

# Third-Party Accredited Investor Verification Letter for a Rule 506(c) Offering

by Practical Law Corporate & Securities

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*A letter to be delivered by a registered broker-dealer, registered investment adviser, licensed attorney, or certified public accountant to assist the issuer in a Rule 506(c) offering in taking the necessary “reasonable steps” to verify the **accredited investor** status of a prospective purchaser. The letter is based in part on the safe harbor provision of Rule 506(c)(2)(ii)(C). This Standard Document has integrated notes with important explanations and drafting tips.*

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## Drafting Note: Read This Before Using Document

This Standard Document is a third-party **accredited investor** verification letter to be delivered to an issuer in connection with an unregistered offering under Rule 506(c) of **Regulation D** (Regulation D) under the **Securities Act**. This letter is designed to help an issuer satisfy the requirement of Rule 506(c) that it take “reasonable steps” to verify that each purchaser in the offering is an **accredited investor** (AI).

The letter is based in part on the safe harbor provision of Rule 506(c)(2)(ii)(C). Under that non-mandatory, non-exclusive safe harbor, the steps taken by an issuer to verify the AI status of a natural person will be deemed reasonable under Rule 506(c) if the issuer obtains a written confirmation of the purchaser’s AI status from one of the following:

- A registered **broker-dealer**.
- A registered **investment adviser**.
- A licensed attorney in good standing under the laws of the jurisdiction in which he or she is admitted to practice law.
- A certified public accountant (CPA) duly registered and in good standing under the laws of the place of his or her residence or principal office.

To satisfy the safe harbor, the third party (the third-party verifier) delivering the written confirmation should state that it “has taken reasonable steps to verify that the purchaser is an **accredited investor** within the prior three months and has determined that such purchaser is an **accredited investor**” (Rule 506(c)(2)(ii)(C), Securities Act).

Third-party verification of AI status may be more appealing than the other “reasonable steps” safe harbors under Rule 506(c)(2)(ii)(A) and (B) (relating to the **investor’s** annual income and net worth, respectively), because third-party verification allows **investors** to avoid delivering sensitive financial information directly to the issuer. For more on the Rule 506(c)(2)(ii) safe harbors, see [Standard Document, Accredited Investor Representation Letter for Rule 506\(c\) Offering: Drafting Note: The Reasonable Steps Verification Requirement under Rule 506\(c\)](#).

## Verification of AI Status under Rule 506(c) Is a Principles-Based Determination

Guidance issued by the [Securities and Exchange Commission](#) (SEC) at the time Rule 506(c) was adopted clearly indicates that whether an issuer’s verification steps are reasonable is a principles-based determination that must be made in the context of the specific facts and circumstances of each purchaser and transaction ([Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, SEC Release No. 33-9415 \(July 10, 2013\)](#)). The instructions to paragraph (c)(2)(ii) of Rule 506 also expressly clarify that the:

“issuer is **not required** to use any of these methods [(the enumerated safe harbors)] in verifying the **accredited investor** status of natural persons who are purchasers. These methods are examples of the types of **non-exclusive** and **non-mandatory** methods that satisfy the verification requirement” (emphasis added).”

Issuers and their counsel using this letter should be aware that it **does not** technically satisfy all the requirements of the reasonable steps safe harbor in Rule 506(c)(2)(ii)(C). This is because the letter does not require the third-party verifier to make either of the following statements:

- It has taken reasonable steps to verify the purchaser’s AI status within the prior three months.
- It has determined that the purchaser is an AI.

The letter omits these statements in an effort to reduce and simplify the work required of the third-party verifier and to avoid forcing it to make a categorical determination of the purchaser’s AI status. Instead of reviewing the definition of AI in Rule 501(a) of Regulation D and evaluating a prospective **investor** in light of that definition, the third-party verifier need only:

- Review the supporting documents and back-up certification provided by the prospective **investor**.
- Confirm, solely on the basis of those documents, that the prospective **investor’s** annual income or net worth exceeds the minimum level set out in the verification letter (which tracks the amounts required in the Rule 501(a) definition of AI).

