

Securities Lawyer 101

Accredited Crowdfunding Q & A



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Private placement offerings under [Rule 506](#) of Regulation D of the Securities Act of 1933, as amended (the "Securities Act") are a cost effective and relatively quick way for private companies to raise capital before, during and after a going public transaction. The JOBS Act created Rule 506 and created a new exemption known as Accredited Crowdfunding. Rule 506(c) fundamentally changed the way unregistered offerings are conducted. While the rule imposes stringent requirements, these requirements are manageable for issuers putting effective compliance strategies into place. Rule 506 offerings are frequently used to raise capital in connection with going public transactions that involve filing a registration statement on Form S-1.

This Securities Lawyer Q & A addresses the recent questions we have received about Rule 506(c) and Accredited Crowdfunding.

Q. What are the maximum amounts that can be raised in a securities offering conducted in an Accredited Crowdfunding Offering made pursuant to Rule 506(c)?

A. Rule 506(c) does not limit the amount that can be raised.

Q. Can a Company advertise an offering made using the Accredited Crowdfunding exemption?

A. Yes, if you comply with the requirements of Rule 506(c) including accredited investor verification.

Q. If my company is in the middle of a Rule 506 offering as of September 23rd, can it continue its offering but generally engage in general solicitation and advertising?

A. Yes but once it engages in solicitation, it cannot accept funds from non-accredited investors.

Q. Does my Company have to file a Form D before it advertises its offering under Rule 506(c)?

A. As of now, issuers do not have to file a Form D prior to engaging in general solicitation or advertising.

Q. Does my company have to file its general solicitation and advertising materials with the SEC before generally soliciting?

A. No, you do not have to file your general solicitation and advertising materials with the SEC before engaging in solicitations or advertising.

Q. Can my Company sell to up to 35 non-accredited investors if it engages in general solicitation and advertising?

A. No. A company cannot engage in general solicitation and advertising if it accepts funds from even one non-accredited investor.

Q. Is there a limit on the number of purchasers who can invest in a Rule 506 (c) Offering?

A. Rule 506(c) will allow issuers to sell securities to an unlimited number of accredited investors if general solicitation and advertising is used. Rule 506(b) permits issuers to sell securities to up to 35 non-accredited investors and an unlimited number of accredited investors if general solicitation and advertising is not used.

Q. How did the JOBS Act change Rule 506 offerings?

A. The [JOBS Act](#) eliminated the prior prohibition against general solicitation and advertising in Rule 506 securities offerings, provided that the securities offered are sold only to accredited investors; however, the issuer is required to take “reasonable steps” to verify that all investors are accredited. After September 23, 2013, Rule 506 offerings being made without general solicitation will be conducted pursuant to Rule 506(b).

Q: Can I rely on an investor certification or declaration from an investor certifying that he or she is accredited?

A. No. You must take reasonable steps to verify the accredited investor status of all investors if you engage in general solicitation and advertising under Rule 506(c).

Q. What are the new requirements that apply to Accredited Crowdfunding under Rule 506 (c) offerings?

A. The Dodd-Frank Wall Street Reform and Consumer Protection Act imposed bad actor

ban provisions. The new rules prohibit issuers as well as underwriters, placement agents, directors, executive officers, and certain shareholders from participating in Rule 506 offerings, if they have been convicted of, or are subject to court or administrative sanctions for, securities fraud or other violations of specified laws. This prohibition applies to offerings conducted under Rule 506(c).

Q. In connection with a Rule 506 offering, is the issuer required to undertake investor verification steps?

A. When general solicitation is used the issuer must take steps to verify accredited investor status. The issuer must demonstrate a reasonable belief that the investors in the offering are accredited investors. As a result, the issuer must some conduct diligence if it relies upon a third-party verification service. For offerings made in reliance upon Rule 506(b), issuers are not required to confirm accredited investor status.

Q. Are the securities sold in offerings made under Rule 506(b) and (c) restricted securities?

A. Yes, securities sold in Rule 506(b) and Rule 506(c) offerings are restricted securities. The changes to Rule 506(c) would not affect tradability or resales, because Rule 506 is available only to issuers.

Q. Do companies have file a Form D with the SEC if they conduct a securities offering using Accredited Crowdfunding pursuant to Rule 506 (c) of Regulation D?

A. While companies relying upon the Rule 506 exemption do not have to register their securities, they must file a Form D with the SEC. This includes issuers conducting offerings under Rule 506(c). In these offerings, [Form D requirements](#) have been expanded to include among other things, disclosure of whether general solicitation and/or advertising is used in the offering.

For further information about this securities law Q & A, please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, Florida, [\(561\) 416-8956](tel:(561)416-8956), by email at info@securitieslawyer101.com or visit www.securitieslawyer101.com. This [securities law blog](#) post is provided as a general informational service to clients and friends of [Hamilton & Associates Law Group](#) and should not be construed as, and does not constitute legal advice on any specific matter, nor does this message create an attorney-client relationship. Please note that the prior results discussed herein do not guarantee similar outcomes.
