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# JOBS Act would allow funds to market offerings to a much larger audience and to a greater degree than ever before

By Precy Dumlao, Opalesque Asia:
The Jumpstart Our Business Startups (JOBS) Act , which was signed into law by President Barack Obama last week, could provide some welcome relief for the alternative investment industry, both in how funds are marketed and in a potential increase in the investor base, according to Phil Niles, Director of Product Development at fund administration firm Butterfield Fulcrum.

Niles says in a release received by Opalesque, that one of the areas that potentially would be impacted relates to the marketing of alternative investment vehicles.

"The JOBS Act, which is currently working its way through a second vote in the House of Representatives, is set to eliminate the ban on marketing private placements, which would include hedge funds and private equity funds. A signature from President Obama, officially signing it into law, could come as early as April 2012 and the President has already indicated he would sign such legislation if it came to his desk."

On April 8, Obama signed into law the JOBS Act which aims to ease the restriction on access to investment capital for "Emerging Growth Companies" (EGCs), which are defined as firms that have completed their initial public offering after December 8, 2011, and that has less than $1bn in total revenue.

The JOBS Act's also aims to raise job creation and economic growth by improving access to public capital markets for emerging growth companies. The new law also relaxes the disclosure requirements for certain companies going public, provides alternative ways for private companies to raise capital and allows some companies to stay private longer.

Under the current legislation, says the Butterfield Fulcrum report, funds rely on Rule 506 to exempt their securities from registration and either Section 3(c)(1) or Section 3(c)(7) to exempt themselves from registration. However, these edicts also restrict a public offering and, in order to avoid breaching these rules, an issuer is required to have a pre-existing relationship with any prospective investors. In addition, the issuer also needs to have reason to rationally believe the investor meets the qualification standards of an accredited or sophisticated investor.

Niles explains that funds would now be able to market their offerings to a substantially larger audience and to a far greater degree than ever before. "This relaxation of the general solicitation rules will greatly shift how funds are marketing to investors."

The passing of the JOBS Act quickly drew positive responses from the hedge fund industry as it sees the new law to improve the marketability of the sector. Tripp Kyle, a partner at the public relations firm Brunswick Group, which works with some of the largest investment firms in the world commented, ""It's a dramatic change from where the industry is. I think it presents a real opportunity for firms to evolve their mind-set from what they can't do to what they can and perhaps should be doing."

The Hedge Fund Association also voiced its support for the new law.

"This is an action whose time has come," said Mitch Ackles, president of the HFA. "Now that many hedge fund managers are required to register with the SEC, the strongest reason for the ban on hedge fund advertising has been removed. Second, information about hedge funds is ubiquitous because of the internet, websites and the media."

It is expected that hedge funds will be allowed to advertise in the U.S. shortly after the SEC adopts final rules, which is expected to occur within 90 days of the signing of the JOBS Act. However, hedge funds will still be restricted to selling their securities to accredited investors such as individuals with a minimum $1m net worth and qualified institutional investors (companies that manage a minimum $100m in assets).

Butterfield Fulcrum’s Niles adds that another area of note is the increase in the number of "holders of record" in private funds. Currently, funds rely on Section 3(c)(7) of the Investment Company Act of 1940 to exempt themselves from registration, but this section also limits the number of holders in the fund to 499.

"Clearly, with the meteoric rise in the popularity of alternative investments, this limitation has become difficult for many funds, especially ones with large investor bases comprised of high net worth individuals," he notes. "The JOBS Act will raise this threshold to 1,999 holders of record, quadrupling the potential investor base for a 3(c)(7) fund