Minimum Amounts, Maximum Access: New Offering Framework Allows Greater Public Access to Private Markets

March 26, 2025

EXECUTIVE SUMMARY

On March 12, 2025, the Division of Corporation Finance (the "Division") of the Securities and Exchange Commission (the "SEC") in an interpretive letter (the "506(c) Letter")[1] provided a more streamlined method for issuers, including private funds and registered funds, to raise capital in the private markets. The 506(c) Letter confirmed that a fund issuer using general solicitation to offer securities (meaning the issuer can use public means to advertise the offering) could satisfy the "reasonable steps" requirement to verify an investor's "accredited investor" status by reference to a minimum investment amount.

This much-needed guidance should increase a fund's ability to raise additional capital from investors that, to date, many fund sponsors had difficulty accessing due to onerous verification standards that they and fund intermediaries (e.g., fund platforms, placement agents and bank-sponsored feeder funds) were reluctant to employ. Notably, the 506(c) Letter confirms that investment minimums are not the only methods that may be used to satisfy Rule 506(c); issuers may continue to use other reasonable methods.

While this alert focuses on implications for private and registered funds, we note that the 506(c) Letter is not limited to fund issuers.

---

[1] https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225. We encourage you to read the full text of the incoming letter at https://www.sec.gov/files/corpfin/no-action/latham-watkins506c-031225-incoming.pdf.

On the same date, the Division also issued new Compliance and Disclosure Interpretations that confirm that the verification methods provided in Rule 506(c) of Regulation D under the Securities Act of 1933, as amended, (the "Securities Act") are not the exclusive means to demonstrate compliance with Rule 506(c)'s verification requirement, noting that the method of verification can be tailored to the facts and circumstances of the offering, and that minimum investment amounts can serve as a "reasonable step" to verify accredited investor status. https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/securities-act-rules.

Rule 506(c) and the Rule 506(c) Letter

Generally, Rule 506(c) permits general solicitation so long as all investors in the offering are accredited investors and the issuer takes reasonable steps to verify the accredited investor status of the investors. Rule 506(c) includes a list of non-exclusive methods to satisfy the verification requirement, although many fund sponsors and intermediaries have found compliance with those requirements difficult to operationalize, particularly for retail or natural person investors. The 506(c) Letter provides an alternative verification method for both entity and natural person investors with minimal additional documentation, which can be met by private funds and registered funds if:

- The offering requires or the investor invests a minimum investment amount of at least $1,000,000 for an entity investor or $200,000 for a natural person investor, in each case inclusive of binding commitments;
    - An entity investor accredited solely on a "look-through basis" (i.e., based on the accredited investor status of all of its equity owners, such as certain feeder funds) must agree to invest a minimum of $1,000,000, or $200,000 for each of the look-through entity's equity owners if all of the look-through entity's equity owners number fewer than five natural persons;
- The fund receives a written representation from the investor (which can be provided in a subscription agreement, a standalone document, an affirmative written electronic communication from the investor, or any other written means as the issuer reasonably determines under the circumstances of the offering):
    - that the investor is an "accredited investor" as defined in Rule 501;
        - for look-through entities, each of its equity owners has a minimum investment obligation to the look-through entity (inclusive of binding commitments) of at least $200,000 for natural persons and $1,000,000 for legal entities;
    - that the investment amount is not financed by a third party for the specific purpose of investing in the offering;[2]
        - for look-through entities, the minimum investment amount of the look-through entity and each of its equity owners is not financed in whole or in

[2] The third-party financing condition includes exceptions for certain specified financing arrangements, including those where the financing is for purposes other than to finance the investment in question.

part by any third party for the specific purpose of making the particular investment in the issuer; and

- The fund has no actual knowledge of any facts that indicate that the investor's representations above are otherwise inaccurate.

Issues to Consider

Many private funds relying on Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "Investment Company Act"), already require investment minimums higher than those reflected in the 506(c) Letter, which could make the prospect of relying on Rule 506(c) more appealing to private funds due to the ability to more freely market their interests and avoid foot-faults for public statements made at conferences or on firm websites. Funds relying on Section 3(c)(1) of the Investment Company Act or another exception thereunder may more universally welcome the new verification options, although such funds should nonetheless pay close attention to investor qualification requirements in addition to Rule 506, such as the "qualified client" standard under the Investment Advisers Act of 1940, as amended, so as to be able to charge performance fees to such funds.

Any "switch" to Rule 506(c) should be analyzed broadly, as the rule does not relieve an issuer or its affiliates from general antifraud requirements applicable to any offering of securities. U.S. 3(c)(7) funds (and 3(c)(1) funds) that make global offerings should also consider the effect of a "general solicitation" under Rule 506(c) on a foreign jurisdiction's offering requirements. A U.S. 3(c)(7) or 3(c)(1) fund's use of Rule 506(c), however, should alleviate any tension between the offering standards imposed by Section 3(c)(7) and the standard permitted by Regulation S under the Securities Act.

Certain funds registered under the Investment Company Act, and certain funds that elect to be regulated as business development companies ("BDCs") under the Investment Company Act, choose to make private offerings pursuant to Rule 506. Such registered funds and BDCs should also find the expanded verification procedures that the 506(c) Letter introduced helpful in accessing additional sources of retail capital.

The 506(c) Letter has some similarities to the guidance that SIFMA provided on this subject in June 2014[3], especially with respect to the accredited investor verification method based on an investor's investment amount in the offering. The investment minimums in the 506(c) Letter, however, are lower than those included in the SIFMA guidance.

---

[3] https://www.sifma.org/wp-content/uploads/2017/05/sifma-guidance-on-rule-506c-verification.pdf.

* * *

Please reach out to your Debevoise contact or one of the authors if you have any questions about the application of the 506(c) Letter.

Eric T. Juergens
Partner, New York
1 212 909 6301
etjuergens@debevoise.com

Sheena Paul
Partner, Washington, D.C.
+1 202 383 8178
spaul@debevoise.com

Marc Ponchione
Partner, Washington, D.C.
+1 202 383 8290
mponchione@debevoise.com

Paul M. Rodel
Partner, New York
+1 212 909 6478
pmrodel@debevoise.com

Steven J. Slutzky
Partner, New York
+1 212 909 6036
sjslutzky@debevoise.com

Lauren P. Heller
Counsel, New York
+1 212 909 6123
lpheller@debevoise.com

Christine Liu
Associate, Washington, D.C.
+1 202 383 8102
cliu1@debevoise.com

Daniel Hyun Gu Yeo
Associate, New York
+1 212 909 7437
hgyeo@debevoise.com