

SEC Adopts Amendments to Expand Accredited Investor Definition

The U.S. Securities and Exchange Commission [adopted amendments](#) on August 26, 2020, to update the definition of "accredited investor" in Rule 501(a) of the Securities Act of 1933. The amendments will allow more investors to participate in private offerings by adding new categories of individuals who may qualify as accredited investors based on defined measures of professional knowledge, experience, or certifications. The amendments also expand the list of entities that may qualify as accredited investors. In addition, the SEC adopted similar amendments to the definition of "qualified institutional buyer" (QIB) in Rule 144A of the Securities Act to make the type of institutions that may qualify as QIBs consistent with those that qualify as accredited investors. The amendments and order will become effective 60 days after publication in the Federal Register.

Under the Securities Act, securities must be sold either pursuant to an effective registration statement filed with the SEC or pursuant to an exemption from registration. A number of widely used exemptions that permit unregistered offerings require that some or all of the investors purchasing the securities be accredited investors. Even where the securities laws might allow companies to sell some securities to nonaccredited investors without registration, many companies nonetheless limit participation in their offerings to accredited investors. Historically, accredited investor status has indicated that the investor has the financial sophistication and means to sustain the risk of loss or fend for themselves, such that the protections afforded by a registered offering are unnecessary.

In adopting the amendments, the SEC stated that the amendments are "tailored to permit investors with reliable alternative indicators of financial sophistication to participate in such investment opportunities, while maintaining the safeguards necessary for investor protection and public confidence in investing in areas of the economy that disproportionately create new jobs, foster innovation, and provide for growth opportunities."

Summary of Amendments

Spousal Equivalents

The current accredited investor definition allows an individual, together with their spouse, to qualify as an accredited investor by surpassing either (1) a \$300,000 joint income threshold, or (2) a \$1 million joint net worth threshold (excluding the value of their primary residence). The amendments allow unmarried couples to pool their assets for purposes of these tests, so long as the individuals are "spousal equivalents," defined to mean a cohabitant occupying a relationship generally equivalent to that of a spouse. Previously, each member of an unmarried couple would have needed to have at least an annual income of \$200,000 or a \$1 million net worth to qualify as an accredited investor.

Professional Certifications, Designations, or Credentials

The amendments permit individuals to qualify as accredited investors if such individuals hold professional certifications and designations or other credentials in good standing that the SEC determines provide a reliable indicator of the individual's sufficient financial sophistication. In a [separate order](#), the SEC designated individuals holding a Series 7 license, Series 65 license, or Series 82 license as eligible. The SEC may designate

other certifications, designations, or credentials by SEC order, providing the SEC with flexibility to reevaluate or add certifications, designations, or credentials in the future.

Knowledgeable Employees

The amendments enable "knowledgeable employees", as defined in in Rule 3c-5(a)(4) of the Investment Company Act, of a private investment fund exempt from SEC registration to qualify as accredited investors for purposes of investments in the fund. This allows certain employees involved in the investment activities of private equity, venture capital, and similar private investment funds to invest in the funds even if they are not executive officers or general partners of the fund or its managing entities as previously required under the rules.

Expanded Eligibility for Entities

The amendments will expand or clarify the types of entities that qualify as accredited investors to include:

- Limited liability companies with greater than \$5 million in assets and that were not formed for the specific purpose of acquiring the securities offered
- Investment advisers registered with the SEC or any state and exempt reporting advisers
- Rural business investment companies (RBICs)
- Any other entities, including Native American tribes, government bodies, funds, and entities organized under the laws of foreign countries, that own "investments" (as defined in Rule 2a51-1(b) under the Investment Company Act) in excess of \$5 million, and that were not formed for the specific purpose of acquiring the securities offered

Family Offices and Clients

The amendments also add any family office, as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act, with at least \$5 million in assets under management and its family clients, as defined in Rule 202(a)(11)(G)-1 of the Investment Advisers Act, to the definition of accredited investor. The amendments apply only to a family office that was not formed for the specific purposes of acquiring the securities offered and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment.

Qualified Institutional Buyers

The amendments expand or clarify the definition of QIBs in Rule 144A to include limited liability companies and RBICs if they meet the required \$100 million in securities owned and invested threshold. The amendments also make any institution qualifying as an accredited investor eligible to be a QIB if it satisfies the \$100 million threshold.

Next Steps

Once the adopted amendments become effective, companies and other issuers should update their forms of accredited investor questionnaires and subscription documents to reflect the updated definition of accredited investor, which forms will need to be updated if the SEC designates new professional certifications, designations, or credentials that bestow accredited investor status.

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