

Memorandum

SEC Staff Letter Could Open the Door to More General Solicitations for Private Funds

March 17, 2025

In a [letter](#) issued last week, the SEC staff opened the door to far greater use of the so-called “general solicitation” offering exemption of Regulation D under the Securities Act of 1933. [Rule 506\(c\) of Regulation D](#) permits the use of general solicitation—meaning fund marketing activity that utilizes public means—if, among other conditions, the issuer takes “reasonable steps to verify” the accredited investor, or “AI,” status of the purchasers. Many fund sponsors have avoided general solicitations because the AI verification process can be onerous, and some intermediaries are not willing to give assurances with respect to that process. The letter appears to provide a new, very practical route to verifying that status essentially through reliance on minimum investment amounts and investor self-certifications.

The letter is impactful because it could allow fund sponsors to generate publicity about funds they are launching without fear that they will lose the fund offering’s exemption from registering under the Securities Act. While the letter provides very welcome relief, it does not answer all questions, and we continue to analyze its application to various scenarios. Reversing course from a general solicitation approach back to a traditional Regulation D offering is not ideal; accordingly, we recommend fund sponsors take great care before launching into a general solicitation offering in reliance on the letter’s guidance.

With that note of initial caution, here is our take on the letter:

Key Takeaways

- **Minimum investment thresholds can satisfy AI verification requirements.** The letter permits verification of AI status to be satisfied under Rule 506(c) if certain minimum investment thresholds are required and investors make certain self-certifications. The minimum thresholds are:
 - **Individuals** (individual investors in their own capacity): \$200,000
 - **Entities** (including family office investors if the investor is an entity): \$1 million
 - Each investor (individual or entity) in an entity “formed for the purpose” of making the investment must meet the minimum threshold, and the entity must make representations as to each of those investors
 - The minimum amount must not be met with borrowed funds (amounts in excess of the minimums may be borrowed)

- **Private fund sponsors should benefit.** Many private fund offerings already qualify for these minimum investment thresholds. Accordingly, some practices prohibited by general solicitation restrictions could become more commonplace—reference to funds on sponsor websites or in speeches or other public forums, for example.
 - Any references to funds in public statements, however, will naturally result in more scrutiny on whether the statements are accurate, materially complete in the context given and compliant with the SEC marketing rule under the Advisers Act.
 - In addition, fund sponsors should consider requirements of non-U.S. jurisdictions before engaging in any publicity that could be perceived as targeting investors in those jurisdictions.
- **Retail vehicles relying on Regulation D might require further guidance.** Our initial take is that many retail offerings relying on Regulation D may not have sufficiently high minimum investment requirements, for commercial and (in some cases) regulatory reasons. The same may be true with respect to bank-sponsored feeder vehicles formed to facilitate high net worth investors’ access to a specific private fund. It does not appear that the letter was informed by retail vehicle needs, but the letter suggests an overall openness to making general solicitation feasible, and we may engage the staff on issues specific to retail vehicles that rely on Regulation D.
- **Reg S offerings are not impacted, but fund sponsors need to consider other jurisdictions’ requirements.** The letter and procedures therein apply to Regulation D offerings only. Regulation S (non-U.S.) offerings are not impacted. Fund sponsors should check with local counsel in non-U.S. jurisdictions before engaging in marketing activity in those jurisdictions. Non-U.S. jurisdictions may well have rules affecting general solicitation-style marketing.

Detailed Summary of the Letter

[Rule 506\(c\)](#) permits the use of general solicitation in exempt Regulation D offerings if (among other conditions) the issuer takes “reasonable steps to verify” the AI status of the purchasers. The rule provides a list of non-exclusive and non-mandatory methods to satisfy the verification requirement, but many fund sponsors have found these methods to be unworkable.

THE LETTER PERMITS THE USE OF INVESTMENT MINIMUMS TO VERIFY AI STATUS

The [letter](#) permits issuers to satisfy the Rule 506(c) requirement to take “reasonable steps to verify” the AI status of purchasers by requiring minimum investment amounts of at least \$200,000 for natural persons and at least \$1,000,000 for legal entities. Such minimum investment amounts must be coupled with written representations from each purchaser that: (i) it is an AI, and (ii) the minimum investment amount is not financed in whole or in part by a third party for the specific purpose of making the investment.

- The letter will permit an issuer to satisfy the verification requirement by:
 - Having minimum investment amounts of at least \$200,000 for natural persons and at least \$1,000,000 for legal entities; **and**
 - Receiving written representations that:
 - the purchaser is an AI; 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.
- A purchaser must enter into an agreement to make the required minimum investment, which could be made pursuant to a binding commitment to invest at least the minimum cash amount in one or more installments, as and when called by the issuer.
- The SEC staff has also made [related updates to its Compliance and Disclosure Interpretations](#) (so-called, C&DIs) regarding Rule 506(c).

THE LETTER REQUIRES WRITTEN REPRESENTATIONS FROM THE INVESTOR

- A **natural person** must provide a written representation that he or she meets the income and/or net worth tests established in Rule 501(a)(5) or (a)(6) of Regulation D's definition of the term "accredited investor."
- A **legal entity** that is accredited by total assets must provide a written representation that it is an AI as defined in Rule 501(a)(3), (a)(7), (a)(8), (a)(9), or (a)(12).
- A **legal entity accredited solely from the AI status of all of its equity owners** must provide a written representation that:
 - It is an entity that is an AI, as defined in Rule 501(a)(8), in which all of the equity owners are AIs, as defined in Rule 501(a)(3), (a)(5), (a)(6), (a)(7), (a)(9), or (a)(12); **and**
 - Each of the purchaser's equity owners has a minimum investment obligation to the purchaser of at least \$200,000 for natural persons and \$1,000,000 for legal entities. This obligation could be made 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.
- The written representations can 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 can reasonably determine under the circumstances of the offering.

SOME FINANCING PERMITTED (BUT NOT SOLELY FOR THE PURPOSE OF MAKING THE MINIMUM INVESTMENT)

- A purchaser could represent that its minimum investment amount is not financed in whole or in part if the purchaser obtains capital through one or more:

- financing programs, including a secured credit facility, that has other purposes than solely making the particular investment in the issuer
- binding commitments or financing to the purchaser that predate the commencement of the offering under Rule 506(c)
- financing transactions conducted by the purchaser in which the purchaser, as an issuer, satisfied the conditions applicable to an issuer under the letter
- A formed-for-the-purpose entity must provide a written representation that 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 lack of financing requirement applies **solely** to the minimum investment amount but not to any greater investment amount.

NO BLINDERS PERMITTED

- The issuer must not have actual knowledge of any facts that indicate that any purchaser is not an AI 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.

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