

Explanatory note: Guidance superseded by amended Rule 152.

Question 256.34

Question: ~~An issuer has been conducting a private offering in which it has made offers and sales in reliance on Rule 506(b). Less than six months after the most recent sale in that offering, the issuer decides to generally solicit investors in reliance on Rule 506(c). Is the five factor integration analysis in the Note to Rule 502(a) the sole means by which the issuer determines whether all of the offers and sales constitute a single offering?~~

Answer: ~~No. Under Securities Act Rule 152, a securities transaction that at the time involves a private offering will not lose that status even if the issuer subsequently decides to make a public offering. Therefore, we believe under these circumstances that offers and sales of securities made in reliance on Rule 506(b) prior to the general solicitation would not be integrated with subsequent offers and sales of securities pursuant to Rule 506(c). So long as all of the applicable requirements of Rule 506(b) were met for offers and sales that occurred prior to the general solicitation, they would be exempt from registration and the issuer would be able to make offers and sales pursuant to Rule 506(c). Of course, the issuer would have to then satisfy all of the applicable requirements of Rule 506(c) for the subsequent offers and sales, including that it take reasonable steps to verify the accredited investor status of all subsequent purchasers.~~ [November 17, 2016*]

[Withdrawn January 23, 2026]