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## INVESTMENT MANAGEMENT SERVICES

# Recent SEC Developments Impacting PPM Under Rules 506(b) and 506(c)

## What has changed?

Private offerings conducted pursuant to Regulation D remain one of the most frequently utilized methods of raising private capital in the United States. Although the fundamental framework governing Rules 506(b) and 506(c) has not changed, recent guidance from the Securities and Exchange Commission ("SEC"), together with proposed federal legislation expanding the accredited investor definition, has important implications for issuers conducting private placements and the preparation of private placement memoranda ("PPMs"), subscription agreements, and related offering documents.

Most significantly, on March 12, 2025, the SEC's Division of Corporation Finance issued a no-action letter establishing a significantly more practical framework for satisfying the accredited investor verification requirement under Rule 506(c). While the guidance does not amend Regulation D itself, it substantially reduces one of the primary obstacles that historically discouraged issuers from utilizing Rule 506(c) offerings. As a result, issuers should review their offering documents and compliance procedures to ensure they reflect current SEC guidance while remaining prepared for additional regulatory and legislative developments affecting private offerings.

## What is the difference between rule 506(b) and rule 506(c)?

Rules 506(b) and 506(c) are both safe harbors under Regulation D that permit issuers to raise an unlimited amount of capital without registering securities under the Securities Act of 1933. Although both exemptions accomplish the same objective, they operate under significantly different regulatory frameworks.

Rule 506(b) continues to prohibit general solicitation and public advertising while permitting sales to an unlimited number of accredited investors and up to thirty-five sophisticated non-accredited investors. Rule 506(c), by contrast, permits issuers to engage in general solicitation and advertising but requires that every purchaser qualify as an accredited investor and that the issuer take reasonable steps to verify that status.

Historically, many issuers favored Rule 506(b) because Rule 506(c)'s verification requirement was viewed as expensive, intrusive, and administratively burdensome. The SEC's March 2025 guidance, however, substantially changes that practical analysis.

## How does section 4(a)(2) support rule 506(b)?

Rule 506(b) is rooted in the statutory private placement exemption contained in Section 4(a)(2) of the Securities Act. The exemption applies only where purchasers possess sufficient financial sophistication, or have access to knowledgeable advisers, to evaluate the merits and risks of the investment, have access to information comparable to that provided in a registered offering, and acquire the securities for investment purposes rather than resale or public distribution.

Because the exemption is intended to preserve the private nature of the offering, general solicitation and public advertising remain fundamentally inconsistent with Section 4(a)(2). Although neither the Securities Act nor SEC rules establish precise numerical limits on when an offering ceases to be "private," courts and the SEC have consistently considered the number of purchasers, their relationship to the issuer, and their ability to obtain information when evaluating compliance. Consequently, offering securities to even a single purchaser who fails to satisfy the applicable requirements may jeopardize the availability of the exemption for the entire offering.

## Has rule 506(b) changed?

Rule 506(b) is rooted From a regulatory standpoint, Rule 506(b) remains largely unchanged. Issuers may continue to raise an unlimited amount of capital from an unlimited number of accredited investors while selling securities to no more than thirty-five sophisticated non-accredited investors. Those non-accredited investors must possess sufficient knowledge and experience in financial and business matters, or be assisted by a purchaser representative, to evaluate the merits and risks of the investment.

Where non-accredited investors participate, issuers remain obligated to provide disclosure documents containing substantially the same type of information required in Regulation A offerings, furnish the financial statement information specified under Rule 506, and remain available to answer questions from prospective investors throughout the offering process. Likewise, the longstanding prohibition on general solicitation, the bad actor disqualification provisions, and existing disclosure obligations remain fully applicable.

Accordingly, recent SEC developments do not alter the substantive legal requirements governing Rule 506(b). Instead, they primarily affect the relative attractiveness of Rule 506(c) as an alternative exemption.

