

On August 26, 2020, the Securities and Exchange Commission announced revisions to Rule 501(a) of Regulation D, updating the definition of “accredited investor.” The revised rule will become effective 60 days after publication in the Federal Register.

The revisions were not dramatic. On the one hand, the amendments recognize the reality of modern family units by adding “spousal equivalent” to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors. On the other hand, the Commission chose not to adjust for inflation the monetary income and wealth test elements of the existing definition. These tests have been in effect since 1982, though as the Commission pointed out in its release, the calculation of net worth previously included the value of the primary residence, but in 2011, the Commission amended the net worth standard to exclude the value of the investor’s primary residence. Overall, the refinements to the Rule focus as much, or more, on expertise as wealth in terms of qualifying for accredited investor status.

There are no deletions from the existing list of accredited investors. The new categories and refinements, set out in the new Rule that appears below, include:

- Confirming that the now ubiquitous form of entity, limited liability companies, with more than US\$5 million in assets should be included in the list.
- Recognizing the increasing importance of “family offices,” added family offices with at least US\$5 million in assets under management and their “family clients,” as each term is defined under the Investment Advisers Act.
- A new category to the definition 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. This approach provides the Commission with flexibility to reevaluate or add certifications, designations, or credentials in the future, and such refinements should be expected.
- With respect to investments in a private fund, natural persons who are “knowledgeable employees” of the fund are added to the definition.
- SEC- and state-registered investment advisers, exempt reporting advisers and rural business investment companies (RBICs) are added to the list of entities that may qualify.
- Addition of a new 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 US\$5 million and that was not formed for the specific purpose of investing in the securities offered.

The amended rule also expands the definition of “qualified institutional buyer” in Rule 144A to include limited liability companies and RBICs if they meet the US\$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 US\$100 million threshold.



## Revised § 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§230.500 *et seq.* of this chapter), the following terms shall have the meaning indicated:

- (a) **Accredited investor.** **Accredited investor** shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
- (1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; [any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the Commission under section 203\(l\) or \(m\) of the Investment Advisers Act of 1940;](#) any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any [Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act;](#) any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
  - (2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
  - (3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, ~~or~~ partnership, [or limited liability company,](#) not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
  - (4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
  - (5) Any natural person whose individual net worth, or joint net worth with that ~~person's spouse~~ [person's spouse or spousal equivalent \[see definition below\]](#), exceeds \$1,000,000.
    - (i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating net worth under this paragraph (a)(5):
      - (A) The person's primary residence shall not be included as an asset;
      - (B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
      - (C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;
    - (ii) Paragraph (a)(5)(i) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:
      - (A) Such right was held by the person on July 20, 2010;
      - (B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and
      - (C) The person held securities of the same issuer, other than such right, on July 20, 2010.
- [Note 1 to paragraph \(a\)\(5\): For the purposes of calculating joint net worth in this paragraph \(a\)\(5\): joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard of this paragraph \(a\)\(5\) does not require that the securities be purchased jointly.](#)
- (6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse [or spousal equivalent](#) in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
  - (7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in §230.506(b)(2)(ii); and

- (8) Any entity in which all of the equity owners are accredited investors.

Note 1 to paragraph (a)(8): It is permissible to look through various forms of equity ownership to natural persons in determining the accredited investor status of entities under this paragraph (a)(8). If those natural persons are themselves accredited investors, and if all other equity owners of the entity seeking accredited investor status are accredited investors, then this paragraph (a)(8) may be available.

- (9) Any entity, of a type not listed in paragraphs (a)(1), (a)(2), (a)(3), (a)(7), or (a)(8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;

Note 1 to paragraph (a)(9): For the purposes this paragraph (a)(9), "investments" is defined in rule 2a51-1(b) under the Investment Company Act of 1940 (17 CFR 270.2a51-1(b)).

- (10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this paragraph (a)(10), the Commission will consider, among others, the following attributes:

- (i) The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;
- (ii) The examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;
- (iii) Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and
- (iv) An indication that an individual holds the certification or designation is either made publicly available by the relevant self-regulatory organization or other industry body or is otherwise independently verifiable.

Note 1 to paragraph (a)(10): The Commission will designate professional certifications or designations or credentials for purposes of this paragraph (a)(10), by order, after notice and an opportunity for public comment. The professional certifications or designations or credentials currently recognized by the Commission as satisfying the above criteria will be posted on the Commission's website.

- (11) Any natural person who is a "knowledgeable employee," as defined in rule 3c-5(a)(4) under the Investment Company Act of 1940 (17 CFR 270.3c-5(a)(4)), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in section 3 of such act, but for the exclusion provided by either section 3(c)(1) or section 3(c)(7) of such act;

- (12) Any "family office," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1):

- (i) With assets under management in excess of \$5,000,000;
- (ii) That is not formed for the specific purpose of acquiring the securities offered; and
- (iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.

- (13) Any "family client," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1)), of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii).

### New definition:

- (j) **Spousal equivalent.** The term **spousal equivalent** shall mean a cohabitant occupying a relationship generally equivalent to that of a spouse.