

SEC Proposes Expansion of the Definitions of “Accredited Investor” and “Qualified Institutional Buyer”

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by Jason Brenkert

At the Securities and Exchange Commission’s (the “Commission”) open meeting on December 18, 2019, the Commissioners approved proposed amendments to the definition of “accredited investor” under Regulation D under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) and the definition of a “qualified institutional buyer” in Rule 144A under the U.S. Securities Act.

Commissioners Robert Jackson and Allison Lee both dissented on the proposal. The statements of the commissioners on the proposed rules showcased significant disagreement between them on the role of the Commission and the fundamental purposes of the federal securities laws. Commissioner Jackson’s public statement was titled *Statement on Reducing Investor Protections around Private Markets* and highlighted his belief that the new release does not take the Commission’s role in protecting investors seriously. Commissioner Lee also noted her concern regarding the one-sided nature of the proposed rules which seek to expand the pool of available investors without adequately considering an adjustment in the income and wealth thresholds.

The amendments to the definition of “accredited investor” are meant to provide more opportunity for main street investors to participate in private capital markets by including a greater number of institutional and individual investors that have the knowledge and expertise to participate in private capital markets. The proposed amendments add new categories of natural persons and entities that qualify as accredited investors. Specifically, the proposed amendments would:

- add new categories of natural persons that may qualify as accredited investors based on certain professional certifications or designations or other credentials or their status as a private fund’s “knowledgeable employee;”
- expand the list of entities that may qualify as accredited investors and allow entities meeting an investments test to qualify;
- add family offices with at least \$5 million in assets under management and their family clients; and

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- add the term “spousal equivalent” to the definition.

Changes are also proposed to the “qualified institutional buyer” definition to include limited liability companies, RBICs, and any institutional accredited investor not already listed in Rule 144A when they meet the existing threshold of \$100 million in securities owned and invested.

For more information on the proposed amendments, see our recent eUpdate [here](#).