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# The JOBS Act Won't Affect Due Diligence - Or At Least It Shouldn't...

There has been a great deal of fanfare about the enactment of the Jumpstart Our Business Startups (JOBS) Act. Some say it will be a great boon in terms of asset inflows for the hedge fund industry. On the other hand, some critics may argue that such marketing will have little to no impact, and may even set a dangerous precedent for hedge fund managers to shift their focus away from their current investors and instead focus more heavily on marketing. Regardless, of the pros and cons of the JOBS Act it will shortly become the new norm for the hedge fund industry.

So what effect will the JOBS Act have on investors approach toward operational due diligence? The answer should be none.

*Where Marketing Ends and Due Diligence Begins*

From the investor's perspective regardless of how they find a hedge fund, the operational due diligence process should be the same. For example, let's assume that prior to the JOBS Act an investor may have found a particular hedge fund through an investment consultant. Now in the new post-JOBS Act regime this investor sees an ad in a magazine and goes to that fund directly without the consultant. From the investor's perspective regardless of how they come to meet a hedge fund manager, after they show interest in a manager this is where marketing should stop and operational due diligence should begin.

Investors should be very conscious of this fact. A hedge fund with more room to operate may, within the bounds of the JOBS Act, seek to extend these more aggressive marketing efforts into the investment and operational due diligence processes as well. How would this work you may ask? Consider an investor who goes directly to a hedge fund managers website and after answering a few questions, is provided with a flurry of materials some of which may make claims regarding the hedge fund's operations.

While document review is certainly a crucial part of the operational due diligence process - the source of the documents is key. If an investor relies primarily manager provided marketing materials which only highlight manager strengths this is a problem. Investors should be conscious of not only the source of documents but now, under the JOBS Act, investor's must also consider the ever increasingly gray area between marketing puffery and actual operational due diligence information.

*Bigger Net, Smaller Fish*

The JOBS Act will unshackle the hedge fund industry from previously strict marketing regulations. These include the ability to more actively market their funds to investors via previously frowned upon avenues such as more elaborate corporate websites and even advertisements. When a broader, more aggressive marketing net is cast, smaller investors will likely show interest. These smaller investors may not be knowledgeable about fund operations or be equipped to perform operational due diligence.

*Institutional Investors Should Also Be Skeptical*

Such concerns are not merely limited to smaller investors. Even more sophisticated investors and increasingly resource constrained investors run the risk of relying too heavily on manager prepared marketing materials describing fund operations. Marketing materials should not be viewed as a replacement to the benefits of a comprehensive and thorough fund due diligence process.

*Conclusion*

The JOBS Act may be a positive overall development for the hedge fund industry, particularly for hedge fund managers. Investors however, need to remain cautious of the ever increasingly blurry line between the fund raising and due diligence processes. By not succumbing to the temptation of replacing marketing claims with actual fundamental operational due diligence, investors will be able to tell if a hedge fund's operations hold up to any new marketing hype.

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