KIRKLAND & ELLIS

Kirkland AIM

SEC No-Action Letter Opens the Door Wider on Rule 506(c) Offerings

13 March 2025

On March 12, 2025, the U.S. Securities and Exchange Commission provided interpretive guidance pursuant to a no-action letter clarifying that issuers relying on Rule 506(c) of Regulation D, the private offering safe harbor permitting general advertising and solicitation, can satisfy the Rule's accredited investor verification requirements through investor self-certification when the investor is making an investment equal to or above a minimum amount.

The no-action letter, which builds on prior industry guidance to broker-dealers and registered investment advisers, means private funds no longer need to rely on more burdensome accredited investor verification procedures when conducting Rule 506(c) offerings, such as obtaining: IRS forms; bank or brokerage statements; credit reports; or attorney, CPA, broker-dealer or registered investment adviser verification letters.

The minimum investment amounts are only $200,000 for natural persons and $1 million for entities,[1] and binding capital commitments count towards the minimum, meaning most sponsors should be able to take advantage of this new guidance for Rule 506(c) offerings.

Under the new guidance, a private fund issuer could reasonably conclude that it has taken reasonable steps to verify a purchaser's accredited status if the private fund:

- obtains written representations that:
  - the purchaser is an accredited investor; and
  - the purchaser's minimum investment amount is not financed[2] in whole or in part by any third party for the specific purpose of making the particular investment in the issuer;

- requires minimum investment amounts (including binding capital commitments) of at least $200,000 for natural persons and least $1 million for legal entities;[1] and
- 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.

Historically, only a small percentage of offerings have relied on Rule 506(c) because of the burdensome verification requirements. In particular, private fund sponsors often found the verification requirements to be a roadblock to offering Rule 506(c) interests to high-net-worth bank feeder vehicles and clients of intermediaries, such as broker-dealers and registered investment advisers. We expect this new guidance will impact the market and make Rule 506(c) offerings more prevalent.

If you have any questions, please contact the Kirkland IFG and regulatory attorneys with whom you regularly work.

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1. For entities that are accredited solely due to the accredited investor status of each of the entity's equity owners, the minimum investment amount is $1 million, or $200,000 for each of the entity's equity owners if the entity has fewer than five natural person owners. ↩

2. For the sake of clarity, the lack of financing requirement applies 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. In addition, for entities that are accredited solely due to the accredited investor status of each of the entity's equity owners, each equity owner needs to make the lack of financing representation. ↩

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Suggested Reading

- 30 January 2025 Kirkland AIM SEC Delays Implementation Date for Revised Form PF Allowing April 30th Filings to Use Current Form
- 24 January 2025 Kirkland AIM Off-Channel Communications
- 07 January 2025 Kirkland AIM Private Fund Manager U.S. SEC / CFTC Compliance: 2025 Key Dates