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# SEC Expands Accredited Investor Definition

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Last week, in a move meant to modernize the definition of "accredited investor," the SEC adopted a final rule amending Rules 501(a), 215, 144A and 163B of the Securities Act of 1933 (the "Securities Act") and Rule 15g-1 of the Securities Exchange Act of 1934 (the "Exchange Act"). These amendments make changes to the definition of "accredited investor" and also expand the definition of "qualified institutional buyer" as described below. They will become effective 60 days after they are published in the Federal Register.



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## Additional Categories of Accredited Investors

The SEC's amendments to Rule 501(a) add the following categories to the definition of accredited investor:

### Professional Certification

Individuals holding certain professional certifications, designations and other credentials will now qualify for accredited investor status. The amendments include a non-exclusive list of attributes the SEC would consider in determining which such certifications, designations and credentials qualify, including whether (i) the credential arises out of an examination administered by a self-regulatory organization, industry body or an accredited educational instituted, (ii) by obtaining such credential, the individual can reasonably be expected to have sufficient knowledge and experience in financial matters to evaluate merits and risks of investments, and (iii) an indication that the individual holds such credential is made publicly available by the relevant organization.

The following certifications and designations administered by FINRA are the first such certifications and designations the SEC has indicated will qualify an individual for accredited investor status: Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65), and Licensed Private Securities Offerings Representative (Series 82). The amendments contemplate the SEC's ability to add further certifications, designations and credentials to this list in the future.

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Knowledgeable Employee

Knowledgeable employees of private funds, as defined under Rule 3c-5(a)(4) of the Investment Company Act of 1940 (the "Investment Company Act"), now qualify as accredited investors for the purposes of investments in the fund by which they are employed. The definition of "knowledgeable employee" includes:

> (i) an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the private fund or an affiliated management person (as defined in Rule 3c-5(a)(1) of the Investment Company Act) of the private fund; and
>
> (ii) an employee of the private fund or an affiliated management person of the private fund (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such private fund, other private funds, or investment companies the investment activities of which are managed by such affiliated management person of the private fund, provided that such employee has been performing such functions and duties for or on behalf of the private fund or the affiliated management person of the private fund, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

Spousal Equivalents

The SEC's amendments now permit natural persons to include spousal equivalents when determining joint income and net worth for the purposes of qualifying as an accredited investor. Additionally, the SEC clarified that including spousal equivalents for either the joint income or net worth standard does not require joint purchase of the securities in question.

Entities

The following entities now qualify as accredited investors:

- SEC or state registered investment advisers and exempt reporting advisers;
- Rural Business Investment Companies ("RBICs");
- Limited liability companies with total assets exceeding $5 million that were not formed for the specific purpose of acquiring the securities being offered;
- "Family offices" with at least $5 million in assets under management and their "family clients," as each is defined in the Investment Advisers Act of 1940; and
- Any entity that is not otherwise listed (such as Indian tribes and governmental bodies) that (i) was not formed for the specific purpose of

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> acquiring the securities being offered and (ii) owns investments in excess of $5 million.

Additionally, the SEC clarified that in determining accredited investor status of an investor entity, issuers may look through various layers of entity ownership to the natural person owners. Thus, if those natural persons are themselves accredited investors, and if all other equity owners of the investor entity are accredited investors, the investor entity would be an accredited investor under Rule 501(a)(8). This is in keeping with the SEC's intent to qualify entities owned 100% by accredited investors, even where such ownership is indirect.

**Other Amendments**

The SEC also amended Rule 215 so that it now cross-references the definition of accredited investor in Rule 501(a), ensuring that two definitions of accredited investor which had historically been substantially similar, but not identical, now conform.

Amendments to Rule 144A expand the definition of "qualified institutional buyer" to include limited liability companies and RBICs, as well as any institutional investors included in the accredited investor definition that are not otherwise listed in Rule 144A, provided that such entities and investors meet the $100 million in securities owned and invested threshold that is currently included in the definition. Conforming amendments were also adopted with respect to Rule 163B and Rule 15g-1 of the Exchange Act.

**Recommended Actions**

With the newly expanded definition of accredited investor, more investors are now allowed to participate in private offerings. Fund managers and other issuers will need to revise and update their offering documents to reflect the amended definition of "accredited investor" and take advantage of this expanded investor pool. If you would like assistance in this process, our investment management practice group is standing by and would be happy to do so ahead of the amendments' effective date.

*Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Thomas H. Bilodeau III, Scott Stokes, David Glod or Matthew Sweet.*

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