PRIVATE FUNDS · COMPLIANCE PRACTICE NOTE

Accredited Investor Verification Is Not KYC/AML

Two Frameworks, Two Files, Two Risks — A Plain-English Guide for Sponsors and Fund Managers

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Two compliance files sit on every private-fund manager's desk at every subscription. One answers a question of *securities law*: may this investor buy this security? The other answers a question of *financial-crimes law*: may this money enter the U.S. financial system? They sound similar. They are not. Confusing them — or treating one as a substitute for the other — is one of the most common, and most consequential, compliance mistakes in private capital raising today.

This note explains the two regimes side by side, walks through the recent regulatory churn (the postponed FinCEN Investment Adviser AML Rule, the narrowed Corporate Transparency Act, and the state-law overlay), and ends with a principles-based intake program — plus a checklist for the file that actually lands on the desk at closing.

Two Verifications, Two Questions

Accredited verification and KYC/AML answer different statutory questions

	Accredited Verification	KYC / AML / Sanctions
Question	May this investor buy this security?	May this money enter the financial system?
Statutory Source	Securities Act §4(a)(2) Rule 506(c)(2)(ii) Rule 501(a)	Bank Secrecy Act 31 C.F.R. Chapter X OFAC · CTA · IA AML Rule
Who Is Verified	The purchaser (and entity equity-owners for accreditation)	The investor and all 25%+ beneficial owners & control persons
What Is Verified	Income, net worth, or qualifying license	Identity, source of funds, sanctions / PEP status, geographic risk
Examiner	SEC	FinCEN · OFAC · DOJ Federal banking regulators
Failure Mode	Loss of Rule 506(c) safe harbor; rescission & §5 liability	Civil & criminal penalties; OFAC strict liability; loss of bank relationships

FIGURE 1 — TWO REGIMES, TWO QUESTIONS, TWO FILES

Framework One — Accredited Investor Verification

Accredited verification is a creature of the federal securities laws. It exists to police one question: *may this investor buy this security in a private placement?* Its statutory anchors are Section 4(a)(2) of the Securities Act of 1933 (the private-placement exemption), Rule 506(c) of Regulation D (the safe harbor that permits general solicitation), and Rule 501(a) of Regulation D (the definition of "accredited investor").

Where a 506(c) offering is in use, **Rule 506(c)(2)(ii)** obliges the issuer to take *reasonable steps* to verify that every purchaser is accredited. The SEC has identified non-exclusive safe-harbor methods — income documentation (W-2s and tax returns for the prior two years), asset documentation (bank, brokerage, or appraisal statements paired with a credit report), or a written confirmation from a registered broker-dealer, SEC-registered investment adviser, licensed attorney, or CPA. Most platforms today rely on third-party verification services that issue a standardized letter.

The 2020 amendments expanded Rule 501(a) to include certain professionally licensed individuals (Series 7, Series 65, Series 82), "knowledgeable employees" of private funds, and certain qualifying entities. The expansion did not, however, change the verification standard — it merely enlarged the pool of people who can be verified.

The verified person is **the purchaser** (and, for entity purchasers, the equity owners whose status drives entity-level accreditation). The examiner is the **SEC**. The failure mode is loss of the Rule 506(c) safe harbor — which means an unregistered, non-exempt sale of securities, with potential §5 liability, rescission rights, and disqualification consequences. Nothing in this regime asks where the money came from or whether the U.S. government has sanctioned the investor.

Framework Two — KYC, AML, Sanctions, and Beneficial Ownership

The second framework lives entirely outside the securities laws. It exists to answer a different question: *may this money enter the U.S. financial system?* Its statutory anchors are the Bank Secrecy Act (31 U.S.C. §§5311 et seq.) and its implementing regulations in 31 C.F.R. Chapter X, the sanctions regulations administered by the Office of Foreign Assets Control (OFAC) at 31 C.F.R. Chapter V, and a growing patchwork of state money-transmitter and financial-privacy statutes.

Bank Secrecy Act baseline

For covered financial institutions, the BSA framework has four operating components: a **Customer Identification Program** (CIP — verify identity at onboarding); the **Customer Due Diligence Rule** (CDD — identify and verify beneficial owners holding 25% or more equity, plus one control person, for legal-entity customers); **ongoing monitoring** (transaction surveillance and risk-rating refresh); and **reporting** — Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) when thresholds are met.

