

SEC Updates Accredited Investor and Qualified Institutional Investor Definitions

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On August 26, 2020, the Securities and Exchange Commission (the “Commission”) adopted amendments to update the definition of “accredited investor” in the Commission’s rules governing certain kinds of private securities offerings, including securities offerings to natural persons and entities conducted pursuant to Rules 506(b) and 506(c) of Regulation D under the United States Securities Act of 1933, as amended (the “Securities Act”), and the definition of “qualified institutional buyer” in Rule 144A under the Securities Act.

The amendments to the accredited investor definition (i) add new categories of qualifying natural persons, including a category based on professional knowledge, experience or certifications and a category for knowledgeable employees of private funds; (ii) add new categories of entities, including “family offices with at least \$5 million in assets under management and a “catch-all” category for any entity which owns investments in excess of \$5 million; and (iii) make certain other modifications to the existing definition. The amendments to the qualified institutional buyer definition similarly expand the list of eligible entities under that definition.

The current definition of “accredited investor” had not been significantly updated for over three decades. The adopted amendments are meant to expand the number of persons eligible to participate in private offerings based on knowledge and sophistication versus the prior rules focus on income and net worth. Notably, the adopted amendments did not raise the standards for individual income (\$200,000 for an individual, \$300,000 for a married couple) or net worth (\$1,000,000), which were established in 1982 and which many have argued should be updated for inflation.

The amendments will become effective 60 days following formal publication in the Federal Register, which means the rules will start to apply to new offerings in early November. You can read the full text of the Final Rule [here](#).

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Accredited Investor Definition

The amendments to the accredited investor definition in Rule 501(a) include:

Natural Person Categories

- Adding a new category to the definition that permits natural persons to qualify as accredited investors based on certain professional certifications, designations or credentials or other credentials issued by an accredited educational institution, which the Commission may designate from time to time by order. In conjunction with the adoption of the amendments, the Commission designated by order holders in good standing of the Series 7, Series 65, and Series 82 licenses as qualifying natural persons. The Commission may designate other certifications, designations, or credentials by the Commission order, providing the Commission with flexibility to reevaluate or add certifications, designations, or credentials in the future.
- Including as accredited investors, with respect to investments in a private fund, natural persons who are “knowledgeable employees” of the fund.
- Adding the term “spousal equivalent” to the accredited investor definition. The amendments allow unmarried couples to pool their assets for purposes of income and net worth tests, so long as the individuals are “spousal equivalents,” defined to mean a cohabitant occupying a relationship generally equivalent to that of a spouse.

Expanded Entity Categories

- Adding a new “catch-all” category for any entity, including Indian tribes, governmental 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 was not formed for the specific purpose of investing in the securities offered,
- Clarifying that limited liability companies with \$5 million in assets may be accredited investors.
- Adding Commission- and state-registered investment advisers, exempt reporting advisers, and rural business investment companies (RBICs) to the list of entities that may qualify.
- Adding “family offices” with at least \$5 million in assets under management and their “family clients,” as each term is defined under the Investment Advisers Act. 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.

The amendment to Rule 215, which is applicable to securities offerings made under Section 4(a)(5) of the Securities Act, replaces the existing definition with a cross reference to the definition in Rule 501(a). The Commission also adopted conforming amendments to Rule 163B under the Securities Act and to Rule 15g-1 under the Exchange Act.

Qualified Institutional Buyers

The amendments expand the definition of “qualified institutional buyer” in Rule 144A to include limited liability companies and RBICs if they meet the \$100 million in securities owned and invested threshold in the definition. The amendments also add to the list any institutional investors included in the accredited investor definition that are not otherwise enumerated in the definition of “qualified institutional buyer,” provided they satisfy the \$100 million threshold.