

Joel H. Trotter
Tel: +1.202.637.2165
joel.trotter@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

Securities Act of 1933
Regulation D
Rule 506(c)

March 6, 2025

Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Attn: Sebastian Gomez Abero
Acting Deputy Director, Legal and Regulatory Policy

Jeb Byrne
Chief, Office of Small Business Policy

Re: Request for Rule 506(c) Interpretative Guidance

Dear Messrs. Gomez Abero and Byrne:

We are seeking interpretive guidance from the Staff of the Division of Corporation Finance of the Securities and Exchange Commission regarding the use of a minimum investment amount as a factor to be used as part of reasonable steps to verify accredited investor status in securities offerings under Rule 506(c) of Regulation D under the Securities Act of 1933, as amended.

In particular, we respectfully request that the Staff concur with our view that an issuer will have taken reasonable steps to verify a purchaser's accredited investor status in a Rule 506(c) offering if the issuer requires purchasers to agree to the minimum investment amounts and related conditions described below. The guidance we seek will benefit market participants by clarifying a specific application of the Commission's determination regarding use of a minimum investment amount as an appropriate factor in completing the required verification steps in Rule 506(c) offerings, consistent with the Commission's goals of both flexibility and greater certainty.

Background

Congress directed the Commission, in Section 201(a)(1) of the JOBS Act of 2012, to revise Rule 506 of Regulation D so that the prohibition in Rule 502(c) against general solicitation or general advertising shall not apply to offers and sales of securities made under Rule 506, "provided that all purchasers of the securities are accredited investors." Section 201(a)(1) also requires issuers to take "reasonable steps to verify" the accredited investor status of the purchasers of the securities, using "such measures determined by the Commission." To that end, the Commission adopted Rule 506(c), which permits the use of general solicitation in Rule 506 offerings if all of the purchasers are accredited investors and if the issuer takes "reasonable steps to verify" the accredited investor status of the purchasers.

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

Rule 506 states that the methods listed in paragraph (c)(2)(ii) are “examples” of “non-exclusive and non-mandatory methods that satisfy the verification requirement” and that “the issuer is not required to use any of these methods” to verify purchasers’ accredited investor status.¹ The Commission also determined that, instead of these non-mandatory, non-exclusive examples, issuers “can apply the reasonableness standard directly to the specific facts and circumstances presented by the offering and the investors” and, further, determined that a purchaser’s “minimum investment amount” is an appropriate factor that issuers may consider “when determining the reasonableness of the steps to verify” a purchaser’s accredited investor status.² We believe that an issuer in a Rule 506(c) offering will have taken reasonable steps to verify the accredited investor status of the purchasers by using the minimum investment amounts and related conditions described below.

Proposed Interpretation

In summary, with respect to each of the three categories of accredited investors described in more detail below, we request that the Staff concur with our view that, in an offering conducted under Rule 506(c) of Regulation D, an issuer will have taken reasonable steps to verify a purchaser’s accredited investor status if the issuer:

- obtains written representations³ that:
 - the purchaser is an accredited investor; and
 - the purchaser’s minimum investment amount is not financed⁴ in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; and
- requires minimum investment amounts⁵ of at least \$200,000 for natural persons and at least \$1,000,000 for legal entities; and

¹ Rule 506(c)(2)(ii), Instruction 1.

² Release No. 33-9415, Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings (July 10, 2013) at 20, 28, 36 & 36 n.119 (“Adopting Release”).

³ The purchaser’s written representation could be contained in a standalone document, in a subscription agreement for the offering, in an affirmative written electronic communication from the purchaser, or any other written means as the issuer shall reasonably determine under the circumstances of the offering.

⁴ For this purpose, the purchaser would not be precluded from providing the necessary representation that its 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 if the purchaser obtains capital through one or more (i) financing programs, including a secured credit facility, that has other purposes than solely making the particular investment in the issuer; (ii) binding commitments or financing to the purchaser that predate the commencement of the offering under Rule 506(c); and/or (iii) financing transactions conducted by the purchaser in which the purchaser, as an issuer, has satisfied the conditions applicable to an issuer under this letter.

⁵ Minimum investment amounts include investment amounts made pursuant to a binding commitment to invest a minimum amount in one or more installments, as and when called by the issuer. In addition, the requirement regarding

LATHAM & WATKINS LLP

- has no actual knowledge of any facts that indicate that any purchaser is not an accredited investor or that any 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.

Below we describe the application of these principles to three categories of accredited investors.

1. Natural Persons

For purchasers who are natural persons, the issuer obtains in writing from the purchaser:

- representations that:
 - the purchaser is an accredited investor, as defined in Rule 501(a)(5) or Rule 501(a)(6); and
 - 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; and
- an agreement to make a \$200,000 minimum investment (including pursuant to a binding commitment to invest at least a minimum cash amount in one or more installments, as and when called by the issuer).