**Because the third-party verifier does not affirm the purchaser’s AI status, the issuer must make that determination itself, on the basis of the signed verification letter and the other surrounding facts and circumstances, possibly with guidance from its counsel.**

While this letter would not on its own satisfy the Rule 506(c)(2)(ii)(C) safe harbor, depending on the circumstances of the offering and the purchaser, a properly completed and signed letter together with a good faith reasoned determination of AI status by the issuer could nonetheless constitute reasonable steps to verify under Rule 506(c)(2)(ii). Issuer’s counsel should carefully consider the facts and circumstances surrounding each transaction and each purchaser to determine whether a signed third-party verification letter in line with this Standard Document would constitute reasonable steps to verify under Rule 506(c).

For more on the reasonable steps verification requirement, including the three factors an issuer should consider when weighing whether specific measures constitute reasonable steps, see [Practice Note, Section 4\(a\)\(2\) and Regulation D Private Placements: Guidance on Reasonable Steps to Verify Accredited Investor Status](#).

## This Letter Should Be Used with the Related Investor Back-Up Certificate

This third-party verification letter should be used with the related **investor** back-up certificate, [Standard Document, Investor Back-Up Certificate for Third-Party Accredited Investor Verification Letter for a Rule 506\(c\) Offering](#). The **investor** back-up certificate requires the **investor** to confirm for the benefit of the third-party verifier and the issuer that:

- The US federal income tax forms and other supporting documents provided by the **investor** to the third-party

verifier to show the **investor's** annual income or net worth are true, correct, and complete.

- If the **investor** is relying on annual income to satisfy the definition of AI, the **investor** reasonably expects to earn annual income in the current calendar year in excess of the amount required by that definition.
- If the **investor** is relying on net worth to satisfy the definition of AI, the **investor** has disclosed to the third-party verifier all liabilities necessary to determine net worth as calculated under that definition.

This verification letter contemplates that the **investor** back-up certificate will be:

- Completed and signed by the **investor**.
- Delivered by the **investor** to the third-party verifier.
- Attached by the third-party verifier to this verification letter as an annex.
- Delivered to the issuer by the third-party verifier together with its signed verification letter.

## Amendments to Definition of Accredited Investor

On August 26, 2020, the SEC adopted final rule amendments to modify the AI and **qualified institutional buyer** definitions, which became effective on December 8, 2020, including, among others:

- For the purposes of pooling finances to qualify as AIs under the joint net worth or income thresholds in Rule 501(a)(5) and (a)(6), adding the term “spousal equivalent”, and defining “spousal equivalent” as “a cohabitant occupying a relationship generally equivalent to that of a spouse.”
- Adding a note clarifying that the calculation of “joint net worth” for purposes of Rule 501(a)(5) can be the aggregate net worth of an **investor** and his or her spouse (or “spousal equivalent” as described above) and that the securities being purchased by an **investor** relying on the joint net worth test need not be purchased jointly.

For more information on these amendments, see [Legal Update, SEC Amends Accredited Investor and Qualified Institutional Buyer Definitions](#).

## Other Resources for Regulation D Offerings

For additional resources for Regulation D offerings, see the [Regulation D Private Placement Toolkit](#), which includes:

- Practice Notes that provide an overview of Regulation D offerings, including the use of general solicitation.
- Standard Documents including a form engagement letter, a “bad actor” questionnaire, subscription agreements, and a **blue sky** filing cover letter.
- Standard Clauses for issuer board resolutions and for form representations and covenants relating to general solicitation and bad actor disqualification.

END DRAFTING NOTE

## Third-Party Accredited Investor Verification Letter

### [THIRD-PARTY LETTERHEAD]

[Mr./Ms.] [FIRST NAME] [LAST NAME] has asked this firm to deliver to [ISSUER NAME] (the “**Company**”) this verification letter (the “**Verification Letter**”) to assist the Company in verifying whether [Mr./Ms.] [LAST NAME] is an “**accredited investor**” (an “**Accredited Investor**”) within the meaning of Rule 501 under the Securities Act of 1933, as amended (the “**Securities Act**”).

**Drafting Note: Third-Party Verification for Natural Persons Only**

The safe harbors in Rule 506(c)(2)(ii)(A) through (C) are for natural person purchasers. They are not intended to serve as examples of the types of methods that would constitute reasonable steps for verifying the AI status of a legal entity. For this reason, this verification letter assumes that the prospective **investor** is a natural person.

