

## SEC Relaxes the Burden of Accredited Investor Verification in Rule 506(c) Offerings with Minimum Investment Thresholds

The Securities Act of 1933 (the “Securities Act”)<sup>1</sup> and its implementing regulations<sup>2</sup>, which govern the issuance of securities in the United States, contain several exemptions and safe harbors from the public registration requirement that is the centerpiece of the Securities Act. For private funds and growing startups, an exemption from the Securities Act’s registration requirement is a prerequisite to taking on investment, and most rely on a permutation of the private placement exemption set forth in the Securities Act and in Regulation D<sup>3</sup>. Despite the near ubiquity of reliance on these exemptions, many issuers are either unfamiliar with the fact specific requirements of Regulation D or are intimidated by the intricacies of the regulation, specifically with regard to Regulation D’s “accredited investor” requirements.

Fortunately, the United States Securities and Exchange Commission (the “SEC”), which administers the Securities Act, recently issued guidance intended to clarify and in some cases relax the obligations of issuers to verify the accredited investor status of participants in an issuance under Regulation D’s Rule 506(c).

**In Short:** If you (as an issuer of securities in a Rule 506(c) issuance) set a minimum investment threshold of \$200,000 for individuals or \$1,000,000 for legal entities, you will meet your burden to verify accredited investor status if:

- You require investors to sign a written statement confirming that they are accredited investors and citing the applicable basis under Rule 506 supporting their accredited investor status;
- You require investors to sign a written statement confirming that they are not borrowing money to make their investment; and
- You do not have any knowledge or information that contradicts the investors’ written representations.

### Rule 506(c) Exemption

Rule 506(c) of Regulation D creates a safe harbor under the Securities Act’s private placement exemption which clarifies that issuances of securities made in accordance with its provisions will not be deemed public offerings subject to registration. Significantly, and unlike Rule 506(b) of Regulation D (which provides a separate safe harbor for securities offerings), Rule 506(c) allows issuers to make general advertisements or solicitations for investment as a part of an issuance without that issuance being deemed a public offering subject to registration.<sup>4</sup> The ability to make general solicitations for investment can be a significant benefit for startups or funds that do not have existing relationships with a wide base of potential equity investors. However, this benefit is counter-balanced by the requirement that all investors in a 506(c) offering be “accredited investors”,<sup>5</sup> meaning that all investors must meet the detailed sophistication, experience, and capital requirements described in Regulation D.<sup>6</sup> In addition, while issuers in a 506(b)

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<sup>1</sup> See 15 U.S.C. §§ 77a *et seq.* (2025).

<sup>2</sup> See 17 C.F.R. §§ 230.100 *et seq.* (2025).

<sup>3</sup> See 17 C.F.R. §§ 230.500–230.508 (2025).

<sup>4</sup> See 17 C.F.R. § 230.502(c) (2025).

<sup>5</sup> See 17 C.F.R. § 230.506(c)(2)(i) (2025).

<sup>6</sup> See 17 C.F.R. § 230.501(a) (2025).

offering may rely on their investors' representations that they meet accredited investor requirements, issuers in Rule 506(c) offerings must take additional steps to verify the accredited investor status of their investors.

Specifically, Rule 506(c) requires that issuers take "reasonable steps" to verify that purchasers of securities are accredited investors, which can include any of the following:<sup>7</sup>

- With regard to whether the purchaser is an accredited investor on the basis of income, reviewing any IRS form that reports the purchaser's income for the two most recent years (including, but not limited to, Form W-2, Form 1099, Schedule K-1 to Form 1065, and Form 1040) and obtaining a written representation from the purchaser that he or she has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year;
- With regard to whether the purchaser is an accredited investor on the basis of net worth, reviewing one or more of the following types of documentation dated within the prior three months and obtaining a written representation from the purchaser that all liabilities necessary to make a determination of net worth have been disclosed:
  - With regard to assets: bank statements, brokerage statements, and other statements of securities holdings, certificates of deposit, tax assessments, and appraisal reports issued by independent third parties;
  - With regard to liabilities: a consumer report from at least one of the nationwide consumer reporting agencies;
- Obtaining a written confirmation from one of the following persons or entities listed below that such person has taken reasonable steps to verify that the purchaser is an accredited investor within the prior three (3) months and has determined that such person is an accredited investor:
  - A registered broker-dealer;
  - An investment adviser registered with the SEC;
  - A licensed attorney who is in good standing under the laws of the jurisdiction in which he or she is admitted to practice law; or
  - A certified public accountant who is duly registered and in good standing under the laws of the place of his or her residence or principal office;
- With regard to a purchaser that the issuer previously took reasonable steps to verify as an accredited investor in a prior 506(c) offering, so long as the issuer is not aware of information to the contrary, obtaining a written representation from such person at the time of the offering sale that her or she qualifies as an accredited investor. A written representation under this method of verification will satisfy the issuer's obligation to verify the person's accredited investor status for a period of five years from the date the person was previously verified as an accredited investor.

