

Insights

SEC Updates Private Placement “Accredited Investor” Definition

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On August 26, 2020, the Securities and Exchange Commission (the “SEC”) adopted amendments (the “Amendments”) to the private placement definition of “accredited investor” in Regulation D under the Securities Act of 1933 (the “Securities Act”). The SEC’s primary objective of the Amendments is to expand the pool of accredited investors to include investors that have the knowledge and expertise to assess the risks of illiquid privately offered securities. The Amendments will be effective October 25, 2020.

Regulation D is the most commonly relied upon exemption from the registration requirements of the Securities Act for private placements. In 2019, private placements raised an estimated \$1.5 trillion of capital, compared to approximately \$1.2 trillion raised in registered offerings. The definition of “accredited investor” is integral to the applicability of the Regulation D exemption. Thus, the expansion of the types of investors who qualify as accredited investors will make private placements available to a greater number of potential investors. The SEC intends that expanding the pool of accredited investors will increase the availability of capital that can be efficiently raised by issuers in the private capital markets.

Of particular note is that the Amendments do not change the current dollar thresholds under certain commonly relied upon provisions of the accredited investor definition which are generally:

- individual/joint with spouse or spousal equivalent (a) income which exceeds \$200,000/\$300,000 or (b) net worth, excluding principal residence, which exceeds \$1 million; or
- certain entities with total assets in excess of \$5 million.

The SEC chose not to raise these dollar thresholds, which have remained at the levels set in the 1980s, to adjust for the cumulative effect of inflation because it did not want to reduce the number of natural persons and entities qualifying as accredited investors. Consistent with maintaining those dollar thresholds, the SEC expanded the concept of combined finances with a “spouse” to include a “spousal equivalent.” As likewise defined in other SEC rules, a “spousal equivalent” is a cohabitant with a relationship generally equivalent to that of a spouse.

As provided for in the Securities Act, the SEC has determined through the Amendments that the following types of investors have the requisite financial sophistication, knowledge and experience in financial matters to be added to the definition of accredited investor:

- individuals who hold certain professional certifications or credentials issued by an accredited educational institution as designated by the SEC, which the SEC initially designated as the Licensed General Securities Representative (Series 7), the Licensed Private Securities Offerings Representative (Series 82), and the Licensed Investment Adviser Representative (Series 65);

- a “knowledgeable employee” of a private investment fund who is generally an executive of the fund or of an affiliate, or an employee who participates in the fund’s investments;
- a limited liability company with total assets in excess of \$5 million;
- SEC- and state-registered or exempt investment advisers;
- any entity owning investments (as defined in the Investment Company Act) in excess of \$5 million, not formed for the purpose of investing in the securities offered; and
- a “family office” with assets under management in excess of \$5 million not formed for the purpose of investing in the securities offered, and any “family client” of a family office (as each are defined in the Investment Advisers Act).

Limited liability companies (“LLCs”) with total assets in excess of \$5 million are now included in the definition among the types of entities that are considered to be an accredited investor. The SEC considers this a clarification, rather than an expansion, as it intended that Regulation D reflect its longstanding SEC staff interpretations that LLCs were eligible to be accredited investors if they met the other requirements of the definition.

If you would like to discuss the effects of the Amendments to your business or have questions, please contact **Robert A. Greising, Robert J. Wild, Corben A. Lee**, or any other member of our **Business, Acquisitions & Securities team**.