# SEC Adopts Amendments to "Accredited Investor" Definition

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The Securities and Exchange Commission (the "SEC") recently adopted amendments to the definition of "accredited investor," which will permit a wider range of investors to participate in certain private offerings. The amended definition includes several new categories of natural persons and entities who qualify as accredited investors for purposes of Rule 501(a) of Regulation D under the Securities Act of 1933 (the "Securities Act"). The amendments also expand the definition of "qualified institutional buyer" under Rule 144A under the Securities Act.

**"Accredited Investor" Definition**

*Certain Professional Certifications, Designations or Credentials*. The amendments add to the list of natural persons qualifying as accredited investors any person holding in good standing one or more professional certifications, designations or credentials from an accredited educational institution that the SEC has designated by order as qualifying an individual for accredited investor status. The amendments set forth criteria for the SEC to consider when deciding which professional certifications, designations or credentials to recognize as qualifying an individual for accredited investor status, but does not codify any specific certification, designation or credential. The SEC has commented that it intends to include any individual with a Series 7 license (general securities representative), Series 65 license (investment adviser representative), and Series 82 license (private securities offerings representative), each issued by the Financial Industry Regulatory Authority ("FINRA"). The SEC will post on its website all professional certifications, designations or credentials currently recognized by the SEC as satisfying the criteria above.

*Knowledgeable Employee*. The amended definition of accredited investor now includes "knowledgeable employees" of private funds (as defined in Rule 3c-5(a)(4) under the Investment Company Act of 1940, as amended (the "Company Act")). Currently, knowledgeable employees of private funds are included in the definition of "qualified purchasers" under the Company Act. Under the amended definition of accredited investor, knowledgeable employees of private funds will qualify as accredited investors for private offerings under Regulation D. Generally, knowledgeable employees include, among others, any employee of a private fund or an affiliated person of a private fund who, in connection with the employee's regular functions or duties, has participated in the investment activities of such fund for at least 12 months, as well as any advisory board member and other person serving in a similar capacity for the private fund or an affiliated person of the private fund.

*Spousal Equivalents*. Previously, spouses were permitted to aggregate their respective net worth and income to satisfy the accredited investor requirements under Rule 501(a). The amendments added "spousal equivalent" as another type of person with whom an individual may aggregate net worth or income to reach the minimum thresholds. A spousal equivalent is a cohabitant occupying a relationship generally equivalent to that of a spouse.

*Registered Investment Advisers*. Under the amendments, SEC-registered and/or state-registered investment advisers are added to the list of accredited investors, regardless of their size, assets under management, income or net worth. This change could help smaller advisers that previously did not qualify for accredited investor status under any other part of the previous definition (such as the part including entities with total assets in excess of $5 million) to participate in private offerings. We note that the inclusion of registered investment advisers in the definition does not affect the legal analysis necessary for registered investment advisers to recommend private offerings to their clients.

*Family Offices and their Family Clients.* The amendments also add to the definition of accredited investor any "family office" (as defined under the Investment Advisers Act of 1940, as amended ("Advisers Act")) (i) with more than $5 million in assets under management, (ii) that was not formed for the specific purpose of investing in the private offering, and (iii) whose prospective investment in the private offering is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective

investment. Any "family client" (as defined under the Advisers Act) of a family office satisfying the criteria above were also added to the definition of accredited investor.

*Rural Business Investment Companies ("RBICs")*. RBICs were added to the list of entities qualifying as accredited investors, regardless of their assets under management. RBICs are incorporated bodies, limited liability companies, or limited partnerships that exist solely for the purpose of performing the functions and conducting the activities authorized by the Consolidated Farm and Rural Development Act. Generally, the Consolidated Farm and Rural Development Act promotes economic development and job creation in rural areas by encouraging capital investments in smaller businesses and enterprises located in rural areas. At least 75% of an RBIC's invested capital must be invested in "Rural Business Concerns," (which are defined as any company, organization, Indian tribe, or other person or entity that primarily operates in a rural area) and no more than 10% of the investments may be made in an area with a city of over 150,000 or an urbanized area that contains the city or is next to the city.

*Limited Liability Companies*. Limited liability companies with assets in excess of $5 million (which is the requirement currently applicable to corporations and partnership), were added to the definition of accredited investor, as long as the limited liability company was not formed for the specific purpose of investing in the private offering.

*Entity Catch-All*. The amendments also create a catch-all category for any entity that owns "investments" (as defined under the Company Act) in excess of $5 million and that is not formed for the specific purpose of investing in the securities offered. This change draws upon the distinction between investments and assets that has previously been used in the context of the definition of qualified purchaser under the Company Act.

**"Qualified Institutional Buyer" Definition**

The amendments expand the definition of "qualified institutional buyer" under Rule 144A of the Securities Act, which pertains to the resale of restricted securities, to mirror the expanded definition of accredited investor under Rule 501(a) of Regulation D. RBICs and limited liability companies were added to the list of entities that may qualify as a qualified institutional buyer, and a catch-all category was created for any entity not otherwise qualifying under the definition and that owns and invests at least $100 million in securities of issuers that are not affiliates with such entity.

The amendments were adopted on August 26, 2020 and will become effective December 8, 2020.

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