



June 1, 2020

VIA ELECTRONIC SUBMISSION

Shaver Law Group, LLC d/b/a My RIA Lawyer
400 Galleria Parkway
Suite 1500
Atlanta, Georgia 30339

Attn: Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, Rel Nos. 33-10763 and 34-88321; File No. S7-05-20

Dear Ms. Countryman:

The Shaver Law Group, LLC d/b/a My RIA Lawyer appreciates the opportunity to comment on the above-mentioned release by the U.S. Securities and Exchange Commission (the “Commission”).¹ We speak on behalf of our clients and are in support of the Commission's Proposal to amend the verification requirements under Rule 506(c) (the “Proposal”). We support the Commission’s effort to address widespread confusion, minimize investor risks, and alleviate verification process costs that burdens our clients and other issuers.

Currently, Regulation D consists of three rules that provide exemptions from the registration requirements of the Securities Act.² Rule 506(c) of Regulation D offers an exemption without any limitation on the offering amount.³ Under Rule 506(c), issuers can make offers through general solicitation or advertising so long as: (1) all purchasers in the offering are limited to accredited investors; (2) the issuer takes reasonable steps to verify the investors’ accredited investor status; and (3) satisfaction of other conditions⁴ under Regulation D.⁵

There are currently two methods to verify the investors’ accredited investor status: (1) a principles-based method; or (2) a non-exclusive list of verification methods for natural person purchasers.⁶ Leading up to this Proposal, issuers expressed growing concerns regarding the cost and burdens of the “reasonable steps to verify” requirement, difficulty in determining the appropriate levels of verification of the accredited investor status of investors, and potential impact and risks on investor privacy.⁷

¹ 85 Fed. Reg. 17956 (March 31, 2020).

² See 85 Fed. Reg. 17956 at 13.

³ See *id.*

⁴ Offerings under Rule 506(c) must satisfy the conditions of: Rule 501 (definitions for the terms used in Regulation D); Rule 502(a) (integration); Rule 502(d) (limitations on resale); and Rule 506(d) (“bad actor” disqualification).

⁵ See *id.*

⁶ See *id.* at 86.

⁷ See 85 Fed. Reg. 17956 at 87.



Principles-Based Method

The principles-based method of verification requires an objective determination by the issuer, or its agents, as to whether the steps taken are *reasonable in the context of the particular facts and circumstances* of each purchaser and transaction.⁸ In some circumstances, the determination of the reasonable steps may not be substantially different from an issuer's development of a "reasonable belief."⁹ Through this verification method, the Commission intended to provide issuers with flexibility in determining the steps needed to verify an investor's accredited investor status, and to avoid uniform verification methods that may be ill-suited or unnecessary to a particular offering or purchaser in light of its unique facts and circumstances.¹⁰ However, issuers have expressed concerns of regulators or other market participants questioning their method of verification without regard to the analysis performed by the issuer under this method.¹¹

To minimize the concerns and encourage issuers to utilize a method that best fits their unique facts and circumstances, the Commission restated their prior guidance on the principles-based method and what may be considered "reasonable steps" to verify an investor's accredited investor status.¹² Though it refuses to codify an exclusive list of factors, the Commission suggests the following as some of the factors an issuer *should consider* when using the principles-based verification method:

- The nature of the purchaser and the type of accredited investor that the purchaser claims to be;
- 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 to participate in the offering, and the terms of the offering, such as a minimum investment amount.¹³

Non-Exclusive List of Verification Methods

The non-exclusive list of verification methods provided by Rule 506(c) lists verification documents that issuers *may* review, but are not required to use when seeking to satisfy the verification requirement such as W-2s, tax returns, bank and brokerage statements, credit reports, etc.¹⁴ The Commission issued the non-exclusive list in response to requests for more certainty on acceptable verification methods, however, it inadvertently created confusion amongst issuers, and encouraged some to rely solely on the items outlined in the non-exclusive list.¹⁵ In addition to confusion amongst issuers, there were growing concerns that issuers strictly complying with the non-exclusive list of methods may drive away potential investors who are wary of turning over financially sensitive information.¹⁶

Commission Proposal

In response, the Commission proposes to add a new item to the non-exclusive list in Rule 506(c) that would allow an issuer, or its agents, to establish that an investor remains an accredited investor as of the time of sale if: (1) the issuer or its agents previously took reasonable steps to verify the investor as an accredited

⁸ See *id.*

⁹ See *id.* at 90.

¹⁰ See *id.* at 89.

¹¹ See *id.*

¹² See *id.*

¹³ See *id.* at 89-90.

¹⁴ See 17 C.F.R. § 230.506.

¹⁵ See *id.* at 87.

¹⁶ See *id.*



investor; (2) the investor provides a written representation to that effect to the issuer or its agent; and (3) the issuer or its agent is not aware of information to the contrary.¹⁷ The Commission proposes this additional line item to the non-exclusive list with the anticipation of the following benefits: reduction in costs of verification for issuers that may engage in more than one Rule 506(c) offering over time with repeat investors; and reduction of continual risk to investors from having to repeatedly provide financially sensitive information to the issuer or its agents.¹⁸ The Commission acknowledges the risk that some previously verified investors could lose their accredited investor status over time, and may provide written representations that they are accredited investors.¹⁹ Should an issuer not be aware of information to the contrary, the issuer might sell securities to non-accredited investors, violating Rule 506(c).²⁰ However, the Commission expects the preexisting relationship between the issuer and investors to mitigate this risk.²¹

Conclusion

Our private fund clients benefit when the Commission’s rules are fair, clear, and enforced in a consistent manner. The Proposal fairly meets the objectives of the Commission in protecting investors while not being overly burdensome on fund sponsors. The Proposal Further clarifies the accredited investor verification rule. This in turn reduces regulatory risk to fund sponsors which suggests an increase in private fund market participation. On behalf of our clients, My RIA Lawyer asks the Commission to enforce these accredited investor verification rules in a consistent manner in conjunction with ongoing and transparent guidance.

My RIA Lawyer is grateful for the opportunity to comment and appreciated the Commission’s ongoing commitment to open dialogue around its rulemaking process.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "L Shaver", followed by a horizontal line.

Leila Shaver, Esq.
Owner, Shaver Law Group, LLC, d/b/a My RIA Lawyer

¹⁷ See *id* at 208.

¹⁸ See *id*.

¹⁹ See *id* at 209.

²⁰ See *id*.

²¹ See *id*.