

# SEC Modernizes the Accredited Investor Definition

## FOR IMMEDIATE RELEASE

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*Washington D.C., Aug. 26, 2020* — The Securities and Exchange Commission today adopted amendments to the “accredited investor” definition, one of the principal tests for determining who is eligible to participate in our private capital markets. Historically, individual investors who do not meet specific income or net worth tests, regardless of their financial sophistication, have been denied the opportunity to invest in our multifaceted and vast private markets. The amendments update and improve the definition to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in those markets.

“Today’s amendments are the product of years of effort by the Commission and its staff to consider and analyze approaches to revising the accredited investor definition,” said Chairman Jay Clayton. “For the first time, individuals will be permitted to participate in our private capital markets not only based on their income or net worth, but also based on established, clear measures of financial sophistication. I am also pleased that we have expanded and updated the list of entities, including tribal governments and other organizations, that may qualify to participate in certain private offerings.”

The amendments allow investors to qualify as accredited investors based on defined measures of professional knowledge, experience or certifications in addition to the existing tests for income or net worth. The amendments also expand the list of entities that may qualify as accredited investors, including by allowing any entity that meets an investments test to qualify.

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### FACT SHEET

#### Updating the Accredited Investor Definitions

Aug. 26, 2020

The Securities and Exchange Commission adopted amendments to update and improve the definition of “accredited investor” in the Commission’s rules and the definition of “qualified institutional buyer” in Rule 144A under the Securities Act of 1933. The amendments to the accredited investor definition add new categories of qualifying natural persons and entities and make certain other modifications to the existing definition. The amendments to the qualified institutional buyer definition similarly expand the list of eligible entities under that definition.

### Background

These amendments are part of the Commission’s ongoing effort to simplify, harmonize, and improve the exempt offering framework, thereby expanding investment opportunities while maintaining appropriate investor protections and promoting capital formation.

In June 2019, the Commission requested public comment on its Concept Release on Harmonization of Securities Offering Exemptions. In the Concept Release, the Commission requested comments on possible approaches to amending the accredited investor definition, which is a central component of several exemptions from registration, including Rules 506(b) and 506(c) of Regulation D, and plays an important role in other federal and state securities law contexts. The Concept Release was preceded by a Commission staff report issued in December 2015 on the accredited investor definition, which examined the background and history of the definition and considered comments and recommendations on amending the definition.

After taking into account the views expressed by members of the public and recommendations over the years from various Commission advisory committees and the annual SEC Government-Business Forum on Small Business Capital Formation, the Commission proposed in December 2019 to amend the accredited investor definition. In March 2020, the Commission continued the harmonization effort by proposing amendments to the exempt offering framework.

### Highlights

The amendments revise Rule 501(a), Rule 215, and Rule 144A of the Securities Act.

The amendments to the accredited investor definition in Rule 501(a):

- add a new category to the definition that 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. Members of the public may wish to propose for the Commission’s consideration additional certifications, designations or credentials that satisfy the attributes set out in the new rule;
- include as accredited investors, with respect to investments in a private fund, natural persons who are “knowledgeable employees” of the fund;
- clarify that limited liability companies with \$5 million in assets may be accredited investors and add SEC- and state-registered investment advisers, exempt reporting advisers, and rural business investment companies (RBICs) to the list of entities that may qualify;
- add 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 \$5 million and that was not formed for the specific purpose of investing in the securities offered;
- add “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; and
- add the term “spousal equivalent” to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors.

The amendment to Rule 215 replaces the existing definition with a cross reference to the definition in Rule 501(a).

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

The Commission also adopted conforming amendments to Rule 163B under the Securities Act and to Rule 15g-1 under the Exchange Act.

### **What’s Next?**

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