

# FINN DIXON & HERLING

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## SEC Allows Simple, Objective Accredited Investor Verification for Rule 506(c) Offerings

*Test based on actual Investment Amount (including binding commitments to invest a minimum amount in installments, as and when called by the issuer) - \$200,000 for natural persons and \$1,000,000 for entities.*

This spring, the staff of the Securities and Exchange Commission (the “SEC”) issued a no action letter providing significant new guidance under Rule 506(c) of Regulation D of the Securities Act of 1933 (the “Securities Act”), which allows for general solicitation and general advertising in connection with Regulation D offerings to accredited investors.<sup>1</sup> The guidance offers a more streamlined path for issuers—particularly private funds—to comply with the requirement to take “reasonable steps to verify” the accredited investor status of each purchaser in a Rule 506(c) offering.

*Please see our helpful summary tables at the end of this alert.*

**Background and the Challenge of Verification** – Since the adoption of Rule 506(c) in 2013, issuers have been permitted to engage in general solicitation and advertising in connection with private offerings, so long as the issuer has taken “reasonable steps to verify” that each purchaser is an accredited investor. Despite the availability of this option, most private fund sponsors have instead continued to rely on Rule 506(b), which prohibits general solicitation, due to two perceived issues with Rule 506(c)’s verification requirements: (i) perceived legal uncertainty and compliance burdens for the issuer, and (ii) the belief by investors and issuers that inquiries into an investor’s financial status were (or could be) intrusive.

**The SEC Staff Guidance** – The SEC Staff’s new guidance addresses this concern directly. The guidance confirms that one, non-exclusive means by which an issuer may satisfy Rule 506(c)’s requirement to take reasonable steps to verify that a purchaser is an accredited investor is that the purchaser makes a minimum investment of a specified amount—\$200,000 for natural

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<sup>1</sup> The no action letter can be found at <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225>.

persons or \$1,000,000 for entities—and provides certain written representations (so long as the sponsor has no reason to believe that the investor is not an accredited investor). In cases where an entity claims accredited investor status based on the accredited investor status of its equity owners, the underlying owners must also provide similar representations.

**Our View** – This development offers a much-needed, non-exclusive compliance pathway for private fund sponsors to engage in general solicitation without needing to engage in administratively complex or potentially intrusive verification methods. By establishing a clear standard tied to actual investment amounts and self-certifications, the guidance lowers the barrier for private funds and other issuers to take advantage of Rule 506(c), enabling broader marketing and investor engagement opportunities. Of course, because this guidance is nonexclusive, issuers may choose to take other steps to satisfy the “reasonable steps to verify” requirement.

Issuers relying on this method must still remain vigilant to ensure that there are no red flags or facts suggesting a purchaser is not an accredited investor, but the SEC’s letter represents a meaningful step toward a more practical and accessible Rule 506(c) framework.

Private funds that are engaged in a 506(b) offering are permitted to switch to rely on Rule 506(c). Private fund sponsors should consider whether they may wish to switch to Rule 506(c) for current offerings or begin using 506(c) for future offerings.

The comparison tables below are summary in nature and are intended to operate as a brief guide. Issuers should engage legal counsel before issuing securities.

Characteristic		Rule 506(b)	Rule 506(c)
Types of Investors	Accredited	✓ Yes	✓ Yes
	Unaccredited	✓ <b>limited</b> (capped at 35) with additional disclosure required	✗ No
Verification		Issuer must have a reasonable belief that any accredited investors are in fact accredited investors.	Issuer must take “reasonable steps to verify” that all investors are accredited investors (see table below for new methods approved by the recent no action letter).
General Solicitation?		✗ Prohibited.	✓ Permitted.

New 506(c) “Accredited Investor” Verification Methods by Investor Type		
<b>Natural Persons</b>	Amount of Investment	At least \$200,000
	Representations from Purchaser	Written representation that: <ul style="list-style-type: none"> <li>the purchaser is an accredited investor; and</li> <li>the purchaser’s 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</li> </ul>
	No Contrary Knowledge by Issuer	The issuer has no actual knowledge of any facts that indicate that the purchaser is not an accredited investor or that the purchaser’s minimum investment amount was financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.
<b>Entities Accredited Based on Total Assets</b>	Amount of Investment	At least \$1,000,000
	Representations from Purchaser	As above
	No Contrary Knowledge by Issuer	As above
<b>Entities Accredited Based on Equity Owners’ Accredited Investor Status (“Look through”)</b>	Amount of Investment	At least \$1,000,000 (or \$200,000 for each of the purchaser’s equity owners if the purchaser’s equity owners are fewer than 5 natural persons)
	Representations from Purchaser	Written representation that: <ul style="list-style-type: none"> <li>the purchaser is an entity that is an accredited investor in which all of its equity owners are accredited investors;</li> <li>each of the purchaser’s equity owners has a minimum investment obligation to the purchaser of at least \$200,000 (for natural</li> </ul>

		<p>persons) and \$1,000,000 (for legal entities); and</p> <ul style="list-style-type: none"> <li>the purchaser's minimum investment amount and each of the purchaser's equity owners' minimum investment amounts are not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer</li> </ul>
	No Contrary Knowledge by Issuer	As above

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### FINN DIXON & HERLING LLP

If you have questions concerning the matters discussed above, or would like more detailed information, please contact **Claire Stevens (203-325-5009; [cstevens@fdh.com](mailto:cstevens@fdh.com))** or one of the other attorneys referenced below:

**Reed W. Balmer**, 203-325-5011 [rbalmer@fdh.com](mailto:rbalmer@fdh.com)  
**Zachary J. Moore**, 203-325-5006 [zmoore@fdh.com](mailto:zmoore@fdh.com)  
**Andrew M. Calamari**, 203-325-5057 [acalamari@fdh.com](mailto:acalamari@fdh.com)  
**Jeffrey Plotkin**, 203-325-5018 [jplotkin@fdh.com](mailto:jplotkin@fdh.com)  
**Richard D. Kilbride**, 203-325-5075 [rkilbride@fdh.com](mailto:rkilbride@fdh.com)  
**Terry Lin**, 203-325-5053 [tlin@fdh.com](mailto:tlin@fdh.com)

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