2/4/14

202-551-3261

Tony Barone message to NFH

Rule 506 (b) and (c)

506(c) guidance on reasonable steps to verify investor is accredited investor, does not apply to 506(b)

On old

 Rule 506 issuer is obligated to take reasonable steps to verify investor is an accredited investor.

Checking box on Sub Doc is not “reasonable steps” in SEC’s view, Commission has never thought it was adequate.

Old legacy 506 check the box has never been adequate, issuer is obligated to take reasonable steps.

Staff has always taken the position that checking the box is not reasonable steps

Or based on past issuer’s past experience with the investor if issuer knows the investor, then checking the box is OK. (i.e. If investor has been purchasing over and over and issuer knows that investor), then that is a reasonable basis for reasonable belief. Reasonable Basis on 501(a) and reasonable belief

506 (c) guidance does not apply to 506(b), not required for 506(b). However, you can use the guidance for rules of practice on (b), but they are not the requirements of 506(b).

SEC’s view is that you something more than check the box for a reasonable believe standard, checking the box for a new investor is not adequate