2. Entities Accredited by Total Assets

For purchasers that are legal entities, the issuer obtains in writing from the purchaser:

- representations that:
 - the purchaser is an accredited investor, as defined in Rule 501(a)(3), Rule 501(a)(7), Rule 501(a)(9), or Rule 501(a)(12); and
 - 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; and
- an agreement to make a \$1,000,000 minimum investment (including pursuant to a binding commitment to invest at least a minimum cash amount in one or more installments, as and when called by the issuer).

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 by an equity owner of a purchaser.

3. Entities Accredited Solely by All Equity Owners' Accredited Investor Status

For purchasers that are legal entities accredited solely from the accredited investor status of all of their equity owners, the issuer obtains in writing from the purchaser:

- representations that:
 - the purchaser is an entity that is an accredited investor, as defined in Rule 501(a)(8), in which all of the equity owners are accredited investors, as defined in Rule 501(a)(3), Rule 501(a)(5), Rule 501(a)(6), Rule 501(a)(7), Rule 501(a)(9), or Rule 501(a)(12); and
 - each of the purchaser's equity owners has a minimum investment obligation to the purchaser (including pursuant to a binding commitment to invest at least a minimum cash amount in one or more installments, as and when called by the purchaser) of at least \$200,000 for natural persons and \$1,000,000 for legal entities; and
 - the minimum investment amount of the purchaser, and the minimum investment amount of each of the purchaser's equity owners, is not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; and
- an agreement to make a minimum investment (including a binding commitment to invest at least the minimum cash amount in one or more installments, as and when called by the issuer) of at least:
 - \$1,000,000; or
 - \$200,000 for each of the purchaser's equity owners if all of the purchaser's equity owners are fewer than five natural persons.

4. No Knowledge of Untrue Representations

In each case, the issuer must have no actual knowledge of any facts that indicate that:

- any purchaser is not an accredited investor; or
- the minimum investment amount of any purchaser (and, for purchasers that are legal entities accredited solely from the accredited investor status of all of their equity owners, the minimum investment amount of any such equity owner) is financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.

Discussion

Recognizing the Commission's determination that the use of a "minimum investment amount" is an appropriate verification factor, we believe that an issuer will have taken reasonable

LATHAM & WATKINS LLP

steps to verify a purchaser's accredited investor status by obtaining the purchaser's written representations and by requiring the purchaser to make the minimum investment amount described above.

We believe that each of these minimum investment amounts, when coupled with the purchaser's written representation and related conditions, represents a reasonable verification step under Rule 506(c)(2)(ii). This conclusion follows from the Commission's determination that an issuer can use a "high minimum investment amount" as a factor in conducting reasonable verification steps:

"The more likely it appears that a purchaser qualifies as an accredited investor, the fewer steps the issuer would have to take to verify accredited investor status, and vice versa. For example, if the terms of the offering require a high minimum investment amount and a purchaser is able to meet those terms, then the likelihood of that purchaser satisfying the definition of accredited investor may be sufficiently high such that, absent any facts that indicate that the purchaser is not an accredited investor, it may be reasonable for the issuer to take fewer steps to verify or, in certain cases, no additional steps to verify accredited investor status other than to confirm that the purchaser's cash investment is not being financed by a third party."⁶

The Commission repeatedly emphasized the relevance of a high minimum investment amount as a key factor in conducting reasonable verification steps:

"We continue to believe that there is merit to the view that a purchaser's ability to meet a high minimum investment amount could be a relevant factor to the issuer's evaluation of the types of steps that would be reasonable to take in order to verify that purchaser's status as an accredited investor. By way of example, the ability of a purchaser to satisfy a minimum investment amount requirement that is sufficiently high such that only accredited investors could reasonably be expected to meet it, with a direct cash investment that is not financed by the issuer or by any third party, could be taken into consideration in verifying accredited investor status."⁷

The interpretive guidance we seek would benefit market participants by clarifying a specific application of the Commission's determination in adopting Rule 506(c) regarding "minimum investment amount" as one possible verification factor while providing a bright-line example consistent with the Commission's goals of both "flexibility" and "greater certainty" to

⁶ Adopting Release at 28.

⁷ Id. at 34.

LATHAM & WATKINS LLP

the private placement markets in completing the required verification steps in Rule 506(c) offerings.⁸

Conclusion

We hereby request that the Staff concur with our view that, in an offering conducted under Rule 506(c) of Regulation D in the manner described in this letter, an issuer will have taken reasonable steps to verify a purchaser's accredited investor status if the issuer requires the minimum investment amounts together with the related conditions described above.

* * *

Should you require additional information or wish to discuss this request further, we are available at your convenience. We appreciate your consideration of this matter and look forward to your response.

Very truly yours,

Michele M. Anderson
Alexander F. Cohen
Paul M. Dudek
Joel H. Trotter

of LATHAM & WATKINS LLP

⁸ See id. at 14, 18.