

SEC's No-Action Relief Simplifying Verification Requirements for Private Offerings May Assist Private Capital Fundraising Under Rule 506(c)

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The Securities and Exchange Commission (“**SEC**”) has issued no-action relief that should help facilitate certain private capital raising in the U.S. On March 12, 2025, Latham & Watkins secured SEC Staff interpretive guidance (the “**Guidance**”) with regard to the investor verification required for offerings relying on Rule 506(c) of Regulation D under the Securities Act of 1933, as amended (the “**Securities Act**”).¹ This regulatory guidance and clarification may unlock the largely untapped potential of Rule 506(c), which has remained underutilized since its creation following the Jumpstart Our Business Startups Act of 2012 (the “**JOBS Act**”). Despite Congressional intent to ease capital formation through the enactment of Rule 506(c), to date, private capital markets have hesitated to embrace Rule 506(c) offerings due to its cumbersome investor verification requirements.

Why This Matters for Private Funds

Fund sponsors can now more simply utilize Rule 506(c) offerings to seek capital. The Guidance allows for a practical shift in how private funds can market themselves and access capital. Prior to the issuance of the Guidance, the verification steps required under Rule 506(c) were widely considered burdensome for issuers, and intrusive for investors. The practical difficulties in implementing the investor verification requirements to date have limited issuer’s use and reliance of Rule 506(c) offerings. As SEC Commissioner Hester Peirce noted in November 2024, issuers had “raised around \$169 billion annually under Rule 506(c) compared to \$2.7 trillion under 506(b), which does not permit general solicitation.”² The dramatic disparity—with Rule 506(c) offerings representing just 6% of exempt offerings—highlights how verification hurdles seemed to hamper the Rule 506’s’s intention and effectiveness.

Key Features of the New Guidance and Verification Framework

The cornerstone of the SEC’s new approach is a bright-line test for accredited investor verification in certain instances based on minimum investment amounts. Under the Guidance, fund sponsors can satisfy the investor verification requirements in part by:

- Setting minimum investment amounts at or above the specified amounts (\$200,000 for individuals and \$1,000,000 for entities)³
- Obtaining investor representations (confirming that the investor is an accredited investor, and that the investor’s minimum investment is not financed in whole or in part by any third party for the purpose of making the investment).
- Having no actual knowledge of any facts that would negate any of the foregoing representations.

This verification approach balances investor protection with practical market realities. The substantial minimum investment amounts naturally limit participation to financially sophisticated

parties, while the streamlined process removes unnecessary barriers to capital formation. Further, by establishing this clear standard, the SEC has eliminated the uncertainty that previously plagued the “reasonable steps to verify” requirement under Rule 506(c) without imposing additional burdens that could slow offering processes or alienate potential investors.

Practical Implications for Fund Managers

For private fund sponsors relying on Rule 506(c), the Guidance has the potential to transform marketing efforts. Fund managers can expand market reach, streamline investor onboarding, accelerate fundraising timelines and access new investor pools, among other things. The Guidance particularly benefits emerging managers and specialized funds that lack extensive pre-existing investor networks.

Industry Outlook

There is likely to be an uptick in private funds relying on Rule 506(c) following this guidance as various private equity funds, venture capital funds, hedge funds, and other alternative investment vehicles are expected to consider this exemption. The Guidance may particularly benefit:

- Emerging managers seeking to establish their market presence;
- Specialized strategy funds targeting specific investor demographics;
- Private funds using digital platforms for investor engagement; and
- Private funds looking to differentiate in competitive fundraising environments.

[1] <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225>

[2] <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sbcfac-111324>

[3] *The investor would also certify that its investment is not financed by a third party for the purpose of making the investment, among other requirements set forth in the Guidance.*