END DRAFTING NOTE

I confirm that I am authorized to sign this Verification Letter on behalf of my firm and that [I am/my firm is] (*check one*):

—		A certified public accountant duly registered and in good standing under the laws of the place of my residence or principal office.
—		A licensed attorney in good standing under the laws of each jurisdiction in which I am admitted to practice law.
—		A broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.
—		An investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended.

**Drafting Note: Third-Party Verifier Is a Legal Entity**

Rule 506(c)(ii)(2)(C) provides that the written confirmation may be obtained from a third party that is a natural person or a legal entity.

However, this verification letter assumes that if an individual licensed attorney or CPA delivers the letter, that person will have been authorized to sign the letter as a representative on behalf of his or her law firm or accounting firm. This approach is presumably in line with the preference of most individual attorneys and CPAs and also enhances the authoritative value of the letter from the issuer’s perspective.

If a licensed attorney or CPA wishes to sign the verification letter in an individual capacity, the letter should be revised accordingly.

END DRAFTING NOTE

In providing this Verification Letter, we are relying without independent verification on the accuracy and completeness of the Supporting Documents (defined below) and the Back-Up Certificate (attached as Annex A), each as delivered to us by [Mr./Ms.] [LAST NAME]. While we are not aware of any facts that would lead us to believe that either the Supporting Documents or the Back-Up Certificate are incomplete or inaccurate, we make no affirmative representation as to their completeness or accuracy.

Subject to the preceding paragraph, and based only on our review of the Supporting Documents and the Back-Up Certificate,

we confirm that [Mr./Ms.] [LAST NAME] (*check at least one*):

	—	Had individual annual income in excess of \$200,000, or joint annual income together with [his/her] spouse or spousal equivalent (as defined in Rule 501(j) under the Securities Act) (" <b>Spousal Equivalent</b> ") in excess of \$300,000, in each of the two most recent years for which [Mr./Ms.] [LAST NAME] has filed U.S. federal income tax returns ([YEAR] and [YEAR]).
	—	Has an individual net worth, or a joint net worth together with [his/her] spouse or Spousal Equivalent, in excess of \$1,000,000. For purposes of this Verification Letter, "net worth" means total assets (excluding [Mr./Ms.] [LAST NAME]'s primary residence) at fair market value less total liabilities. In calculating total liabilities, debt secured by the primary residence is included only to the extent that it (a) exceeds the fair market value of the residence or (b) was incurred during the last 60 days (unless incurred to acquire the residence). For the purposes of calculating joint net worth, joint net worth can be the aggregate net worth of the <b>investor</b> and spouse or Spousal Equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard does not require that the securities be purchased jointly.

**Drafting Note: Annual Income and Net Worth**

**Annual Income**

The thresholds above for individual and joint annual income are tied to the annual income test in the definition of AI, which are set out in Rule 501(a)(6). The text of the annual income paragraph prompts the third-party verifier to specify the two calendar years during which the **investor's** income satisfied the income test. This is particularly important where the verification letter is delivered early in the year before the **investor** has filed its income tax returns for the immediately preceding year. For example, if the verification letter is being delivered in **February 2021**, before the **investor** has filed his or her 2020 federal income tax return, the issuer would want to know, and the third-party verifier should specify, that the two years for which the **investor** satisfied the income test were 2018 and 2019. In this situation, the requirement in Rule 501(a)(6) that the **investor** have "a reasonable expectation of reaching the same income level in the **current year**" (emphasis added) would apply to 2021, leaving an information gap regarding the **investor's** income in 2020. This gap may be addressed by requiring the **investor** to provide written representations:

- Confirming that no IRS forms reporting the **investor's** income for 2020 are available.
- Specifying the **investor's** income for 2020 and confirming that the **investor's** income for 2020 reached the level needed to qualify as an AI.

Model **investor** representations like these are discussed in [Standard Document, Investor Back-Up Certificate for Third-Party Accredited Investor Verification Letter for a Rule 506\(c\) Offering: Drafting Note: Annual Income](#). This approach mirrors the guidance provided by the SEC in [Compliance and Disclosure Interpretations: Securities Act Rules, Question 260.35](#).