OFAC sanctions — strict liability

OFAC is the unforgiving sibling of AML. Every U.S. person — issuer, fund, manager, escrow agent, transfer agent — is prohibited from transacting with any individual or entity on the Specially Designated Nationals and Blocked Persons (SDN) List, or in a sanctioned jurisdiction. OFAC enforcement is **strict liability**: good faith and ignorance are not defenses. Practical compliance means screening every investor and every beneficial owner against the SDN List at onboarding and on a continuing basis, and screening wire counterparties as well.

FinCEN Investment Adviser AML Rule — watch this space

In August 2024, FinCEN finalized a long-anticipated rule extending core BSA obligations — written AML program, SAR filing, recordkeeping, and information-sharing — to most SEC-registered investment advisers and exempt reporting advisers. The original effective date was January 1, 2026.

On December 31, 2025, FinCEN issued a final rule **postponing** the effective date by two years — to **January 1, 2028** — citing the need to coordinate with the SEC, address scope concerns, and align with a broader Treasury review of AML priorities (FinCEN, Dec. 31, 2025; 91 Fed. Reg. 36, Jan. 2, 2026). Sophisticated managers should treat the postponement as a deferral, not a repeal — most expect the rule (or a close cousin) to take effect on the 2028 date or shortly thereafter. Fund managers who built AML programs in anticipation of the 2026 deadline should keep them on the shelf.

Corporate Transparency Act — narrowed, not gone

The Corporate Transparency Act once required virtually every U.S. corporation and LLC to report its beneficial owners to FinCEN. On March 21, 2025, FinCEN issued an **interim final rule** that narrowed the reporting obligation dramatically: domestic reporting companies and U.S. persons are exempt; only foreign reporting companies registered to do business in the United States must file (FinCEN BOI). The narrowed CTA does not eliminate beneficial-ownership diligence under the BSA CDD Rule — banks still ask, and prudent fund managers still collect.

State law — the NSMIA overlay

The National Securities Markets Improvement Act preempts state *securities* registration of 506(c) covered securities, but it does not preempt state *financial-crimes* regimes. Florida's Money Services Businesses Act (Chapter 560, Florida Statutes), New York DFS Part 504 (transaction-monitoring and OFAC-screening certifications by covered institutions), and the California Money Transmission Act and CCPA each layer additional requirements on top of federal BSA/OFAC baseline. The state overlay is most often relevant when an offering touches escrow services, payment processors, or California-resident investors.

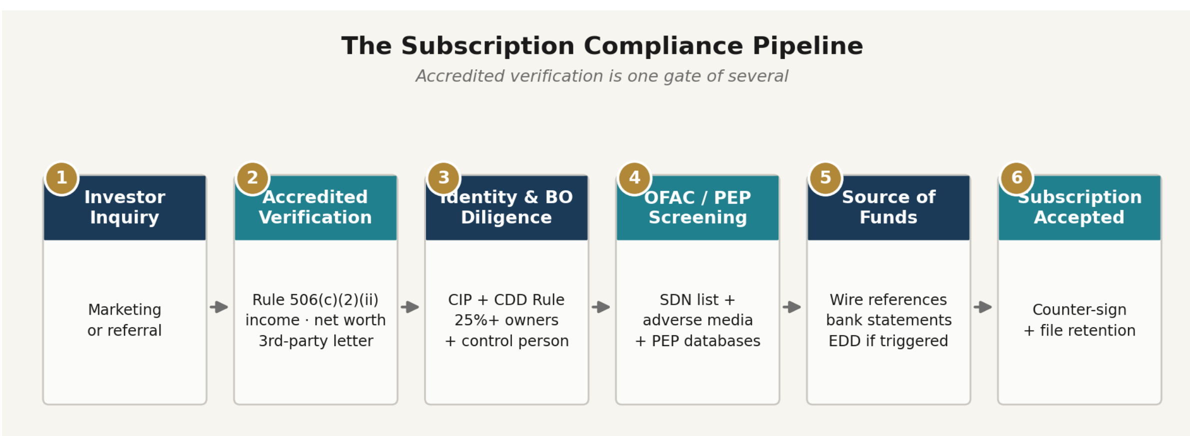

FIGURE 2 — ACCREDITED VERIFICATION IS ONE GATE OF SEVERAL

A Principles-Based Intake Program

No single regulation tells a fund manager what its intake program must look like. The right approach is principles-based: a five-element architecture that holds up under bank-counterparty diligence, SEC examination, and (when the IA AML Rule arrives) FinCEN review.

