change in the agency's controversial no-admit, no-deny policy (2013; see Chair White's address at SEC Speaks 2014, February 21, 2014)
- Focus:
 - Where large numbers of investors harmed
 - Markets or investors were placed at significant risk
 - To send an important message

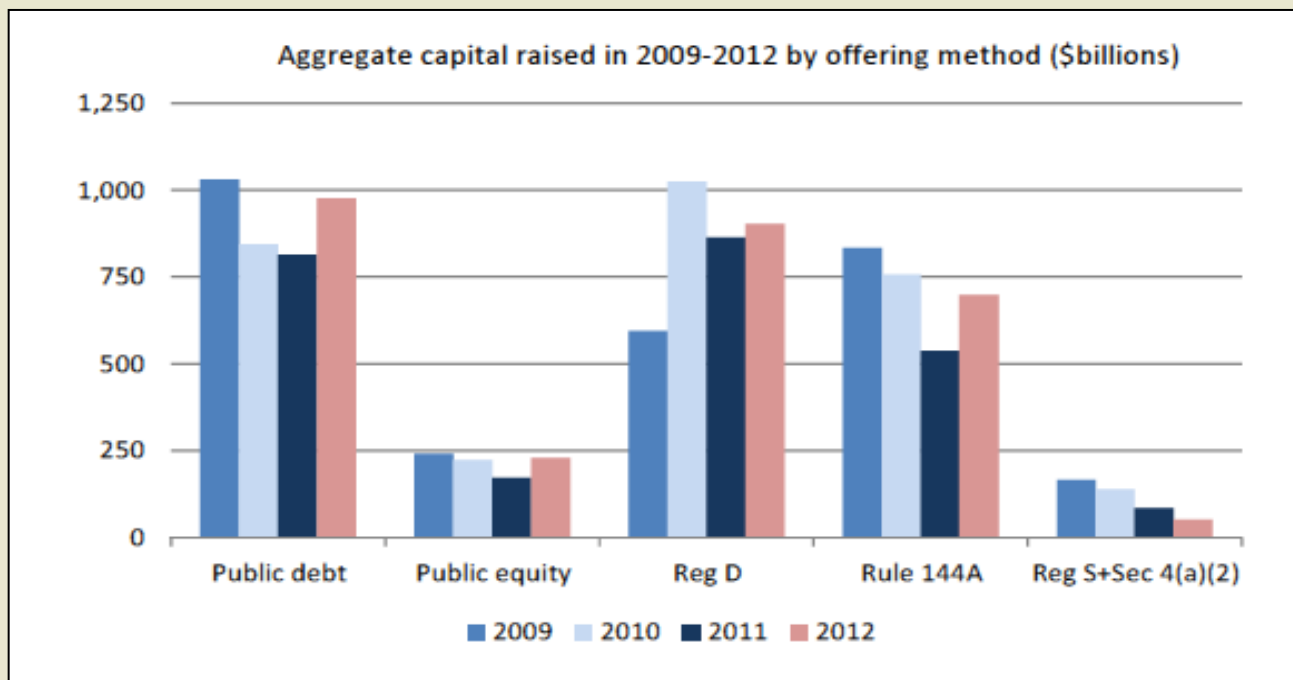


SEC's Division of Enforcement Report for Fiscal Year Ended September 30, 2014

- Largest number of enforcement actions – 755
- Largest total value of monetary sanctions awarded – over \$4 billion
- Largest number of cases in recent history taken to trial – 30
- Steady stream of admission of guilt via settlements
- Expanding number of Administrative Proceedings
- A new Financial Reporting and Audit Task Force