**Net Worth**

The threshold for net worth above and the definitions of net worth and liabilities above track the language of the net worth test in the definition of AI, set out at Rule 501(a)(5). For more information, see [Practice Note, Section 4\(a\)\(2\) and Regulation D Private Placements: Accredited Investors](#).  
END DRAFTING NOTE

In support of this Verification Letter, we have received from [Mr./Ms.] [LAST NAME] and reviewed originals or copies of (the

**“Supporting Documents”** (check all that apply):

—	Form W-2s filed by [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] with the Internal Revenue Service for each of the two most recent years for which [Mr./Ms.] [LAST NAME] has filed U.S. federal income tax returns ([YEAR] and [YEAR]).
—	Form 1040s filed by [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] with the Internal Revenue Service for each of the two most recent years for which [Mr./Ms.] [LAST NAME] has filed U.S. federal income tax returns ([YEAR] and [YEAR]).
—	Form 1099s filed by [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] with the Internal Revenue Service for each of the two most recent years for which [Mr./Ms.] [LAST NAME] has filed U.S. federal income tax returns ([YEAR] and [YEAR]).
—	Schedule K-1s to Form 1065 filed by [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] with the Internal Revenue Service for each of the two most recent years for which [Mr./Ms.] [LAST NAME] has filed U.S. federal income tax returns ([YEAR] and [YEAR]).
—	Other documents filed by [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] with the Internal Revenue Service ( <i>describe</i> ): _____ _____ _____
—	Bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, or appraisal reports issued by independent third parties to [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent], in each case dated within three months of the date below.
—	A consumer credit report for [each of] [Mr./Ms.] [LAST NAME] [and [his/her] spouse or Spousal Equivalent] from at least one of the nationwide consumer reporting agencies dated within three months of the date below.
—	Other documents ( <i>describe</i> ): _____ _____ _____

**Drafting Note: Supporting Documents**

The US federal income tax forms and other documents listed above correspond to the documents listed in Rule 506(c)(2)(ii)(A) and (B), the reasonable steps safe harbors under which an issuer may **directly** verify an **investor’s** AI status under the AI income test or the AI net worth test.

Where the **investor** provides US federal income tax forms, it is important for the third-party verifier to specify the two calendar years during which the **investor’s** income satisfied the income test (see [Drafting Note, Annual Income](#)).

Where the **investor** provides documents indicating that it satisfies the AI net worth test, it is important for the third-party verifier to affirm that the documents reviewed are dated within three months of the date of the verification letter. This timing requirement tracks Rule 506(c)(2)(ii)(B), the reasonable steps safe harbor under which an issuer may **directly** verify an **investor’s** AI status under the AI net worth test.

END DRAFTING NOTE

We consent to the Company’s reliance on this Verification Letter in connection with a potential investment by [Mr./Ms.] [LAST NAME] in an offering of the Company’s securities (the “**Offering**”). However, we assume no liabilities or obligations in connection with the Company’s determination of whether [Mr./Ms.] [LAST NAME] is an **Accredited Investor**.

This Verification Letter speaks only as of the date below. We expressly disclaim any obligation to update the contents of this Verification Letter.

We are delivering this Verification Letter to the Company in connection with the Offering. This Verification Letter may not be relied upon by the Company, or by any other person, for any other purpose.

Firm name:	_____
Signature:	_____
Name:	_____
Title:	_____
Date:	_____

**Drafting Note: Signature Block**

This verification letter assumes that if an individual licensed attorney or CPA delivers the letter, that person will have been authorized to sign the letter as a representative on behalf of his or her law firm or accounting firm (see [Drafting Note, Third-Party Verifier is a Legal Entity](#)).  
 If a licensed attorney or CPA wishes to sign the verification letter in an individual capacity, the letter should be revised accordingly.  
 END DRAFTING NOTE

**ANNEX A: BACK-UP CERTIFICATE**

**Drafting Note: Annex A: Back-Up Certificate**

To support the third-party verifier in delivering this verification letter, the prospective **investor** should complete, sign, and deliver a back-up certificate. The third-party verifier should attach the **investor’s** signed back-up certificate to this verification letter before delivering it to the issuer.  
 For a form **investor** back-up certificate, see [Standard Document, Investor Back-Up Certificate for Third-Party Accredited Investor Verification Letter for a Rule 506\(c\) Offering](#).  
 END DRAFTING NOTE

