

Updated SEC Definition Opens Private Markets to (a Handful of) New Investors

Last week the SEC [adopted](#) rule amendments to the definition of "accredited investor" under Regulation D ("Reg D") of the Securities Act of 1933. The rule amendments, the [SEC says](#), are intended to modernize a term that has not changed in nearly 40 years and to "more effectively identify institutional and individual investors that have the knowledge and expertise to participate in" today's "multifaceted and vast private markets."

New Accredited Investors under Reg D

- **Spousal Equivalents.** Natural person investors may now aggregate their assets with a "spousal equivalent" (a "cohabitant occupying a relationship generally equivalent to that of a spouse"). Reg D will retain its basic test: a natural person is generally deemed to be an accredited investor if, together with their spouse or spousal equivalent, the person has an income of at least \$300,000 (\$200,000 if only an individual) or a net worth of more than \$1 million. The definition of "spousal equivalent" used here comports with that used elsewhere by the SEC, such as the family office rule under the Investment Advisers Act of 1940.
- **Licensed/Certified Individuals.** Natural persons holding in good standing professional licenses, certifications, and other designations now qualify as accredited investors. The SEC has preliminarily identified FINRA Series 7, 65, and 82 license holders as falling into this new category and will post additional qualifying professional designations or certifications to its website. Individuals cannot self-certify their qualification.
- **Investment Advisers and RBICs.** Investment advisers registered with the SEC or state securities regulators, "exempt reporting advisers" under Section 203(m) or Section 203(l) of the Investment Advisers Act, and rural business investment companies are now specifically included as accredited investors. These are added to the list that includes banks, broker-dealers, insurance companies, mutual funds, and business development companies, among others.
- **Limited Liability Companies and Other Entities.** An LLC and any other entity (including Native American Indian tribes, governmental bodies, funds, and entities organized under the laws of foreign countries) with more than \$5 million in "investments," as defined in Rule 2a51-1(b) under the Investment Company Act of 1940, now qualify as an accredited investor if not formed for purposes of acquiring the securities issued. This addition codifies the SEC staff's [longstanding position on LLCs](#).
- **Knowledgeable Employees of Private Funds.** "Knowledgeable employees" of private funds and their managers now explicitly qualify as accredited investors. Rule 3c-5(a)(4) under the Investment Company Act generally defines knowledgeable employees as the directors, officers, executives, and non-clerical employees of a private fund and/or its manager. Reg D will now include these individuals as accredited investors along with their spouses/spousal equivalents making joint investments. It is noteworthy that the SEC declined to include "qualified purchasers," as defined by the Investment Company Act, as accredited investors, noting the two standards are distinct and serve different regulatory purposes.
- **Family Offices.** A "family office" and its "family clients" now qualify as accredited investors under Reg D if the family office has at least \$5 million in assets under management, its purchase is directed by a sophisticated person, and it is not formed for the purpose of purchasing the securities offered. Most family offices should easily be able to qualify under this category.

The SEC has also adopted amendments to other federal securities laws to synchronize with these changes to the

accredited investor definition, including the "qualified institutional buyer" definition under Regulation 144A of the Securities Act.

The Practical Impact

Asset managers and private securities issuers are likely to welcome the recent amendments, as they introduce new certainty in some cases and simplicity in others. The actual effect remains to be seen, however, as the basic income and net worth thresholds for natural persons have not been adjusted and many of the changes merely codify or clarify existing practices. Still, the SEC estimates there are over 70,000 individuals with Series 7, 65, and 82 licenses, and permitting natural persons to aggregate their assets with their *spousal equivalent* should expand the universe of accredited investors while also recognizing the status of a marginalized societal group. Check back soon for our post on how the amendments will impact family offices in particular.

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