CAPITAL MARKETS · PRACTICE NOTE

Unlocking Capital Through Rule 506(c)

A Plain-English Guide to Publicly Marketed Private Offerings — for Sponsors and Their Investors

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For the better part of a century, raising private capital meant a quiet conversation in a familiar room. The Securities Act of 1933 prohibited issuers from advertising private placements, so a sponsor could only approach investors with whom it already had a substantive, pre-existing relationship. The JOBS Act of 2012 changed that. With the SEC's adoption of **Rule 506(c)** under Regulation D in 2013, issuers can now openly solicit accredited investors — through websites, email campaigns, webinars, social media, and conferences — without losing the federal exemption from registration. The trade-off is rigorous: every purchaser must be an accredited investor, and the issuer must take reasonable steps to verify it.

This note explains what Rule 506(c) is, why an increasing number of real estate sponsors, hospital systems, and operating companies are choosing it, and the regulatory architecture every offering must navigate — the Securities Act, the Investment Company Act of 1940, state blue sky laws, and the anti-fraud rules that no exemption ever displaces.

What Rule 506(c) Actually Is

Rule 506(c) is a non-exclusive safe harbor under Section 4(a)(2) of the Securities Act — the statutory exemption for transactions by an issuer not involving any public offering. Before the JOBS Act, the price of that exemption was silence: any general solicitation or general advertising defeated it. Congress directed the SEC to remove that prohibition for offerings in which all purchasers are accredited, and the Commission did so by adopting Rule 506(c).

Two conditions are non-negotiable:

- **All purchasers must be accredited investors** under Rule 501(a) — high-net-worth or high-income individuals, qualifying entities, knowledgeable employees, and (since 2020) certain holders of professional licenses such as Series 7, 65, and 82.
- **The issuer must take reasonable steps to verify** accredited status. Self-certification, which suffices under Rule 506(b), is not enough. The SEC has identified non-exclusive verification methods — income documentation, asset documentation paired with a credit report, or written confirmation from a registered broker-dealer, SEC-registered investment adviser, licensed

attorney, or CPA — and most platforms today rely on third-party verification services to standardize the file.

Securities sold under Rule 506(c) are *covered securities* under the National Securities Markets Improvement Act (NSMIA), so state registration is preempted. State **notice filings** — typically a copy of Form D and a fee — remain required in every state where an investor resides, generally within fifteen days of the first sale in that state.

Why Sponsors Are Choosing 506(c) — The Business Case

The strategic case for 506(c) is straightforward: a wider funnel, faster closes, and a marketing capability that doubles as franchise development. The compliance trade-offs are real but manageable when the structure is built correctly from day one.

- **Wider funnel, faster closes.** Sponsors can now market openly to physician groups, family offices, country-club networks, podcast audiences, and LinkedIn followings. Accredited-only pools also tend to clear faster than mixed 506(b) raises that must accommodate up to thirty-five non-accredited investors with the attendant disclosure burden.
- **Brand and franchise value.** The marketing itself builds the sponsor's long-term capital-raising platform. Each campaign expands the investor list for the next deal.
- **Versatility across asset classes and use cases.** The same regulatory architecture supports a wide range of capital formations — see the three vignettes below.

> *Rule 506(c) is the first meaningful loosening of the public-offering bar in eighty years. The discipline it demands in exchange is straightforward — but it is not optional.*

Three Representative Use Cases

Multifamily and Commercial Real Estate

A developer acquiring or recapitalizing a value-add multifamily, industrial, office, or self-storage asset uses a Delaware LLC as the issuer (single-asset or multi-asset fund), structures preferred-equity and common-equity tranches, and markets to accredited investors through a branded investor portal. The fund relies on Section 3(c)(1) or 3(c)(7) of the Investment Company Act to avoid registration as an investment company; the operating LLCs holding the real estate are typically not investment companies in the first instance.

Hospital–Physician Medical Office Syndications

A health system seeking to monetize its medical office building portfolio sells equity tranches to affiliated physicians and other accredited investors. The structure aligns physician economics with the hospital's real estate strategy, unlocks balance-sheet capital, and — because the physician investor base is naturally identifiable — pairs especially well with the 506(c) solicitation framework. Stark Law, Anti-Kickback, and tax-exempt-bond covenants must be scrubbed alongside the securities analysis.

Operating Companies Beyond Real Estate

Specialty lenders, search funds, and growth-stage operating businesses use 506(c) to syndicate equity or mezzanine capital from accredited networks. The same Investment Company Act analysis applies — operating companies generally rely on the fact that they are not engaged primarily in investing in securities, while pooled investment vehicles rely on 3(c)(1) or 3(c)(7).

The Compliance Architecture

A 506(c) offering does not exist in a single statute. Counsel will build the deal around six pillars, each of which has its own documentation track in the closing binder.

