

# Citizen.VC No Action Letter: Clarity and Guidance for Conducting a Private Placement Online

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The **SEC** has recently provided clarity as to how an issuer of securities can conduct a private placement in a password protected web page under Rule 506(b), without it being deemed a “general solicitation” and thereby being subject to the additional requirements imposed by the new Rule 506(c). The guidance has been provided by the issuance of the Citizen.VC No Action Letter (the “*CVC Letter*.”)

Today, many enterprises conduct their business activities online. The challenge for issuers of private securities is how to conduct their offerings online in a manner that is consistent with the legal regulations applicable to offering securities. This is especially challenging as technology is constantly jumping ahead of the regulations. Since the final regulations of the *JOBS Act* were published by the SEC in September of 2013, it has been unclear as to how an issuer would or could conduct a private placement offering online under Rule 506(b). The last guidance by the SEC on how one could conduct an online offering as a private placement under Regulation D without a general solicitation was in 1997. This was at a time when we were in a narrowband world prior to common use of the Internet for conducting business and other common daily interactions; a world before Google, Facebook, and smartphones.

As set forth in the CVC Letter, an issuer can now develop a specific set of policies and procedures that will take the offering outside of being considered a “general solicitation.” The key is that certain procedures are created and followed which enable the issuer and the potential investor to develop a “pre-existing, substantive relationship” before any securities are offered. These procedures are designed to enable the issuer to evaluate the prospective investor’s financial sophistication, circumstances, suitability, and his or her ability to understand the nature and risks of a potential investment. If there is no general solicitation, then the issuer is not required to obtain independent verification of the accredited status of the investor.

In essence, the approach under the CVC Letter is to make the online private placement offering similar in policies and procedures to an offline private placement. The pre-existing relationship is not time based nor is it satisfied by answering a mere two questions. Rather, the establishment of a pre-existing relationship depends on the QUALITY of the relationship between the issuer and a potential

investor. While the vast majority of online offerings will clearly fall within the new Rule 506(c), the CVC Letter does spell out a way to conduct a true private placement in a password protected web page that does not give rise to a general solicitation.

We believe the guidance set forth in the CVC Letter will be viewed as “best practices” by issuers who want to raise capital in a password protected web page under Rule 506(b). The guidelines should limit fraud and limit potential losses by investors who may not be able to afford the risk of losing money, all of which is a good thing for value creation, building new growth companies, and the entire venture capital ecosystem.

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