



Comparison Chart
Regulation D Rule 506(b) vs Regulation D Rule 506(c)
by Jason Powell, Esq.

	Rule 506(b)	Rule 506(c)
Dollar Limit:	No limit	No limit
Manner of Offering:	Limited marketing directly to known investors without "general solicitation" (substantial pre-existing relationship); no internet solicitation (although online intermediaries may be used)	No limitations on solicitation, can be marketed over the internet; TV, advertisements and solicitation on social media permitted
Eligible Issuers:	Both SEC registered and private companies can use exemption (U.S. and foreign)	Both SEC registered and private companies can use exemption (U.S. and foreign)
Eligible Investors:	Up to 35 non-accredited investors permitted; no limits on accredited investors	Only accredited investors may buy
Ascertaining Accredited Investor Status:	Accredited investors typically self certify accredited status through an investor questionnaire	Issuers must take reasonable steps to "verify" accredited status; may use various methods; non-exclusive list of methods that may be relied on as meeting requirements
Filing Requirement:	File Form D with the SEC not later than 15 days after first sale.	File Form D with the SEC 15 days before use of general solicitation
Restrictions on Resale:	Restricted securities.	Restricted securities.
Blue Sky Exemption:	No need to comply with state blue sky laws	No need to comply with state blue sky laws
Limits on Investment Amount:	None	None
Types of Security:	No limitations	No limitations
Structure of Investment:	Special purpose vehicles can be used as intermediary for holdings by accredited	Special purpose vehicles can be used as intermediary for holdings by accredited investors

	investors, but not non-accredited investors	
Disclosure:	Private Placement Memorandum typically used although not required if all investors are accredited; online offerings typically more flexible	Private Placement Memorandum typically used, but disclosure is driven by market demands and liability concerns
Use of offering materials outside of mandated disclosure.	Mandated disclosure only if non-accredited investors involved (but same disclosure should be given to all investors)	Not required
Financial Statements:	Financial statements required if non-accredited investors: Offerings to \$2m: audited balance sheet Offerings to \$7.5m: f/s for smaller reporting companies, audited unless unreasonable expense (in which case balance sheet must be audited) Offerings above \$7.5m: f/s mandated for reporting companies, audited unless	Not required
SEC Review:	No review by SEC	No review by SEC
Ongoing Disclosure:	None	None
Liability:	Liability under general Section 17/Rule 10b-5 anti-fraud provisions for any person making untrue statements; state law liability; potential "willful participant" liability for intermediary	Liability under general Section 17/Rule 10b-5 anti-fraud provisions for any person making untrue statements; state law liability; potential "willful participant" liability for intermediary
Register under 34 Act	Registration required if 2,000 holders of record of equity securities or 500 non-accredited holders	Registration required if 2,000 holders of record of equity securities
Intermediaries:	Intermediaries not required; any intermediaries used must be registered broker dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries not required; any intermediaries used must be registered broker dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)
"Bad Actor" Rules:	Offering cannot be made if "Bad Actor" involved; issuer must take "reasonable care" to exclude Bad Actors, may use questionnaires	Offering cannot be made if "Bad Actor" involved; issuer must take "reasonable care" to exclude Bad Actors, may use questionnaires

Three Important Distinctions between Regulation D Rule 506(b) and Regulation D Rule 506(c)

1. Information

If all the investors are accredited, there is no difference between Rule 506(b) and Rule 506(c). If there is even one non-accredited investor in a Rule 506(b) offering the issuer must provide a lot more information.

2. Advertising

In a Rule 506(b) offering you can advertise only the brand, however in a Rule 506(c) offering you can advertise the deal. An issuer undertaking a 506(b) offering can use their website attracts investors who sign up and go through a know your customer process following SEC guidelines. This involves having the investor complete questionnaires, speaking with the investor on the phone a couple times, learning about his or her experience and knowledge investing – in essence developing a relationship. Then, and only then, can should the issuer show the investor actual investments.

In contrast, a website offering investments under Rule 506(c) can show actual investments to everyone visiting the website.

3. Accredited Investor Verification

In a Rule 506(b) offering, the issuer may take the investor's word that he, she, or it is accredited, unless the issuer has reason to believe the investor is lying. In a Rule 506(c) offering, the issuer must take reasonable steps to verify that every investor is accredited. The Securities and Exchange Commission's regulations allow an issuer to rely on primary documents from an investor like tax returns, brokerage statements, or W-2s, but they also allow the issuer to rely on a letter from the investor's lawyer, accountant or broker. I do not recommend to my clients that they handle the verification process, but rather than they obtain a certification letter from the investor's lawyer, accountant or broker. Alternatively, issuers can use a third party service such as VerifyInvestor.

About Jason Powell

Jason Powell is a seasoned attorney, real estate investor, author, speaker and educator. Jason is a partner at the law firm of Cara Stone, LLP. Jason's legal practice focuses on real estate and securities law. Jason counsels new, emerging and established managers throughout the United States on forming and operating real estate syndications, real estate funds, mortgage pools and performing and non-performing note pools. Jason also advises clients on all aspects of real estate including acquisition and disposition, property development, joint ventures, title review and comment, equity and debt financing and leases. Jason is passionate about his role as a deal-maker - creating solutions to join together great people, projects and capital.