



Status Report on The JOBS Act.... The likely beneficiaries

"There is a lot of uncertainty on how to take advantage of the rule change between proposed rules that haven't been settled yet and the lack of CFTC harmonization rules, so a lot of managers are taking a wait-and-see attitude," says the Managed Funds Association's Steve Hinkson. "One of the issues with The JOBS Act [The Jumpstart Our Business Startups Act of 2012] is the CFTC hasn't harmonized its rule with what the SEC has done."



Holly Singer

"The CFTC and SEC are out of synch. Managers that are CFTC-registered have no advantage with The JOBS Act passage. Until those two regulatory bodies harmonize, they are totally out of synch now," says Holly Singer, founder and president of HS Marketing.

Tim Selby, the head of the investment management practice at Alston & Bird, says the CFTC hasn't even talked or indicated they are going to resolve the issue. "You can't comply with both. To that extent, commodity funds can't take advantage of The JOBS Act unless the CFTC amends their rules...Funds of funds that trade in commodities won't be able to engage in general solicitation or advertising to the extent they are relying on CFTC exemption."

Other issues relate to compliance and submission of marketing materials 15 days before a manager can begin marketing of that fund. Not a lot of funds will take advantage of The JOBS Act until these issues are resolved, says Steve Bruce, managing partner at ASC Advisors.

Singer says The JOBS Act does not provide any latitude for smaller managers who are unable to register because of their size. "For managers that are less than \$150 million, which realistically includes a lot of managers, The JOBS Act is absolutely meaningless to them."

"The JOBS Act is not a panacea and not the game changer it should be. In theory, it is a game changer. The reality is that SEC has loaded up so much baggage and strings attached to comply with The JOBS Act - more reporting.

Upcoming Morning Seminar

January 21, 2014

Fixed Income Challenges/Opportunities:

After a 31-year run-up in interest rates, where do we go from here?

The panel will discuss challenges and opportunities in various approaches and the implications they have for hedge funds.

Speakers:

Jeanne Shen, The GVI Alliance
Jordan Allen, Victory Park
Capital Advisors
Mark Walker, Crestline
Others to be announced

more compliance, a lot more record retention and filing of marketing activities collateral - that many managers are dissuaded from investing time, energy and legal and compliance costs to take advantage of that. Managers are so overburdened with compliance costs - their marketing opportunities are being choked," observes Singer.

Timing

Timing is the big question. "People are waiting to see if there are going to be technical fixes. The Managed Funds Association has submitted suggestions for several rule changes as well as petitioned the CFTC to move forward on homogenization, says Bruce. "There are other hurdles that are incorporated into the actual revisions to Reg D. People are actively questioning whether it is this worth their effort."

The comment period closed at the end of November for the newly proposed rules. Hinkson says there have been many comments back on the proposal. The rules will be finalized in 2014. "We're a few months in and there hasn't been a clamoring to begin advertising. Some people are extremely interested but until we get homogenization and over some critical technical hurdles, it will be hard for someone to be the first to jump into the pool," Bruce adds.

Beneficiaries

Views differ on who the biggest beneficiaries of The JOBS Act could be. Hinkson says the bigger funds will use general solicitation rules for branding or improving their website but they are not going to engage until they are absolutely certain of the legal way to do it.

Bruce feels the biggest beneficiaries of The JOBS Act could be funds of funds. "They have investment ideas and capacity with the right managers to execute those strategies. For them, it is all about the idea of creating new solutions for their clients - they are creating emerging manager programs as well as all types of specialized strategies around a set of opportunities. There will be more specialized products in addition to their flagship funds. We are headed toward more customized solutions, more separately managed accounts, and higher levels of transparency."

Singer takes a different view. She feels The JOBS Act is more critical to niche fund managers than funds of funds. "Most funds of funds are already registered investment advisors. Many are already a broker-dealer or broker-dealer affiliate. In general, The JOBS Act allows the manager to speak more transparently to the press and in public. Instead of generically describing what he does, the manager can specify product and performance on a more granular level. That's very different than not being able to candidly describe what you do. The JOBS Act opens the door to more transparent communication."