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NEW SEC STAFF GUIDANCE ON VERIFICATION OF INVESTOR ACCREDITATION IN PRIVATE PLACEMENTS INVOLVING GENERAL SOLICITATION

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WHAT HAPPENED

On March 12, 2025, the SEC staff confirmed in a no-action letter that issuers may rely on high minimum investment levels, as well as investor self-certification of accredited status, in private offerings involving general solicitation under Rule 506(c) under the Securities Act of 1933. At the same time, the SEC staff updated CDI 256.35 addressing the "reasonable steps" an issuer should take before relying on Rule 506(c).

TAKEAWAYS

Companies and private funds now have permission from the SEC staff to use general solicitation in private offerings without having to employ cumbersome investor verification procedures – so long as they follow the new guidance.

In the no-action letter, the SEC staff agreed that an issuer can rely on (1) investor self-certification of accreditation and (2) a minimum investment of at least $200,000 for natural persons and $1 million for legal entities – so long as the issuer does not have actual knowledge of lack of accreditation or third-party financing of the minimum investment.

Issuers may need to comply with additional "blue sky" requirements for notice filings and fees where the exemption under the relevant state law depends on the Section 4(a)(2) statutory private placement exemption. Further, non-U.S. jurisdictions may contain stricter marketing restrictions.

We would note that the new guidance is based on representations made in the requesting letter that did not discuss specific solicitation efforts. Companies and private funds should consider whether to take additional precautionary steps in general solicitations to avoid being criticized in hindsight for targeting potential unqualified or vulnerable investors.

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GENERAL BACKGROUND - VERIFICATION OF ACCREDITATION IN RULE 506(C) GENERAL SOLICITATIONS

General solicitation and advertising are allowed in Rule 506 offerings so long as:

- All of the purchasers are accredited.
- The issuer takes "reasonable steps to verify" their accreditation.

The list of methods of verification in Rule 506(c)(2)(ii) are "non-exclusive and non-mandatory." "[I]ssuers ... are not required to use any of the methods set forth in the nonexclusive list and can apply the reasonableness standard directly to the specific facts and circumstances presented by the offering and the investors." Securities Act Release No. 10884 (November 2, 2020).

In the 2013 release originally adopting Rule 506(c), the SEC stated that "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).

SPECIFIC GUIDANCE PER RECENT NO-ACTION LETTER

In the recent no action letter, the staff agreed that an issuer could reasonably conclude that it has taken reasonable steps to verify accreditation if:

- Each purchaser provides written representations that:
  - It is an accredited investor (under Rule 501(a)(5) or (a)(6) if a natural person, or under Rule 501(a)(3), (7), (8), (9) or (12) if a legal entity); and
  - The minimum investment amount (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 each of the purchaser's equity owners) is not financed in whole or in part by a third party for the specific purpose of making the investment.
- The minimum investment is at least $200,000 for natural persons and at least $1 million for legal entities.
- The company has no actual knowledge that any purchaser is not accredited or that any part of a minimum investment (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) was financed by a third party.

FACTS AND CIRCUMSTANCES TEST FOR REASONABLENESS OF VERIFICATION – UPDATED GUIDANCE PER CDI 256.35

In new CDI 256.35, the staff reaffirmed previous guidance on relevant facts to consider when analyzing the reasonableness of steps taken by an issuer:

- The nature of the purchaser and the type of accredited investor that the purchaser claims to be.
- The amount and type of information that the issuer has about the purchaser.
- The nature of the offering, such as the manner in which the purchaser was solicited to participate in the offering, and the terms of the offering, such as a minimum investment amount."

The CDI states:

> "These factors should be considered in an interconnected manner and are intended to help guide an issuer in assessing the reasonable likelihood that a purchaser is an accredited investor – 'which would, in turn, affect the types of steps that would be reasonable to take to verify a purchaser's accredited investor status. . . . [T]he 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.'Securities Act Release No. 9415 (July 10, 2013)."

RELATED PRACTICE AREAS

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- Private Investment Funds

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