

SEC Guidelines on Proving Accredited Status

What are Reasonable Steps?

So, what are reasonable steps to verify accredited investor status? The answer is: It depends. The SEC has adopted a “principles-based method” of accredited investor verification, indicating that the reasonable steps that are necessary to give an issuer a “reasonable belief” that all investors are accredited depends on the following factors:

- the nature of the purchaser and the type of accredited investor,
- the amount and type of information that the issuer has about the purchaser, and
- the nature of the offering, such as the manner in which the purchaser was solicited.

The SEC gives certain examples in the [final SEC Regulations](#) implementing Rule 506(c), discussing how the reasonable steps necessary to verify accredited investor status depend on the facts and circumstances. For Example, “An issuer that solicits new investors through a website accessible to the general public, through a widely disseminated email or social media solicitation, or through print media, such as a newspaper, will likely be obligated to take greater measures to verify accredited investor status than an issuer that solicits new investors from a database of pre-screened accredited investors created and maintained by a reasonably reliable third party.” Another example is as follows: “...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.”

Safe Harbor for Reasonable Steps

Fortunately, in the final release adopting Rule 506(c), the SEC adopted a non-exclusive “safe harbor” to provide some certainty that issuers are complying with the reasonable steps requirement for natural person investors. Provided that the issuer of securities does not otherwise have knowledge that such person is not an accredited investor, the issuer will be deemed to have taken reasonable steps if:

- with respect to purchasers who are accredited investors based on income, the issuer reviews IRS forms that report revenue (W-2, Form 1099, Schedule

- K-1 or filed Form 1040) for the last two years and obtains a written representation from such person that he or she has a reasonable expectation of reaching the income level in the current year;
- with respect to purchasers who are accredited investors based on net worth, the issuer reviews bank statements, brokerage statements, other statements of securities holdings, certificates of deposit and/or tax assessments and appraisal reports issued by third parties in order to verify assets, a consumer report from at least one of the nationwide consumer reporting agencies to verify liabilities and obtains a written representation that all liabilities necessary to make a net worth determination have been disclosed (all information reviewed may not be more than 3 months old);
 - the issuer has obtained a written confirmation from a broker-dealer, a registered investment advisor, a licensed attorney or a CPA that such person has taken reasonable steps to verify that the purchaser is an accredited investor within the prior 3 months and determined that such purchaser is an accredited investor, and
 - for purchasers who previously purchased securities in an issuer's Rule 506(b) transaction prior to the effectiveness of Rule 506(c), a certification that such person is an accredited investor.

Although the safe harbors outlined above are not mandatory and are non-exclusive, most issuers with individual purchasers will likely take all necessary means to fall within the safe harbors because nobody wants to be one of the SEC's initial test cases regarding whether the issuer of securities has taken reasonable steps.