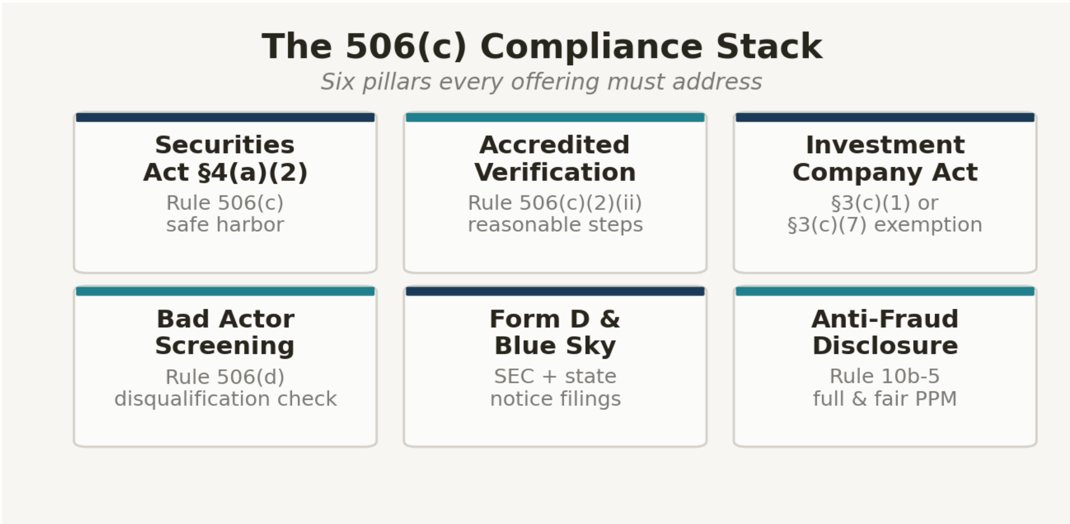

FIGURE 1 — THE SIX PILLARS OF EVERY RULE 506(C) OFFERING

- **Securities Act §4(a)(2) / Rule 506(c).** The federal safe harbor itself. File **Form D** with the SEC within fifteen days of the first sale, and amend for material changes.
- **Accredited investor verification (Rule 506(c)(2)(ii)).** Reasonable steps — principles-based, but in practice document-driven. The verification file is the single most important record in any SEC examination of a 506(c) offering. Retain it for the life of the fund plus the limitations period.
- **Investment Company Act analysis.** Most pooled real estate and private equity vehicles rely on Section 3(c)(1) (no more than 100 beneficial owners; or up to 250 for qualifying venture capital funds) or Section 3(c)(7) (qualified purchasers only — generally individuals with $5 million+ in investments). The SEC has confirmed that 506(c) general solicitation does not itself constitute a "public offering" for purposes of the 3(c)(1)/(c)(7) preconditions, but the underlying offering must still be a private placement under §4(a)(2).
- **Bad Actor disqualification (Rule 506(d)).** Issuers, general partners, directors, executive officers, 20% beneficial owners, promoters, and paid solicitors must be screened for disqualifying events. A standard Bad Actor Questionnaire belongs in every subscription package.
- **Blue sky notice filings.** NSMIA preempts state registration, but every state requires notice filings and fees for sales to its residents. Track the calendar carefully — late notice filings can jeopardize the state-level exemption even though the federal exemption is intact.
- **Anti-fraud (Rule 10b-5 and §17 of the Securities Act).** No exemption from registration is an exemption from the anti-fraud rules. The Investment Memorandum or PPM remains the central disclosure document, and every advertising touchpoint — landing pages, decks, webinars, social posts — is potentially actionable if it omits material facts or paints a misleading picture.

506(b) vs. 506(c)

Sponsors frequently ask which sibling exemption fits a particular raise. The short answer: if you want to market openly and your investor base is (or can be qualified as) entirely accredited, 506(c) is the modern default. If your offering depends on long-standing relationships and a small number of trusted non-accredited investors, 506(b) is still available — but you cannot mix them in the same offering.

Rule 506(b) vs. Rule 506(c) — At a Glance

	Rule 506(b)	Rule 506(c)
Solicitation	No general solicitation — pre-existing relationships only	General solicitation & advertising permitted
Investors	Up to 35 non-accredited + unlimited accredited	Accredited investors only
Verification	Self-certification generally sufficient	Issuer must take reasonable steps to verify
Integration	May convert to 506(c) before any solicitation	Cannot revert to 506(b) once solicitation begins

FIGURE 2 — CHOOSING BETWEEN THE TWO REGULATION D SAFE HARBORS

Practical Watch-Outs

- **No mid-stream switching.** Once general solicitation has begun, the issuer cannot revert to 506(b). Plan the exemption choice before the first marketing email is sent.
- **Performance advertising.** Citing prior deal IRRs invites scrutiny. Apply fair-presentation principles, distinguish realized from unrealized returns, and consider the SEC marketing rule if a registered investment adviser is involved.
- **Broker-dealer questions.** Paying transaction-based compensation to anyone other than a registered broker-dealer is a perennial enforcement focus. Solicitors, “finders,” and online platforms each require their own analysis.
- **ERISA, UBTI, and FIRPTA.** Accepting capital from retirement plans, tax-exempt entities, or non-U.S. investors layers tax and fiduciary regimes on top of the securities analysis. These should be modeled before the cap table fills up, not after.
- **Recordkeeping.** The verification file, marketing assets, subscription documents, Bad Actor questionnaires, and Form D filings should be retained in a single closing binder. Examinations look for completeness as much as substance.

Bottom Line

Rule 506(c) has matured from a novelty into the default exemption for accredited syndications that want reach. The compliance discipline it demands — verification, Investment Company Act fit, Bad Actor screening, Form D and blue sky calendar, and an unbroken anti-fraud overlay — is straightforward when built into the offering from day one and expensive to retrofit later. Sponsors evaluating a capital raise should bring counsel in *before* the first marketing asset is published, not after.

> *The right time to engage counsel is before the first email goes out — not after the first investor wires funds.*

THE DOCUMENT STACK — WHAT CLOSING LOOKS LIKE

- **Investment Memorandum / PPM** — Principal disclosure document; anchors the anti-fraud analysis.
- **Subscription Agreement** — Purchaser representations, accredited status, and signature pages.
- **Accredited Investor Verification** — Income, asset, or third-party letter — the heart of 506(c) compliance.
- **Bad Actor Questionnaire** — Rule 506(d) disqualification screen for covered persons.
- **Beneficial Ownership Certification** — CTA / FinCEN reporting and Investment Company Act counting.
- **Form D + State Notice Filings** — SEC within 15 days of first sale; states per investor residence.

FOR FURTHER INFORMATION

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