

SEC Broadens Guidance on Accredited Investor Verification

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The Securities and Exchange Commission (SEC) has issued a [no-action letter](#) providing new interpretive guidance on the verification of accredited investor status in offerings conducted under Rule 506(c) of Regulation D, which may involve general solicitation or general advertising. In a significant liberalization of the SEC's position since 2012, this new guidance allows issuers to rely on high minimum investment amounts, coupled with written representations from purchasers, as a reasonable step to verify accredited investor status. The no-action letter concurred that an issuer could reasonably conclude that it has taken reasonable steps to verify that a purchaser of securities sold in an offering under Rule 506(c) of Regulation D is an accredited investor if the investment involves minimum investment amounts of at least \$200,000 for natural persons and at least \$1 million for legal entities.

History of Rule 506(c)

Rule 506(c) was introduced in 2012 pursuant to the Jumpstart Our Business Startups (JOBS) Act and became effective in 2013. This rule marked a significant change in the regulatory landscape by allowing issuers and investment funds to raise capital from accredited investors without the need for a preexisting substantive relationship. Prior to the introduction of Rule 506(c), issuers were prohibited from engaging in general solicitation or advertising when offering securities under Regulation D. Rule 506(c) lifted this restriction, enabling issuers to reach a broader audience of potential investors through general solicitation and advertising, provided that all purchasers in the offering are accredited investors.

However, Rule 506(c) introduced a new requirement to ensure that only accredited investors participate in these offerings. Issuers (or their registered placement agents or broker-dealers) must take "reasonable steps to verify" the accredited investor status of each purchaser. This verification process is intended to provide a higher level of assurance that investors meet the accredited investor criteria, as defined under Regulation D. Prior to this no-action letter, the SEC had made clear that a mere written representation that an investor was an "accredited investor" would not constitute "reasonable steps to verify" the investor's accredited investor status.

In the no-action letter, the SEC acknowledged that requiring a high minimum investment amount can be a relevant factor in verifying accredited investor status. Specifically, in order to take advantage of this new guidance as a means of demonstrating reasonable steps to verify accredited investor status, the SEC requires that the minimum investment amounts be at least \$200,000 for natural persons and at least \$1 million for legal entities. If a purchaser meets the high minimum investment requirement, the purchaser may be considered to satisfy the definition of an accredited investor, provided there are no contrary indications. Purchasers must provide written representations confirming their accredited investor status under Rule 501(a) of Regulation D and represent that

their investment is not financed by a third party specifically for making the investment in the issuer. Issuers must not have actual knowledge of any facts indicating that a purchaser is not an accredited investor or that the investment is financed by a third party.

The determination of whether an issuer has taken reasonable steps to verify accredited investor status is objective and context-specific, based on the facts and circumstances of each purchaser and transaction.

Historical Context of High Minimum Investment Amounts

The idea of using high minimum investment amounts as a sufficient indication of accredited investor status has been floated in the past. Notably, when Regulation D was first adopted in 1982, one of the ways that a purchaser could be considered to be an accredited investor was by investing at least \$150,000, if the total purchase price did not exceed 20% of the investor's total net worth at the time of sale.^[1] More recently, in response to the adoption of Rule 506(c), the Securities Industry and Financial Markets Association (SIFMA), a leading trade association representing the securities industry, proposed this approach in a letter to the SEC in June 2014. In their letter, SIFMA argued that a high minimum investment amount could serve as a reliable indicator of an investor's financial sophistication and ability to bear the risks associated with private offerings.^[2]

Impact on Capital Raising

This new interpretive position by the SEC builds on the historical development of using high minimum investment amounts as an indication of accredited investor status and facilitates capital raising by issuers and investment funds in several ways. Issuers can streamline the verification process by relying on high minimum investment amounts and written representations, reducing the need for extensive due diligence. Issuers can have increased confidence in their compliance with Rule 506(c) requirements, knowing that high minimum investment amounts are considered a reasonable verification step. The guidance may attract more accredited investors who are willing to meet high minimum investment thresholds, thereby potentially increasing the pool of eligible investors. Additionally, the reduced need for additional verification steps can lower administrative burdens and costs associated with conducting offerings under Rule 506(c).

Conclusion

The SEC's no-action letter provides valuable guidance for issuers and investment funds seeking to raise capital under Rule 506(c) of Regulation D. By allowing high minimum investment amounts and written representations to serve as reasonable steps for verifying accredited investor status, the SEC has simplified the verification process, potentially making it easier for issuers to attract and secure investments from accredited investors.

[1] See, [Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales](#), Release No. 33-6389 (Mar. 8, 1982).

[2] See, <https://www.sifma.org/wp-content/uploads/2017/08/SIFMA-Rule-506c-guidance-June-2014.pdf>. SIFMA proposed that a natural person should be deemed to qualify as an accredited investor in a Rule 506(c) offering if the purchaser made an investment of at least \$250,000 and provided a representation that the investment constitutes less than 25% of the purchaser's net worth.

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