## How has the SEC changed accredited investor verification under rule 506(c)?

Historically, one of the greatest disadvantages associated with Rule 506(c) offerings was the requirement that issuers take "reasonable steps" to verify accredited investor status. In practice, issuers frequently relied upon reviewing tax returns, brokerage statements, bank records, or obtaining written confirmations from attorneys, accountants, or registered investment advisers. These procedures often created significant administrative burdens and discouraged issuers from utilizing Rule 506(c), despite its ability to permit general solicitation.

On March 12, 2025, the SEC's Division of Corporation Finance issued a no-action letter providing a significantly more practical verification framework. Under the staff's guidance, issuers generally may satisfy the verification requirement when a natural person invests at least $200,000, or a legal entity invests at least $1 million, provided the investor delivers written representations confirming both accredited investor status and that the investment is not financed through third-party borrowing arranged specifically for the investment. The issuer also must have no actual knowledge contradicting those representations.

Although the no-action letter does not formally amend Rule 506(c), it represents one of the most significant practical developments affecting Regulation D offerings in recent years. By substantially reducing the burden associated with accredited investor verification, the SEC has removed one of the primary reasons issuers historically favored Rule 506(b). Consequently, many practitioners expect Rule 506(c) offerings to become increasingly common, particularly where issuers wish to utilize general solicitation and broader marketing efforts. While Rule 506(b) remains fully available, the SEC's recent guidance suggests a broader regulatory movement toward making Rule 506(c) the preferred exemption for many private offerings.

## What practical changes should issuers make to their offering documents?

Historically Issuers should carefully review their private placement memoranda, subscription agreements, investor questionnaires, and internal compliance procedures to ensure they accurately reflect the SEC's updated verification framework. PPMs should explain the verification process being utilized under Rule 506(c), while subscription agreements should incorporate the written investor representations contemplated by the March 2025 guidance.

In addition, issuers should maintain contemporaneous documentation demonstrating compliance with the applicable investment thresholds, investor certifications, and internal procedures supporting their determination that reasonable verification steps have been satisfied. Although the SEC has provided greater flexibility, the reasonable verification requirement itself remains unchanged, making careful documentation essential.

## What additional regulatory developments should issuers monitor?

Beyond the March 2025 no-action letter, the SEC continues to evaluate additional reforms affecting private offerings. Among the most significant proposals are amendments to Form D that would require expanded disclosures concerning issuer compensation, offering terms, and investor verification procedures. Although these proposals have not yet been adopted, issuers should anticipate increased disclosure obligations if finalized.

The SEC also continues emphasizing compliance with the bad actor disqualification provisions applicable to Regulation D offerings. Issuers should conduct thorough diligence concerning officers, directors, placement agents, promoters, and other covered persons to identify any potentially disqualifying events before commencing an offering.

## What legislative changes may affect future private offerings?

Beyond Congress likewise continues to consider legislation designed to expand participation in private capital markets by broadening the accredited investor definition.

The Fair Investment Opportunities for Professional Experts Act (H.R. 3394) would extend accredited investor status to individuals possessing specified professional licenses, educational backgrounds, or relevant employment experience. Similarly, the Accredited Investor Definition Review Act (H.R. 3348) would authorize the SEC to recognize additional professional credentials while requiring periodic review of eligible certifications. The Equal Opportunity for All Investors Act of 2025 (H.R. 3339) would create an SEC-administered examination permitting qualifying individuals to obtain accredited investor status through demonstrated financial knowledge rather than wealth alone.

If enacted, these proposals would expand the pool of eligible investors while requiring issuers to revise PPMs, subscription agreements, investor questionnaires, and verification procedures to reflect the new categories of accredited investors.

Importantly, none of these legislative proposals would eliminate the issuer's obligation to take reasonable steps to verify accredited investor status under Rule 506(c), alter the thirty-five non-accredited investor limitation applicable to Rule 506(b), or modify the existing bad actor disqualification provisions or prohibition against general solicitation under Rule 506(b).

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