- **Written risk assessment.** Document the manager's investor population, geographies, asset classes, and the corresponding inherent BSA/OFAC risk. The risk assessment drives every downstream calibration; without it, the program is unmoored.
- **Layered investor intake.** One questionnaire stack collects accreditation evidence, identity documents, beneficial ownership certification (25%+ equity owners plus one controlling person), source-of-funds attestation, OFAC/PEP screening, and Bad Actor representations. The stack is layered, not stapled — each layer has its own owner, retention period, and trigger.
- **Enhanced due diligence triggers.** EDD is required for high-risk investors: non-U.S. persons; politically exposed persons (PEPs); investors from FATF-listed jurisdictions; cash-intensive businesses; trust and nominee structures; and any investor whose source of funds cannot be plainly mapped to documented assets or income.
- **Ongoing monitoring.** Sanctions screening at onboarding is necessary but not sufficient. The SDN List is updated continuously; investors and their owners should be re-screened at each capital call, at each distribution, and whenever beneficial ownership changes. Adverse-media screening on a periodic cadence is now standard.
- **Recordkeeping and training.** Five-year retention of CIP and CDD records (longer where state law requires); written training for any team member with intake or wire-approval authority; and an annual program review by senior management, documented in the file.

THE INTAKE FILE AT SUBSCRIPTION

- **Accredited Investor Verification** — Income, asset, or 3rd-party letter dated within 90 days of subscription.
- **Government-Issued ID + W-9 / W-8** — For individuals; certified entity documents for organizational investors.
- **Beneficial Ownership Certification** — 25%+ equity owners and one control person; CIP-equivalent identity for each.
- **OFAC / SDN / PEP Screen** — Run on investor and each beneficial owner; result and date in the file.
- **Source-of-Funds Attestation** — Investor representation plus, where indicated, supporting bank or counsel letter.
- **Bad Actor Questionnaire** — Rule 506(d) covered-person screen; refreshed at each offering.
- **Subscription Agreement + Side Letter** — Counter-signed, with all reps regarding accreditation and AML in current form.
- **Wire Reference Page** — Wire from a bank account in the investor's name; reconciled to the subscription record.

Five Misconceptions Worth Dismantling

The most expensive compliance mistakes do not come from ignorance of the rules — they come from conflating them. The five misconceptions below recur in real engagements and merit naming.

- **"Third-party verification means we're AML-compliant."** A third-party accredited investor letter speaks only to Rule 501(a) status. It does not verify identity for CIP purposes, does not screen against the SDN List, does not establish beneficial ownership under the CDD Rule, and is not sufficient evidence of source of funds. Two different vendors, two different files.

- **"The fund administrator handles KYC, so we don't need to."** Fund administrators perform *operational* KYC under their bank counterparties' programs and under the administrator's own AML obligations. Those programs are calibrated to the administrator's risk appetite, not the manager's. The manager remains responsible for its own program, its own risk assessment, and — once the IA AML Rule takes effect in 2028 — its own SAR filings.
- **"The Corporate Transparency Act was struck down, so we don't need beneficial-ownership information."** The CTA was not struck down. FinCEN's March 2025 interim final rule narrowed reporting to foreign reporting companies, but the BSA CDD Rule — which is the legal source of the 25%+ beneficial owner inquiry that banks have asked for since 2018 — remains in full force. Beneficial-ownership data still has to be collected at intake; the question is only whether and where to *report* it.
- **"We're not a covered financial institution, so AML doesn't apply to us."** Today, that is largely correct for most private fund managers. After January 1, 2028, it likely will not be — and even today, OFAC sanctions apply to every U.S. person regardless of regulatory status. Bank and prime-broker counterparties have demanded AML programs from private-fund managers for years, as a contractual requirement.
- **"The accredited investor letter proves who the investor is."** It does not. The letter establishes income or net worth; identity verification is a separate exercise, ordinarily satisfied by a government-issued photo ID, organizational documents, and (in higher-risk cases) certified copies and translations.

Bottom Line

Accredited verification and KYC/AML answer different questions, are enforced by different examiners, and fail in different ways. They share a subject — the investor — and a moment — subscription — but little else. The discipline of running both regimes in parallel, with separate files, vendors, and calendars, is what separates an offering that closes cleanly from one that results in a tolling agreement with the SEC, an OFAC subpoena, or a frozen bank account.

> *An accredited investor letter tells you the investor can buy. It does not tell you who they are, where the money came from, or whether the U.S. government has sanctioned them.*

FOR FURTHER INFORMATION

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