

SEC Staff Guidance Eases Sponsor Verification of “Accredited Investor” Status for Regulation D 506(c) Offerings

The staff at the Securities and Exchange Commission (SEC) issued a [No Action Letter](#) (the “**Staff Guidance**”),¹ providing that a potential investor’s ample minimum investment, coupled with self-certification of “accredited investor” status under Regulation D, allows a private fund or other issuer seeking to rely on Rule 506(c)² to conclude that it has taken “reasonable steps” to verify the potential investor is an accredited investor.³ We expect this Staff Guidance, issued on March 12, 2025, to make Rule 506(c), which allows an issuer to sell securities by general solicitation or general advertising, a more attractive option for private funds seeking a private offering safe harbor under the U.S. Securities Act of 1933 (as amended, the “**Securities Act**”).

Background

Since the SEC implemented Rule 506(c) in 2013 pursuant to Congress’s directive in the Jumpstart Our Business Startups Act to facilitate an avenue for advertising of private placements, issuers have been reluctant to avail themselves of the offering exemption outlined by Rule 506(c).⁴

To rely on Rule 506(c) and engage in general solicitations or general advertising, an issuer must:

- ensure all purchasers in the offering are accredited investors;
- take reasonable steps to verify purchasers’ accredited investor status; and
- ensure other conditions of Regulation D (such as filing a Form D with the SEC) are satisfied.

Although the SEC offered a “non-exclusive list” of ways in which an issuer can verify accredited investor status,⁵ the perceived expense and intrusiveness of verification hindered the adoption of Rule 506(c) in the market.⁶

¹ U.S. Securities and Exchange Commission, Division of Corporation Finance, No Action Letter Re: Request for Rule 506(c) Interpretative Guidance (Incoming letter dated March 6, 2025), March 12, 2025 (online at <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225>).

² 17 C.F.R. § 230.506(c).

³ Private funds refers to investment funds that rely on the exemption from registration in Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), including most private equity, venture capital, and other closed-end investment funds.

⁴ The SEC Office of the Advocate for Small Business Capital Formation found that, from July 1, 2023 to June 30, 2024, pooled funds raised \$1.7 trillion under the 506(b) safe harbor—which does not allow general solicitations—significantly outpacing 506(c) fundraising (\$125 billion) despite its permissive approach to broad advertising. See SEC Office of the Advocate for Small Business Capital Formation, Fiscal Year 2024 Annual Report, p. 15, <https://www.sec.gov/files/2024-oasb-annual-report.pdf>.

⁵ 17 C.F.R. § 230.506(c)(2)(ii).

⁶ See, e.g. U.S. Securities and Exchange Commission, Report to Congress: Access to Capital Markets and Liquidity, August 2017 at 39-40, <https://www.sec.gov/files/access-capital-and-market-liquidity-study-dera-2017.pdf> (noting that between the inception of Rule 506(c) in 2013 and December 31, 2016, Rule 506(c) offerings represented just 3% of capital raised in Rule 506 offerings).

Legal Developments

In the recent no-action letter, the Staff Guidance agreed that an issuer “could reasonably conclude that it has taken reasonable steps to verify that purchasers of securities sold in an offering under Rule 506(c) of Regulation D are accredited investors” if:

- the terms of the offering require a minimum investment of \$200,000 for individuals, and \$1,000,000 for legal entities (including pursuant to a binding commitment to invest in the issuer);
- each purchaser makes written representations that (a) it is an accredited investor under Rule 501⁷ and (b) the 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;”⁸ and
- the issuer has no actual knowledge that either of the preceding representations are not correct with respect to any purchaser.

For investors that are legal entities, but only hold accredited investor status through Rule 501(a)(8) (“all of the equity owners are accredited investors”), the issuer must “look through” with respect to minimum investment obligations of investor’s equity owners. The investor’s equity owners should have a minimum investment obligation to the investor of at least \$200,000 for natural persons or \$1,000,000 for legal entities, and the investor’s overall minimum investment obligation to the issuer should be at least \$1,000,000 or \$200,000 for each equity owner (if the Investor’s equity owners are fewer than five natural persons). Similarly, such an investor must represent that the minimum investment amount of each of the purchaser’s equity owners is not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.

Application to Private Funds

The Staff Guidance will likely make Rule 506(c) significantly more “user-friendly” for both fund sponsors and their investors by offering an alternative to seeking non-public financial records or other sensitive information from prospective investors to verify their accredited investor status.

Using Rule 506(c) could, in turn, offer more flexibility to fund sponsors in their public communications. So long as all requirements of Rule 506(c) are satisfied, an issuer may engage in “general solicitation” or “general advertising” in an offering without losing its private offering safe harbor under the Securities Act. In practice, this means that a fund sponsor could raise capital for a private fund in reliance on Rule 506(c) and participate in media interviews or industry events, post on social media, and issue sponsor- or fund-related press releases without having to strictly vet communications to avoid “conditioning the market” for securities of the private fund. Indeed, a sponsor could publicly advertise the offering of private fund interests so long as investors are verified accredited investors and other requirements of Rule 506(c) and the Staff Guidance are satisfied.

⁷ The Staff Guidance specifies that the investor must be an accredited investor under Rule 501(a)(5) or (a)(6) if it is a natural person, or under Rule 501(a)(3), (7), (8), (9) or (12) if it is a legal entity, so the guidance will not apply to certain kinds of accredited investors, including “family clients” of family office and accredited investors qualifying through professional certifications.

⁸ Letter from Latham and Watkins LLP to SEC Division of Corporation Finance, March 6, 2025 (online at <https://www.sec.gov/files/corpfin/no-action/latham-watkins506c-031225-incoming.pdf>).

Given these potential advantages, many private fund sponsors may take another look at Rule 506(c) as an option for marketing to U.S. investors during their next fundraise.

What's Next?

Going forward, private fund sponsors should:

- revisit private offering strategy with fund counsel and consider reliance on Rule 506(c) as an option in light of the Staff Guidance;
- work with fund counsel to modify fund subscription materials to accommodate reliance on Rule 506(c) and the Staff Guidance; and
- consider carefully whether general solicitation under Rule 506(c) for one fund product may create issues for pre-existing or parallel offerings under different private offering rules, including offerings in non-U.S. jurisdictions that may not permit general solicitation.

Choate's team is continuing to monitor developments related to the Staff Guidance. Please do not hesitate to contact us with any questions.

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