

Investment Management

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SEC Clarifies Accredited Investor Verification for Rule 506(c) Offerings

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On March 12, 2025, the Securities and Exchange Commission (SEC) issued a no-action letter (No-Action Letter) to clarify the verification process for accredited investors under Rule 506(c).¹

Background

The Securities Act of 1933, as amended (Securities Act), requires that any offer or sale of securities in the United States must either be registered with the SEC or qualify for an exemption to registration thereunder. Regulation D of the Securities Act provides several such exemptions for issuers of securities. Rule 506(b)² under Regulation D allows for an exemption from registration if there is no general solicitation with respect to the offering and if, among other things, there are 35 or fewer nonaccredited but financially sophisticated investors.³ Rule 506(b) also allows an issuer to accept an unlimited number of accredited investors⁴ without independent verification of accredited investor status so long as the issuer has a preexisting substantive relationship with the investors.⁵ Additionally, Rule 506(c)⁶ of Regulation D provides an exemption that permits general solicitation with respect to the offering by the issuer but requires that the issuer take reasonable steps to verify that all investors are accredited investors.

To verify an investor's accredited status under Rule 506(c), issuers can follow a nonexclusive and nonmandatory list of methods that are set forth and further detailed in Rule 506(c). These reasonable steps include:

- Reviewing the investor's income through any IRS form for the two most recent years and obtaining a written representation from the investor that they have a reasonable expectation of reaching the income level needed to be an accredited investor
- Reviewing the investor's net worth from the prior three months through financial statements and a consumer report and obtaining a written representation from the investor that all assets and liabilities relevant to determining net worth have been disclosed
- Obtaining written confirmation from a registered broker-dealer, investment advisor, licensed lawyer, or certified public accountant that the investor is accredited
- Using any other reasonable method based on the specific facts and circumstances⁷

The Incoming Letter

The party seeking SEC guidance was looking for clarity on whether the following steps would be sufficient to verify accredited investor status for purposes of relying on Rule 506(c): (a) obtaining written representations that (i) the purchaser is an accredited investor, and (ii) the purchaser's minimum investment amount is not financed in whole or in part by any third party for the purpose of making the investment in the issuer; (b) requiring minimum investment amounts of \$200,000 from individual investors and \$1 million from legal entities; and (c) ensuring the issuer has no actual knowledge of any facts indicating that an investor is not accredited or that the investment amount was financed in whole or in part by any third party for the specific purpose of making that particular investment.⁸

The No-Action Letter

The SEC confirmed that although each analysis of whether reasonable verification steps were taken is based on particular facts and circumstances, it would agree that an issuer could reasonably conclude that it took reasonable steps to verify an accredited investor's status if (a) an individual purchaser invests a minimum of \$200,000 or a legal entity invests a minimum of \$1 million, and (b) the investor provides written representations that (i) the investor is an accredited investor, (ii) the investment is not financed in whole or in part by a third party for the specific purpose of making that investment, and (iii) the issuer has no actual knowledge of any facts indicating that the investor is not accredited or that the investment amount was financed in whole or in part by any third party for the specific purpose of making that particular investment.⁹

For an entity investor that qualifies as accredited based on its beneficial owners, the investor must also make representations that (a) each of its equity owners is an accredited investor, (b) the investment by each of its equity owners meets the minimum subscription amount of \$200,000 for individuals or \$1 million for legal entities, and (c) the minimum investment amount made by each of its equity owners to the investor was not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.

The No-Action Letter did not explicitly address the incoming letter's request for confirmation that a purchaser is not precluded from representing that they did not receive financing from a third party for their investment even if they obtained their investment from financing programs, binding financing that predates the commencement of the 506(c) offering, and/or financing where the purchaser, as an issuer, satisfied the conditions applicable to the issuer.

Takeaways

This No-Action Letter provides issuers with an additional tool to potentially admit investors under Rule 506(c). However, it should be noted that the No-Action Letter has no legal force or effect and is based on the exact set of facts and circumstances described therein. Nevertheless, the No-Action Letter provides some potential next steps to verify accredited investor status, in addition to previous accepted reasonable verification steps for issuers planning to rely on Rule 506(c):

- Ensure each investor makes an accredited investor representation.
- Ensure each investor makes a representation that its investment was not financed in whole or in part by a third party for the specific purpose of making that investment.
- Ensure each investor invests a minimum subscription amount of \$200,000 for individuals or \$1 million for legal entities.

Note that it remains an open question as to whether fund documents that typically allow issuers to waive or reduce minimum commitment amounts must refrain from having that flexibility in the offering documents entirely or if the issuer can keep that flexibility in the documents but ensure relevant investors invest more than the minimum (if the issuer is trying to rely on this No-Action Letter with respect to such investor).

- Ensure that for an entity investor that qualifies as accredited based on its beneficial owners, the investor makes representations that (i) each of its equity owners is also an accredited investor, (ii) the investment by each of its equity owners meets the minimum subscription amount of \$200,000 for individuals or \$1 million for legal entities, and (iii) the minimum investment amount made by each of its equity owners to the investor was not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.

Notwithstanding any of these listed representations, if the issuer has actual knowledge that the investor is not accredited or that the minimum investment amount of the investor is financed in whole or in part by a third party for the specific purpose of making the particular investment, the issuer cannot rely on this No-Action Letter with respect to such investor.

Next Steps

For further information, guidance, and clarity on how advisors can approach and tailor their investor questionnaires and/or subscription documents to help verify accredited investor status for a Rule 506(c) offering, please reach out to the authors of this article or your regular Lowenstein Sandler contact directly.

¹ [SEC.gov | No Action Letter](#).

² 17 C.F.R. § 230.506(b).

³ See *id.*

⁴ An accredited investor is defined as a purchaser that meets specific criteria of income, net worth, asset size, governance status, or professional experience. See 17 C.F.R. § 230.501(a).

⁵ See SEC Question 256.28, [SEC.gov | Securities Act Rules](#).

⁶ See 17 C.F.R. § 230.501(c).

⁷ *Id.* at 230.506(c)(2)(ii).

⁸ [506c-031225-incoming.pdf](#).

⁹ [SEC.gov | No Action Letter](#).

Contacts

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