Regulation D Offerings in the Capital Markets

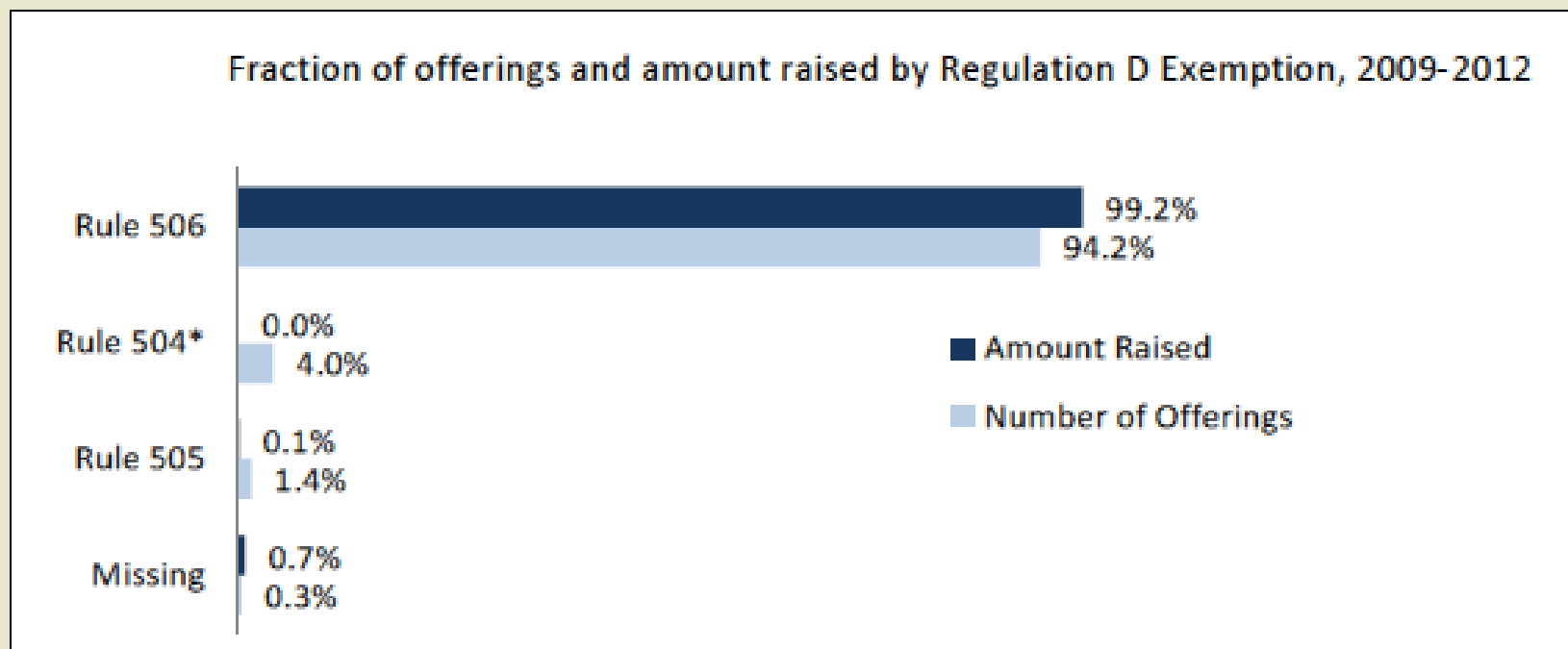
Aggregate capital raised through Regulation D offerings is large compared to other modes of raising capital (save for 2009 – generally between \$750 billion and \$1 trillion)



Source: July 2013 Study by SEC Division of Economic and Risk Analysis

Prevalence of Rule 506

Rule 506 offerings account for more than 99% of the reported capital raised through Regulation D offerings since 2009



Source: July 2013 Study by SEC Division of Economic and Risk Analysis

Documenting a Rule 506 Offering Form D & Blue Sky Notice Filings

**FILE WITH SEC WITHIN 15 DAYS OF DATE OF FIRST SALE, &
THEN NOTICE FILE WITH STATE WHERE INVESTOR RESIDES**

FORM D		U.S. Securities and Exchange Commission		OMB APPROVAL	
Notice of Exempt Offering of Securities		Washington, DC 20549		OMB Number: 3235-0076	
		(See instructions beginning on page 5)		Expires: September 30, 2016	
		Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.		Estimated average burden hours per response: 4.00	
Item 1. Issuer's Identity					
Name of Issuer		Previous Name(s) <input type="checkbox"/> None		Entity Type (Select one)	
Jurisdiction of Incorporation/Organization				<input type="checkbox"/> Corporation	
Year of Incorporation/Organization (Select one)				<input type="checkbox"/> Limited Partnership	
<input type="radio"/> Over Five Years Ago <input type="radio"/> Within Last Five Years (specify year) <input type="radio"/> Yet to Be Formed				<input type="checkbox"/> Limited Liability Company	
				<input type="checkbox"/> General Partnership	
				<input type="checkbox"/> Business Trust	
				<input type="checkbox"/> Other (Specify)	
<i>(If more than one issuer is filing this notice, check this box <input type="checkbox"/> and identify additional issuer(s) by attaching Items 1 and 2 Continuation Page(s).)</i>					
Item 2. Principal Place of Business and Contact Information					
Street Address 1		Street Address 2			
City		State/Province/Country		ZIP/Postal Code	
				Phone No.	
Item 3. Related Persons					
Last Name		First Name		Middle Name	
Street Address 1		Street Address 2			
City		State/Province/Country		ZIP/Postal Code	
Relationship(s): <input type="checkbox"/> Executive Officer <input type="checkbox"/> Director <input type="checkbox"/> Promoter					
Clarification of Response (if Necessary)					
<i>(Identify additional related persons by checking this box <input type="checkbox"/> and attaching Item 3 Continuation Page(s).)</i>					
Item 4. Industry Group (Select one)					
<input type="radio"/> Agriculture		<input type="radio"/> Business Services		<input type="radio"/> Construction	
<input type="radio"/> Banking and Financial Services		<input type="radio"/> Energy		<input type="radio"/> REITS & Finance	
<input type="radio"/> Commercial Banking		<input type="radio"/> Electric Utilities		<input type="radio"/> Real Estate	



