

## > Client Alert

### SEC Modernizes Definition of Accredited Investor and Qualified Institutional Buyer, Allowing Greater Pool of Investors to Participate in Private Securities Offerings

August 31, 2020

#### Authors and Key Contacts

If you would like any further information regarding this alert, please contact any of the attorneys listed below.

#### Henry A. Zangara

Partner

Corporate

P (212) 735-8859

[hzangara@morrisoncohen.com](mailto:hzangara@morrisoncohen.com)



#### Brian R. Forman

Partner

Corporate

P (212) 735-8744

[bforman@morrisoncohen.com](mailto:bforman@morrisoncohen.com)



#### Jessica R. Colombo

Senior Counsel

Corporate

P (212) 735-8753

[jcolombo@morrisoncohen.com](mailto:jcolombo@morrisoncohen.com)



#### Timur N. Eron

Associate

Corporate

P (212) 735-8882

[teron@morrisoncohen.com](mailto:teron@morrisoncohen.com)



The SEC amended and broadened the definitions of “accredited investor” and “qualified institutional buyer” to allow a larger pool of potential investors to participate in private securities offerings under the Regulation D safe-harbor registration exemption and to participate in secondary sales under Rule 144A.

The amendments were adopted along party lines, with the dissenting commissioners objecting that the Commission did not also raise the existing accredited investor income or net worth thresholds which were last set in 1982. Inflation, they argued, has effectively broadened the pool beyond the levels contemplated almost 40 years ago.

Under the revised definition of “accredited investor:”

1. Natural persons will now qualify based on certain professional certifications, including persons that have obtained a FINRA Series 7, Series 65, and Series 82 license. The SEC will have the flexibility to reevaluate or add certifications, designations, or credentials in the future.
2. “Knowledgeable employees” of a private fund or an investment adviser to a private fund will now qualify. The amendment also will now permit an employee who is categorized as a “Knowledgeable Employee” under the Investment Company Act of 1940 to invest in a private fund without having to independently satisfy the economic tests of the “accredited investor” definition.
3. Limited liability companies with \$5 million in assets and SEC- and state-registered investment advisers, exempt reporting advisers, and rural business investment companies will now be included. Limited liabilities companies had not been part of the formal definition, but have been considered accredited investors for some time now based on informal SEC guidance.
4. A new “catch-all” category will include 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

\$5 million and that was not formed for the specific purpose of investing in the securities offered.

5. “Family offices” with at least \$5 million in assets under management and their “family clients,” as each term is defined under the Investment Advisers Act of 1940 are now included. This will eliminate situations where a family office is investing on behalf of trusts owned by family members that are not themselves accredited investors, and thus could not participate in private offerings.
6. The term “spousal equivalent” is added to the accredited investor definition, so that persons that cohabitate or otherwise have relationships similar to those of married couples may pool their finances for the purpose of qualifying as accredited investors.

As noted above, the SEC did not change the current financial criteria for a natural person qualified as an accredited investor. Those thresholds remain as either (a) annual income of \$200,000 (or \$300,000, together with a spouse) or (b) net worth of \$1 million excluding the value of the natural person’s primary residence. Those thresholds remain the same as the financial thresholds that were created in 1982, with the exception of the exclusion of the value of the primary residence, which was changed in recent years.

The definition of qualified institutional buyer was expanded so that RBICs and limited liability companies that are accredited investors will also be QIBs. Additionally, any other type of entity that was added to the definition of “accredited investor” will also be added to the QIB definition if such entity also meets the \$100 million in securities owned criteria for qualified institutional buyers.

The additions to the definition of qualified institutional buyer should serve to eliminate situations in which various entities were not able to participate in 144A transactions because the pre-amendment definition was somewhat limiting from a technical perspective.