



SEC Issues No-Action Letter Clarifying Verification of Accredited Investor Status Under Rule 506(c)

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On March 12, 2025, the Securities and Exchange Commission's (the SEC or Commission) Division of Corporation Finance issued a no-action letter (the NAL) clarifying "reasonable steps" issuers can take to verify the accredited investor status of purchasers, as required under Rule 506(c) of Regulation D (Rule 506(c)), a safe harbor promulgated under the U.S. Securities Act of 1933, as amended (the Securities Act). These updates effectively make it easier to verify accredited investor status in a Rule 506(c) offering and may enable broader public outreach and advertising efforts by private issuers of securities.

DEFINITION OF ACCREDITED INVESTORS UNDER RULE 506(C)

Rule 506(c) permits issuers to generally solicit and publicly advertise an offering without registering the offering and sale with the SEC; provided that, among other items, the issuer takes reasonable steps to verify that purchasers of securities sold in the offering are accredited investors. While Rule 506(c) includes a nonexclusive safe harbor regarding investor verification, certain verification methods have required the review of additional investor documentation or obtaining supplemental written confirmations from an investor's external advisors, which have typically resulted in additional costs or been deemed overly burdensome by many issuers.

In the SEC's NAL, the SEC stated that if the following criteria are met, an issuer will be deemed to have taken reasonable steps to verify that an investor is an accredited investor:

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

COMPLIANCE WITH "BLUE SKY" LAWS AND TIMELY FILINGS

Pursuant to Rule 503 under Regulation D, issuers must file a Form D with the SEC within 15 days of the first sale of securities in an offering relying on Rule 506(c). While state regulation of such offering is generally preempted by

Section 18(b)(4)(F) of the Securities Act, states securities laws still retain authority to require issuers to register their securities offering and to require that notice filings be made and corresponding fees be paid, unless an exemption is available, informally known as “blue sky” compliance.

In many states, notice filings may be required to be made within 15 days after the first sale of the securities in the state, unless an exemption is available. Particularly for Rule 506(c) offerings, fewer state exemptions are available (compared to Rule 506(b) offerings), and states can impose late filing fees, penalties, or even consent orders for late filings.

Should an issuer fail to meet a condition of the Rule 506(c) exemption after already engaging in general solicitation, it would not be able to rely on the Section 4(a)(2) statutory private placement exemption. Accordingly, issuers should ensure “blue sky” compliance and make timely Form D filings to avoid jeopardizing their 506(c) exemptions. While the SEC’s NAL and recent guidance clarifies the verification of a purchaser’s accredited investor status, issuers relying on Rule 506(c) should nonetheless remain mindful of other considerations associated with relying on the exemption, such as any public marketing, and make immediate corrective actions for any missed fee or filing deadlines.

The SEC’s NAL suggests there will be an increase in the number of issuers relying on Rule 506(c), as the reasonable steps necessary to verify an investor’s status as an accredited investor are now clear and relatively streamlined to implement. Issuers should remain diligent and keep in mind that Rule 506(c) permits general advertisements only 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.

Winston’s Capital Markets & Securities Law Watch will monitor developments related to the SEC’s NAL and will provide our readers with timely updates as new information becomes available.

For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

[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 issuer. In addition, the lack of financing in respect of the purchaser’s minimum investment amount would apply solely to the funds applied or committed to the minimum investment amount but not to any greater investment amount made or committed by a purchaser or an equity owner of a purchaser.

[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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