SECURITIES DIVISION

SEP 23 2013

MISSOURI
SECRETARY OF STATE

Gregory M. Mennerick
314-552-6542
FAX 314-552-7542
EMAIL gmennerick@thompsoncoburn.com

September 20, 2013

Office of the Missouri Secretary of State
Securities Division
600 West Main Street
Jefferson City, MO 65101-1276

Re: UniGroup, Inc.

ACKNOWLEDGEMENT COPY

Dear Sir or Madam:

On behalf of our client, UniGroup, Inc., a Missouri corporation (the "Company"), in connection with the offering by the Company of its Class A and Class B Common Stock, pursuant to 15 CSR 30-54.210(3) and Rule 506 under Regulation D of the Securities Act of 1933, as amended, we are pleased to enclose: (a) an executed Form D of the Company as filed with the Securities and Exchange Commission; and (b) the \$100 filing fee.

The first sale of securities in Missouri occurred on September 6, 2013.

Kindly acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy of this letter and returning it in the enclosed, self-addressed stamped envelope.

If you have any questions with respect to the enclosed, or require any additional documentation, please feel free to contact me at (314) 552-6542.

Very truly yours,

Thompson Coburn LLP

- (1) Complete & electronically submit notarized Form ID (with POA from client attached). **SEC TAKES 24 HOURS TO PROCESS.**
- (2) Generate Edgar access codes obtained from email from SEC.
- (3) Complete & file Form D electronically through Edgar.
- (4) Prepare and send applicable Blue Sky notice filings with acknowledgment copies for the states to return.





Documenting a Rule 506 Offering Blue Sky Notice Filings Made Easier?

December 15, 2014

North American Securities Administrators Association (NASAA) launched an electronic database that enables issuers to electronically submit state Form D notice filings and related fees for Rule 506 offerings (called Electronic Filing Depository (EFD) System)

As of December 16, 2014, 37 states, D.C., Puerto Rico and the US Virgin Islands agreed to participate

State	Participating in EFD (Yes/NO)
California	NO
District of Columbia	YES
Illinois	YES
Missouri	YES
New York	NO (Form 99)



Form D

- File electronically
- Certification and Service of Process
 - “...knows the content to be true ...”
- Exemptions claimed



Bad Actor

- Rule 506(d) and 506(e)
 - Felons and other bad actors involved in purchase or sale of securities cannot be involved but may be subject to time periods
 - Such as SEC cease-and-desist orders, securities-related crimes after September 23, 2013; you can seek a waiver from the SEC
 - Document and verify no bad actors involved; do some background checks



Rule 144A

- 2012 amendment allows brokers or dealers to offer securities to non-qualified institutional buyers (QIBs) but sales to only QIBs (reasonable belief)
- The Rule 144A provides liquidity for unregistered securities among QIBs

**Anyone see this as a material impact?
Easier compliance.**



Paying Commission

- SEC is cracking down
- Finder Agreements are being attacked
- SEC going after managers of private equity funds for commissions
- US polices all US securities regardless of where the securities are sold



SEC Winning Streak

- Criticism mounts – SEC using Administrative Law Forum (“in-house”)
- From October 2013 and forward, the SEC has won 100% of the 219 decisions (*Source: The National Law Journal, January 19, 2015*)



Final Thoughts

- Complexities are growing
- Keep good records
- Raising small amounts can be dangerous because of complaints
- Stick with AIs for private deals
- Short cutting will cost you

Do it right!



Thank you

Michael de León Hawthorne

Thompson Coburn LLP

mhawthorne@thompsoncoburn.com

202.585.6936