

## SEC Staff Issues No Action Letter Addressing Accredited Investor Status Verification in Rule 506(c) Offerings Based on Minimum Investment Amounts

In a no action letter dated March 12, 2025 (the “NAL”), the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “SEC”) responded to a request dated March 6, 2025 (the “Request”) from Latham & Watkins LLP for interpretative guidance regarding Rule 506(c) of Regulation D under the Securities Act of 1933 (the “Securities Act”). In particular, the Request asked that the Staff concur with an interpretation of Rule 506(c) to the effect that an issuer will have taken the required reasonable steps to verify a purchaser’s accredited investor status in an offering conducted under Rule 506(c) if the issuer (1) requires purchasers to agree to minimum investment amounts of at least \$200,000 for individuals and at least \$1,000,000 for entities, (2) obtains written representations from each purchaser that it is an accredited investor and that no third-party financing is being used to fund its minimum investment amount and (3) has no actual knowledge that any purchaser is not an accredited investor or is using third-party financing for its minimum investment amount. In the NAL, the Staff agreed that an issuer could reasonably conclude that, as required under Rule 506(c), it had taken reasonable steps to verify that the purchasers in an offering that complied with the foregoing requirements were accredited investors.

The Request is available [here](#), the NAL is available [here](#), and the text of Rule 506 is available [here](#).

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### Background

Regulation D under the Securities Act provides a non-exclusive series of exemptions from the registration requirements of the Securities Act based on Section 4(a)(2) thereof, provided that various conditions set forth in Regulation D are met. These conditions relate to the nature and number of investors involved, the information provided to them, the overall size of the offering, and the manner in which the securities are offered. Rule 506 of Regulation D provides exemptions for limited offers and sales without regard to the dollar amount of the offering. Rule 506(c) allows an issuer to engage in what would otherwise be considered “general solicitation and general advertising” (which would make the offering a public offering and would mean Section 4(a)(2) could not be relied upon as an exemption from registration) in certain circumstances. In order to avail itself of the exemption from registration provided by Rule 506(c), an issuer must, among other conditions, “take reasonable steps to verify that purchasers of securities sold in [the offering] are accredited investors.” Rule 506(c)(2)(ii) lists a non-exclusive set of methods that will be deemed to constitute “reasonable steps” for verifying that purchasers are accredited investors, provided that the issuer does not have knowledge that such purchaser is not an accredited investor. Although the list does not include setting a minimum investment amount as a condition to purchasing in the offering, in a [Securities Act Release](#) issued in July of 2013, the SEC noted that a minimum investment amount (without specifying a particular

amount) may be a factor to be considered in determining whether an issuer has taken the requisite “reasonable steps.”

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## The Request

On March 6, 2025, Latham & Watkins LLP submitted the Request to the Staff seeking interpretive guidance and the Staff’s concurrence that “an issuer will have taken reasonable steps to verify a purchaser’s accredited investor status if the issuer requires purchasers to agree to the minimum investment amounts and related conditions described” in the Request. The minimum investment amounts and other conditions are:

### I. Written Representations

The issuer must obtain written representations that:

- in the case of purchasers who are natural persons, the purchaser is an accredited investor by virtue of either Rule 501(a)(5) (generally, net worth in excess of \$1,000,000), or Rule 501(a)(6) (generally, income in excess of \$200,000 for the past two years),
- in the case of purchasers that are legal entities, the purchaser is an accredited investor by virtue of either Rule 501(a)(3) (generally, an Internal Revenue Code Section 501(c)(3) charitable organization with assets in excess of \$5,000,000), Rule 501(a)(7) (generally, a trust with assets in excess of \$5,000,000), Rule 501(a)(9) (generally, certain investment vehicles owning investments in excess of \$5,000,000), or Rule 501(a)(12) (generally, a family office),
- in the case of purchasers that meet the definition of accredited investor solely by virtue of Rule 501(a)(8) (generally, all of its equity owners being accredited investors),
  - the purchaser is an accredited investor by virtue of Rule 501(a)(8) in which all equity owners are accredited investors by virtue of 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) (the same clauses of the definition noted above),
  - each equity owner of the purchaser has a minimum investment obligation of at least \$200,000 for natural persons or \$1,000,000 for entities (in either case, 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), and
- in the case of all purchasers, the purchaser’s minimum investment amount (and in the case of purchasers that meet the definition of accredited investor solely by virtue of Rule 501(a)(8), the minimum investment amount 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.

### II. Minimum Investment Amounts

The issuer must require minimum investment amounts (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) of at least \$200,000 for natural persons or \$1,000,000 for entities (or, in the case of purchasers that meet the definition of accredited investor solely by virtue of Rule 501(a)(8), \$200,000 for each of the purchaser’s equity owners if all the purchaser’s equity owners are less than five natural persons).

### III. Issuer’s Knowledge

In all cases, the issuer must have no actual knowledge of any facts that would indicate that:

- any purchaser is not an accredited investor, or
- any part of the purchaser’s minimum investment amount (and, in the case of purchasers that meet the definition of accredited investor solely by virtue of Rule 501(a)(8), the minimum investment amount of any equity owner of the purchaser) was financed in whole or in part by any third party for the specific purpose of making the investment in the issuer.

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Notably, the requirement regarding the lack of financing in respect of any purchaser's (or any purchaser's equity owner's) minimum investment amount applies only to the funds applied or committed to the minimum investment amount and not to any greater investment amount.

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## The No Action Letter

The Staff issued the NAL in response to the Request. In the NAL, the Staff expressly agreed that a high minimum investment amount is "a relevant factor" in the verification of a purchaser's status as an accredited investor. In addition to the minimum investment amount, the Staff also acknowledged the other conditions proposed in the Request and agreed that, although "whether an issuer has taken reasonable steps is an objective determination particular to the facts and circumstances of each purchaser and transaction," based on the provisions of the Request, the issuer "could reasonably conclude that it has taken reasonable steps to verify that purchasers of securities sold in an offering under Rule 506(c) are accredited investors."

As is the case with all no action letters, the NAL states that it represents only the views of the Staff and is not a rule, regulation or other statement of the SEC.

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## Conclusion

Prior to the issuance of the NAL, the SEC had noted that including a minimum investment amount could be a factor, and perhaps even a dispositive factor, in verifying accredited investor status but had not provided any specific guidance, much less a bright-line test. With the NAL, the Staff has confirmed that a minimum investment amount is a relevant factor in making that determination, and by establishing specific dollar amounts and setting forth other related requirements, the Staff is now providing clear guidance for its usage by issuers. Views may differ as to the benefits of and risks associated with this increase in clarity and whether the NAL will result in more widespread reliance on Rule 506(c). But at a minimum, this clarification from the Staff removes some of the uncertainty around the role of a minimum investment amount in determining whether an issuer has taken "reasonable steps" to verify accredited investor status.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Daniel Anderson (partner) at 212.701.3819 or [danderson@cahill.com](mailto:danderson@cahill.com); Geoffrey E. Liebmann (senior counsel) at 212.701.3313 or [gliebmann@cahill.com](mailto:gliebmann@cahill.com); or Trevor Lamb (associate) at 212.701.3584 or [tlamb@cahill.com](mailto:tlamb@cahill.com); or email [publications@cahill.com](mailto:publications@cahill.com).