Note that issuers in a 506(c) offering are not required to use any of the specific methods described above, but they instead serve as non-exclusive examples of methods that satisfy Rule 506(c)'s verification requirements depending on the facts and circumstances of the issuance. Additionally, regardless of the method or methods of verification used, the issuer must not have actual knowledge that an investor is not accredited, and no investor may be a "bad actor" as described in Regulation D's bad actor disqualification rules.<sup>8</sup>

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<sup>7</sup> See 17 C.F.R. §§ 230.506(c)(2)(ii)(A)–(E) (2025).

<sup>8</sup> See 17 C.F.R. § 230.506(c)(2)(ii), § 230.506(d) (2025).

## New Guidance on Rule 506(c) Accredited Investor Verification

While Rule 506(c)'s verification requirements are intended to be flexible to allow issuers to choose reasonable and appropriate verification methods based on the facts and circumstances of the issuance, this flexibility has resulted in considerable uncertainty as to what methods of verification are sufficient. In addition, the examples of verification methods described above (especially verification provided by CPAs, attorneys, and other licensed professionals) can impose high costs on startups and other early-stage issuers at a time when funds are not readily available.

However, on March 12, 2025, the SEC issued a No Action Letter offering an additional low-cost example of sufficient accredited investor verification.<sup>9</sup> Specifically, the SEC has stated that Rule 506(c)'s reasonable accredited investor verification requirements are met if the issuer (i) requires minimum investment amounts of at least \$200,000 for natural persons and at least \$1,000,000 for legal entities; (ii) obtains written representations from each purchaser in a 506(c) offering that (A) the purchaser is an accredited investor, and (B) the purchaser's minimum investment amount is not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; and (iii) has no actual knowledge of any facts that indicate that the purchaser's written representations described above are inaccurate.

The SEC's interpretive guidance is supported by the reality that high minimum investment thresholds increase the likelihood that investors are accredited. The SEC stated in its guidance that "if the terms of the offering require a high minimum investment amount and a purchaser is able to meet those terms, then the likelihood of that purchaser satisfying the definition of accredited investor may be sufficiently high such that, absent any facts that indicate the purchaser is not an accredited investor, it may be reasonable for the issuer to take fewer steps to verify or, in certain cases, no additional steps to verify accredited investor status other than to confirm that the purchaser's cash investment is not being financed by a third party."<sup>10</sup>

The required written representations to be provided by purchasers in a Rule 506(c) offering described above can be contained in a standalone document, in a subscription agreement for the offering, in an affirmative written electronic communication from the purchaser, or in any other written means as the issuer shall reasonably determined under the circumstances of the offering.<sup>11</sup> The written representations should state not only that the purchaser is an accredited investor but also the provision of Regulation D pursuant to which the purchaser meets accredited investor status. For example, a natural person (*i.e.*, an individual and not a corporation, association, limited liability company, limited partnership, or other entity) should represent in writing that he or she is an accredited investor as defined in Rule 501(a)(5) or Rule 501(a)(6).<sup>12</sup> In addition, the written representations must include a statement that the purchaser's minimum investment amount (at least \$200,000 for natural persons and \$1,000,000 for legal entities) is not financed

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<sup>9</sup> See SEC AND EXCH. COMM'N, *No Action Letter: Latham & Watkins* (Mar. 12, 2025), <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225>.

<sup>10</sup> See *id.* (quoting Securities Act Release No. 9415 (July 10, 2013)).

<sup>11</sup> See Latham & Watkins LLP, *Request for Rule 506(c) Interpretive Guidance* at \*2, N. 3. (Incoming letter dated Mar. 6, 2025), <https://www.sec.gov/files/corpfin/no-action/latham-watkins506c-031225-incoming.pdf>.

<sup>12</sup> See *id.* at \*3.

in whole or in part by any third party for the specific purpose of enabling the purchaser to make the investment in the issuer.

## **Conclusion**

Rule 506(c)'s accredited investor verification requirements have historically been a barrier for growing startups and private funds, many of whom elect to forego the benefits of 506(c) general solicitation and rely instead on Rule 506(b)'s more restrictive safe harbor. However, the SEC's recent guidance relaxes the verification requirements for issuers that can court investors at higher minimum thresholds and opens the door for these issuers to seek funding beyond their established investor network.