

Rule 506(c) Update: SEC Issues No-Action Letter Allowing Self-Certification of Accredited Investor Status in Certain Circumstances

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On March 12, 2025, the staff at the Securities and Exchange Commission (SEC) Division of Corporate Finance issued a no-action letter in response to a request for Rule 506(c) interpretative guidance, agreeing that an issuer could reasonably conclude that it has taken reasonable steps to verify a purchaser's accredited investor status in an offering of securities conducted under Rule 506(c) of Regulation D if the issuer requires purchasers to invest certain minimum investment amounts, when coupled with the purchaser's written representations and certain related conditions as outlined in the incoming letter.

Rule 506(c) of Regulation D permits issuers to broadly solicit and generally advertise an offering of securities, provided that:

- all purchasers in the offering are accredited investors
- the issuer takes “reasonable steps” to verify purchasers’ accredited investor status and
- certain other conditions in Regulation D are satisfied.

Rule 506(c)(2)(ii) sets forth non-exclusive and non-mandatory accredited investor verification methods that, if satisfied, serve as safe harbors for issuers who will be deemed to have satisfied the “reasonable steps” verification requirement. While an issuer that does not satisfy any of the verification safe harbors can still satisfy the reasonable steps requirement using other verification methods, issuers have been hesitant to rely on Rule 506(c) due to the potentially burdensome steps required to claim one of the safe harbors under the rule, such as a review of a purchaser's tax returns, bank and brokerage statements, liability reports obtained from consumer reporting agencies, or certifications by qualified accountants or lawyers, and the uncertainty of whether the SEC would consider alternative verification procedures to satisfy the “reasonable steps” requirement.

The SEC had previously determined that an issuer can use a “high minimum investment amount” as a factor in conducting reasonable verification steps. The latest no-action letter goes much further, effectively approving a specific standard by which an issuer, in

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the absence of contrary knowledge, may rely on representations provided by the purchaser to satisfy the “reasonable steps” requirement.

Specifically, the staff at the SEC state that an issuer could reasonably conclude that it has taken reasonable steps to verify an accredited investor’s status for purposes of Rule 506(c) where:

- a purchaser that is a natural person represents that they are an accredited investor pursuant to Rule 501(a)(5) or (6), they are investing at least \$200,000, and they represent that such minimum investment amount was not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; or
- a purchaser that is an entity represents that it is an accredited investor pursuant to Rule 501(a)(3), (7), (9) or (12), it is investing at least \$1,000,000, and it represents that such minimum investment amount was not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; or
- a purchaser that is an entity represents that it is an accredited investor pursuant to Rule 501(a)(8), it is investing at least \$1,000,000 (or at least \$200,000 per equity owner if it represents that it is owned by fewer than five natural persons), and it represents that all of the equity owners are accredited investors as defined in Rule 501(a)(3), (5), (6), (7), (9) or (12), each of the purchaser’s equity owners has a minimum investment obligation to the purchaser of at least \$200,000 for natural persons and \$1,000,000 for legal entities, and that such minimum investment amounts were not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; and
- in each case, the issuer has no actual knowledge of any facts that indicate that any purchaser is not an accredited investor, or that the minimum investment amount of any purchaser (and, for purchasers that are legal entities accredited solely from the accredited investor status of all of their equity owners, the minimum investment amount of any such equity owner) is 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 may provide a path for issuers to satisfy the “reasonable steps” requirement, without requiring the purchaser to provide anything more beyond a minimum amount of money, and certain representations.

Whether an issuer has taken reasonable steps to verify that a purchaser is an accredited investor is an objective determination by the issuer (or those acting on its behalf), in the context of the particular facts and circumstances of each purchaser and transaction. Issuers should consult with their securities counsel prior to making such a determination.