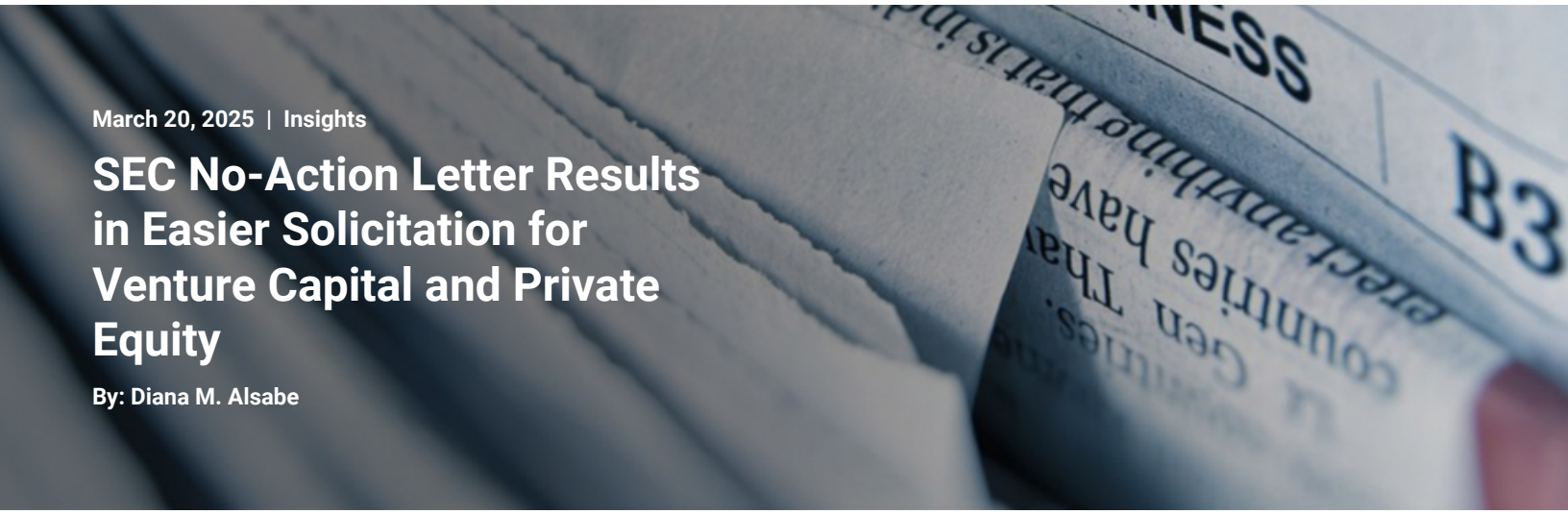

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SEC No-Action Letter Results in Easier Solicitation for Venture Capital and Private Equity

By: Diana M. Alsabe

Introduction

On March 12, 2025, the U.S. Securities and Exchange Commission (SEC) issued a no-action letter in response to a request for interpretive guidance submitted by Latham & Watkins LLP on March 6, 2025. This request sought clarity on whether a minimum investment amount could be used as a factor among reasonable steps to verify accredited investor status in securities offerings made under Rule 506(c) of Regulation D under the Securities Act of 1933.

Background

Rule 506(c) allows issuers to broadly solicit and advertise an offering, provided that all purchasers are accredited investors, the issuer takes reasonable steps to verify this status, and other conditions in Regulation D are met. Accredited investor status is defined under Rule 501(a) of Regulation D, with specific criteria for natural persons and entities.

Latham & Watkins' Proposal

Latham & Watkins proposed a three-pronged approach to verifying accredited investor status:

1. **Natural Persons:** Individuals must provide written representation of their accredited status and agree to a minimum investment of $200,000, which can be made in installments.
2. **Entities Accredited by Total Assets:** Entities must provide a written agreement to invest at least $1,000,000, also payable in installments.
3. **Entities Accredited by All Owners' Accredited Investor Status:** These entities must agree to a minimum investment of $1,000,000, or $200,000 per equity owner if there are fewer than five natural persons as owners

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> (and the equity owners themselves must have made similar commitments to the entity investor).

Latham argued that these minimum investment amounts, combined with written representations (including, among other things, with respect to not financing the minimum investment), constitute reasonable verification steps under Rule 506(c)(2).

SEC's Response

The SEC concurred with Latham's interpretation, acknowledging that a high minimum investment amount is a relevant factor in verifying accredited investor status. The SEC emphasized that the determination of reasonable steps is objective and context-specific, based on the facts and circumstances of each purchaser and transaction. This agreement by the SEC relieves issuers of some of the burdens associated with verifying accredited investor status, potentially expanding the use of 506(c) offerings and allowing greater flexibility for venture capital and private equity firms.

Conclusion

The SEC's no-action letter marks a significant development for issuers seeking to utilize general solicitation under Rule 506(c). By recognizing high minimum investment amounts as a valid verification factor, the SEC has provided issuers with a clearer path to compliance, facilitating broader solicitation efforts and potentially increasing investment opportunities in the venture capital and private equity sectors.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Diana Alsabe.

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