

CLIENT ALERT



New SEC Guidance Could Make Fundraising Easier for Private Funds

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On March 12, 2025, the staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the SEC) issued a no-action letter regarding Rule 506(c) under Regulation D, a safe harbor promulgated under the U.S. Securities Act of 1933, as amended, 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.

Interests in private funds are typically offered to prospective investors under Rule 506(b) or Rule 506(c). Under Rule 506(b), interests in a private fund cannot be publicly advertised. Under Rule 506(c), interests in a private fund can be publicly advertised (including through social media, press releases, podcasts, etc.) as long as the private fund's sponsor takes reasonable steps to verify that all the investors in the private fund are "accredited investors," as defined in Rule 501(a) of Regulation D.

Although the ability to publicly advertise private funds using Rule 506(c) is an attractive option for private fund sponsors, most private funds have continued to rely on Rule 506(b), as verifying that all investors are accredited investors resulted in additional costs or was deemed to be too burdensome by many private fund sponsors.

In the SEC's no-action letter, the SEC stated that if the following criteria are met, a private fund sponsor would be deemed to have taken reasonable steps to verify that an investor is an accredited investor:

1. The minimum investment amount^[1] of the private fund for an investor who is a natural person is at least \$200,000 and the minimum investment amount of the private fund for an investor that is an entity is at least \$1,000,000.^[2]
2. The private fund sponsor has no actual knowledge of any facts that would indicate that (i) the investor is not an accredited investor or (ii) the investor's minimum investment amount was financed by a third party.
3. The private fund's subscription documents include a representation that (i) the investor is an accredited investor and (ii) the investor's minimum investment amount is not financed by a third party.

The SEC's guidance should be a welcome development for private fund sponsors. We believe that the SEC's no-action letter will result in a significant increase in the number of private funds relying on Rule 506(c), as the framework described above greatly simplifies the accredited investor verification requirement for private funds relying on 506(c).

Private fund sponsors should remember that any general advertisements related to their private funds are still subject to other applicable securities laws and regulations (e.g., applicable requirements under the Investment Advisers Act of 1940, as amended, and applicable anti-fraud rules). Private fund sponsors should also keep in mind that Rule 506(c) only permits general advertisements in the U.S. and that offerings outside of the U.S. would be subject to the local private placement rules and marketing restrictions in the applicable non-U.S. jurisdiction.

For more information regarding this new development, please contact us.

[1] The minimum investment amounts would include investment amounts made pursuant to a binding commitment to invest the minimum investment amount in one or more installments, as and when called by the general partner or manager of the private fund.

[2] If an entity satisfies the accredited investor standard solely because all of its owners are accredited investors, such entity must represent that (i) each owner has a minimum investment obligation to such entity that is equal to the minimum investment amount and (ii) such entity and each owner's respective minimum investment amount is not financed by a third party. The minimum investment amount for such entity would be at least \$1,000,000 or \$200,000 for each of such entity's owners if all of such entity's owners are natural persons and there are fewer than five owners.

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