Now & Next

Securities Alert

April 2, 2025

SEC provides guidance on accredited investor verification in General Solicitation Securities offerings

By John Partigan, Andrew Pearce, and Samantha Lopes

SEC staff no-action letter under Rule 506(c) of Regulation D allows companies to raise capital, without independently verifying the purchaser's accredited investor status.

What's the impact?

- The no-action letter has liberalized the requirements for public marketing of exempt offerings without burdensome investor wealth or income verification requirements.
- Fewer state exemptions are available for Rule 506(c) offerings, and states can impose late filing fees or even consent orders for late filings.

On March 12, 2025, the staff of the Division of Corporation Finance of the US Securities and Exchange Commission (the SEC) issued a no-action letter (the "Letter") clarifying reasonable steps issuers can take to verify purchasers' accredited investor status, as required under Rule 506(c) under Regulation D (Rule 506(c)), a safe harbor promulgated under the US Securities Act of 1933, as amended (the Securities Act). The Letter provides an alternative path for compliance

with Rule 506(c) and provides additional flexibility for offerings in private placements and fund products, which will likely increase the number of private fund sponsors that publicly advertise their private funds (e.g., venture capital funds, private equity funds, etc.) to prospective investors.

The Letter has liberalized the requirements for public marketing of exempt offerings without burdensome investor wealth or income verification requirements if the minimum investment amount is large enough. Issuers will no longer be required to independently verify the purchaser's status as an accredited investor under Rule 506(c) (General Solicitation Offering). Issuers conducting General Solicitation Offerings are required under Rule 506(c)(2)(ii) to "take reasonable steps to verify that purchasers of securities sold in General Solicitation Offerings are accredited investors" by confirming, based on factors other than investor self-certification, that purchasers meet the wealth or income thresholds. In certain circumstances, the Letter reduces the burden placed upon issuers in General Solicitation Offerings to verify that purchasers' wealth or income thresholds are satisfied.

Accredited Investors under Rule 506(c)

Rule 506(c) permits issuers to broadly solicit and generally advertise an offering (including making public statements) without having to register the offering and sale with the SEC, provided that the issuer "takes reasonable steps to verify that purchasers of securities sold in any offering are accredited investors" and satisfies the other conditions of Regulation D.

The rule includes a non-exclusive safe harbor, pursuant to which an issuer will be deemed to have taken reasonable steps to verify if it uses certain specified methods that generally require the review of additional investor documentation or obtaining supplemental written confirmations from an investor's external advisers. While some issuers have been willing to undertake these additional steps (or hired third parties for these purposes), these requirements are generally understood to have had a chilling effect on the more widespread adoption of and reliance on Rule 506(c).

New Steps to Verify Accredited Investor Status

The Letter states that, based on the following, 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) are accredited investors.

HIGH MINIMUM INVESTMENT AMOUNTS AND WRITTEN REPRESENTATIONS

If a purchaser meets the high minimum investment threshold, it may be reasonable for the issuer to take fewer steps to verify the purchaser's accredited status, provided there are no facts indicating otherwise.

- For natural persons—the issuer should require a minimum investment of at least $200,000 and obtain written representations that the purchaser is an accredited investor and that the minimum investment amount is not financed, in whole or in part, by a third party for the specific purpose of making the investment.
- For legal entities accredited by total assets—the issuer should require a minimum investment of at least $1,000,000 and obtain written representations that the purchaser is an accredited investor and that the minimum investment amount is not financed, in whole or in part, by a third party for the specific purpose of making the investment.
- For entities accredited solely by all equity owners' accredited investor status—the issuer should require a minimum investment of at least $1,000,000 or $200,000 for each equity owner if all of the equity owners are fewer than five natural persons and obtain written representations that the purchaser is an accredited investor, that 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 equity owners that are legal entities, and that the minimum investment amount is not financed, in whole or in part, by a third party for the specific purpose of making the investment.
- The Latham & Watkins request letter states that minimum investment amounts include a binding commitment to invest, at least, the minimum cash amount in one or more installments, as and when called by the issuer. The request letter also specifies certain types of pre-arranged financing that would not cause the minimum investment to be financed by a third party for the specific purpose of making the particular investment. However, these statements are not addressed in the Letter.

NO ACTUAL KNOWLEDGE OF CONTRARY FACTS

The issuer must not have any actual knowledge of facts indicating that a purchaser is not an accredited investor or that the investment is financed by a third party for the purpose of making the particular investment.

"Blue Sky" Compliance

Rule 503 under Regulation D requires that an issuer relying on Rule 506(c) file a Form D with the SEC within 15 days of the first sale of securities. While substantive state regulation of the offering is preempted by provisions of the National Securities Markets Improvement Act of 1996, which added Section 18(b)(4)(F) to the Securities Act, the states still retain authority to require that notice filings be made and corresponding fees paid. In many states, notice filings may be required to be completed within 15 days after the first sale of the securities in the state unless an exemption is available.

Unlike Rule 506(b) offerings, however, many fewer state exemptions are available for Rule 506(c) offerings, and states can impose late filing fees or even consent orders for late filings. In addition, an issuer that relies on Rule 506(c) would not be able to rely on the Section 4(a)(2) statutory private placement exemption should the issuer fail to meet a condition of the Rule 506(c) exemption. Thus, issuers must be more diligent with "blue sky" compliance for Rule 506(c) offerings.

Implications

The Letter will reduce the administrative burden placed on issuers seeking to make General Solicitation Offerings and will likely encourage more issuers and fund sponsors to make broad solicitations and generally advertise offerings under Rule 506(c). In addition, the relief may allow issuers to publicly speak more freely about their offerings (including via the internet) without worrying about inadvertently mentioning the previously prohibited descriptions of their offerings or private funds. While investor sophistication, reporting obligations, and liquidity will remain barriers, the Letter is likely to lead to increased use of General Solicitation Offerings to raise capital from accredited investors in the United States.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

John C. Partigan
202.585.8535
jpartigan@nixonpeabody.com

Andrew Pearce
617.345.6019
apearce@nixonpeaboy.com

Samantha E. Lopes
202.585.8824
slopes@nixonpeabody.com