

SEC Amends Accredited Investor and Qualified Institutional Buyer Definitions

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The SEC adopted amendments to the definitions of accredited investor in SEC rules and qualified institutional buyer in Rule 144A.

On August 26, 2020, the [SEC](#) adopted [final rule](#) amendments to modify the definitions of:

- [Accredited investor](#) in Rule 501(a) under the [Securities Act](#) (see [Accredited Investor](#)).
- [Qualified institutional buyer](#) (QIB) in [Rule 144A](#) under the Securities Act (see [Qualified Institutional Buyer](#)).

The amendments will become effective 60 days after publication in the Federal Register.

Accredited Investor

The definition of accredited investor in Rule 501(a) is one of the principal tests for who is eligible to participate in the private capital markets through many of the exemptions and safe harbors from registration under the Securities Act, including Rules 506(b) and 506(c) of [Regulation D](#), and also plays an important role in other federal and state securities laws. The SEC's final rule amendments will:

- Add new categories of natural persons to the definition of accredited investor.
- Add to the current list of entities that qualify as an accredited investor.
- Adopt other modifications to the accredited investor definition and related rules.

New Categories of Natural Persons

With the exception of directors, executive officers, and general partners of the issuer, the current definition of accredited investor only uses net worth and income thresholds to determine the financial sophistication of a natural person necessary

to qualify as an accredited investor. The amendments will add additional categories of natural persons who would qualify as an accredited investor even if they do not meet the net worth or income standards, including persons who:

- Hold certain professional certifications, designations, or other credentials.
- Are "knowledgeable employees" of private funds and are investing in the private fund.

Professional Certifications, Designations, and Other Credentials

The final rule amendments will add a new Rule 501(a)(10) to create a category for natural persons to qualify as an accredited investor based on certain professional certifications, designations, and other credentials. Only certifications specifically designated as qualifying by an SEC order, based on criteria outlined in new Rule 501(a)(10), would allow an individual to meet the definition of accredited investor. A list of all certifications, designations, and credentials recognized by the SEC as qualifying will be published on the SEC's website. In connection with the final rule, the SEC issued an [order](#) designating the following certifications, when held in good standing, as qualifying natural persons for accredited investor status:

- Licensed General Securities Representative (Series 7).
- Licensed Investment Adviser Representative (Series 65).
- Licensed Private Securities Offerings Representative (Series 82).

The SEC may designate additional certifications, designations, and other credentials from accredited educational institutions from time to time in future orders.

Knowledgeable Employees of Private Funds

The SEC is also adding a category to the accredited investor definition in new Rule 501(a)(11) to enable "knowledgeable employees" of private funds, as defined in Rule 3c-5(a)(4) under the [Investment Company Act](#), to qualify as accredited investors for the purposes of investing in the fund. Private funds typically rely on [Section 4\(a\)\(2\)](#) of the Securities Act and Rule 506 to offer and sell their interests without registration under the Securities Act.

Expanded List of Qualified Entities

The definition of accredited investor provides an exhaustive list of entities that qualify as an accredited investor. The SEC is now expanding the list of entities to include:

- SEC and state-registered [investment advisers](#).
- Investment advisers exempt from registration under Section 203(l) or (m) of the [Advisers Act](#).

- Rural business investment companies (RBICs).
- [Limited liability companies](#) (LLCs) that:
 - have total assets in excess of \$5 million; and
 - were not formed for the specific purpose of acquiring the securities being offered.
- Any other type of entity that:
 - owns investments, as defined in Rule 2a51-1(b) under the Investment Company Act, in excess of \$5 million; and
 - was not formed for the specific purpose of acquiring the securities being offered.
- Family offices and family clients, as those terms are defined in Rule 202(a)(11)(G)-1 under the Advisers Act, meeting the conditions of new Rules 501(a)(12) and (a)(13), respectively. For more information on family offices, see [Practice Note, Registration of Investment Advisers: Overview: Family Offices](#).

The addition of LLCs to the list of qualified entities codifies a longstanding position of the SEC (see [Securities Act Rules Compliance and Disclosure Interpretations \(C&DIs\) Question 255.05](#)). The SEC believes the new category covering any entity meeting the investment threshold covers existing entities not currently included in the definition, such as Indian tribes and labor unions, while providing flexibility to cover new entity types created in the future.

Other Amendments

The SEC also adopted additional modifications to the accredited investor definition in Rule 501(a) and other related rules:

- **Spousal Equivalents.** For the purposes of pooling finances to qualify as accredited investors under the joint net worth or income thresholds in Rules 501(a)(5) and (a)(6), the amendments add the term "spousal equivalent" and define it as "a cohabitant occupying a relationship generally equivalent to that of a spouse."
- **Note to Rule 501(a)(5).** A new note will clarify that the calculation of "joint net worth" for purposes of Rule 501(a)(5) can be the aggregate net worth of an investor and his or her spouse (or "spousal equivalent" as described above) and that the securities being purchased by an investor relying on the joint net worth test need not be purchased jointly.
- **Note to Rule 501(a)(8).** Under Rule 501(a)(8), an entity qualifies as an accredited investor if all of its equity owners are accredited investors.

Consistent with the SEC's current position (see [Securities Act Rules C&DIs Question 255.06](#)), the amendments will add a note to clarify that, in determining accredited investor status, one may look through forms of equity ownership to natural persons.

- **Securities Act Rule 215.** To conform the definitions of accredited investor in Rules 215 and 501(a), the definition of accredited investor in Rule 215 will be replaced with a cross-reference to the definition in Rule 501(a).
- **Securities Act Rule 163B.** As it relates to [test-the-waters communications](#) with potential investors that are or the issuer reasonably believes are [institutional accredited investors](#), the amendments will amend Rule 163B to include references to:
 - new Rule 501(a)(9), which establishes the new category for entities meeting the \$5 million minimum investment threshold; and
 - new Rules 501(a)(12) and (a)(13), which establish the new categories for family offices and family clients, respectively. The amendments will also add a note clarifying that only family clients that are institutions may be considered institutional accredited investors.
- **Exchange Act Rule 15g-1.** Exchange Act Rule 15g-1(b) exempts [broker-dealers](#) from having to disclose certain information to their customers who are institutional accredited investors before effecting transactions in a [penny stock](#). Similar to the amendments to Rule 163B, the SEC is also amending Rule 15g-1(b) to include references to new Rules 501(a)(9), (a)(12), and (a)(13), including a note clarifying that only family clients that are institutions may be considered institutional accredited investors.

Qualified Institutional Buyer

The SEC's final rule amendments will also modify the definition of QIB in Rule 144A under the Securities Act by:

- Adding RBICs to Rule 144A(a)(1)(i)(C) and LLCs to Rule 144A(a)(1)(i)(H).
- Creating new Rule 144A(a)(1)(i)(J) to allow any institutions that are accredited investors under Rule 501(a) to qualify as a QIB when they satisfy the \$100 million in securities owned and invested threshold. To avoid confusion, the SEC is also adding a note clarifying that entities seeking QIB status under the new rule may be formed for the purpose of acquiring the securities being offered.

For more information on the current definitions of accredited investor and qualified institutional buyer and their role in exempt securities offerings, see [Practice Notes, Section 4\(a\)\(2\) and Regulation D Private Placements](#) and [Resales Under Rule 144A and Section "4\(1½\)".](#)