

SEC staff clarifies Rule 506(c), and opens door to broader distribution of privately offered BDCs

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The guidance clarifies the circumstances in which minimum investment amounts can help satisfy the reasonable steps required to verify purchasers' accredited investor status in Rule 506(c) offerings. The SEC staff also published a notice of intent to grant an exemptive order that would permit a privately offered BDC to have multiple share classes. The combination of these two developments would allow a privately offered BDC to be broadly marketed to accredited investors using general solicitation.

In a [no-action letter](#) and updates to its [Compliance and Disclosure Interpretations](#) (CD&Is) issued on March 12, 2025, the staff of the SEC's Division of Corporate Finance provided helpful guidance on the application of minimum investment amounts as a factor in determining whether an issuer has satisfied the requirement to take "reasonable steps" to verify purchasers' accredited investor status under Rule 506(c). The staff's no-action letter noted the SEC's view that, as stated in the [adopting release for Rule 506\(c\)](#):

... 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. Securities Act Release No. 9415 (July 10, 2013).

Following this view, the staff agreed that an issuer could reasonably conclude that it has taken reasonable steps to verify the accredited investor status of purchasers, as required under Rule 506(c), in circumstances where:

- the purchaser agrees to make a minimum investment of \$200,000 (in the case of a natural person) or \$1,000,000 (in the case of a legal entity), 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 purchaser provides representations that the purchaser is an accredited investor and that 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
- the issuer does not have actual knowledge of any facts indicating that the purchaser's representations as described above are untrue.

For a purchaser that is an entity that qualifies as an accredited investor solely because all of its equity owners are accredited investors (i.e., the entity relies on Rule 501(a)(8)), the entity must agree to make a minimum investment of \$1,000,000 or \$200,000 for each of the purchaser's equity owners, if the purchaser's equity owners are fewer than five natural persons. For example, an entity owned by four natural persons would need to invest a minimum of \$800,000. In

addition, the purchasing entity must represent that it is an accredited investor, and that: (a) each of its equity owners has a minimum investment obligation to the purchaser of at least \$200,000 (in the case of a natural person) or \$1,000,000 (in the case of a legal entity), 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; and (b) 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.

The staff's guidance as described above provides issuers with greater certainty in pursuing offerings under Rule 506(c), and in determining that they have taken the reasonable steps needed to verify the accredited investor status of purchasers, as required under the rule.

Separately, the SEC published a [notice](#) of intent to grant an order for the relief requested in an [exemptive application](#) that would expressly permit a privately offered BDC to have multiple share classes with varying sales loads and asset-based service and/or distribution fees. These types of loads/fees allow a BDC to compensate financial intermediaries in connection with their efforts to sell shares of the BDC. The Investment Company Act of 1940 does not permit a BDC to offer multiple share classes without exemptive relief and to date, the SEC staff had only allowed publicly offered BDCs to rely on this type of exemptive relief. Publicly offered BDCs that are not listed on a securities exchange are subject to blue sky registration because they do not benefit from federal preemption of state securities laws, adding significant time, cost and regulatory burdens on such vehicles. A privately offered BDC is not subject to blue sky registration by virtue of conducting a private offering, and with the newfound ability to offer multiple share classes and engage in general solicitation under Rule 506(c), a privately offered BDC could be marketed and distributed in a manner very similar to a non-traded publicly offered BDC. Unlike the Rule 506(c) no-action letter, which any issuer can rely upon, each sponsor needs to apply for its own multi-class exemptive relief for its BDC(s). For sponsors with existing multi-class relief that covers a non-traded publicly offered BDC, the SEC staff have advised that their position is that a new exemptive application must be submitted to obtain a new order that would supersede the existing order.

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