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SEC PROPOSES AMENDMENTS TO THE “ACCREDITED INVESTOR” DEFINITION

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By **Simon Bord** and **Tiana M. Butcher Walters**

On Wednesday, December 18, the Securities and Exchange Commission (“SEC”) voted to [propose amendments](#) to expand the definition of “accredited investor.” Whether a person (natural or business entity) is deemed to be an accredited investor is one of the primary tests used for determining whether such person is able to invest in unregistered, private offerings of securities.

Specifically, the SEC’s proposed amendments to the definition of accredited investor would:

- add new categories that would permit natural persons to qualify as accredited investors based on certain professional certifications and designations, such as a Series 7, 65 or 82 license, or other credentials issued by an accredited educational institution;
- 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 (“spousal equivalent” would be defined as a cohabitant occupying a relationship generally equivalent to that of a spouse);
- with respect to investments in a private fund, add a new category based on the person’s status as a “knowledgeable employee” of the fund;
- add limited liability companies that meet certain conditions, registered investment advisers and rural business investment companies (RBICs) to the current list of entities that may qualify as accredited investors;
- add a new category for any entity, including Indian tribes, owning “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; and
- 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.

The SEC’s proposed amendments to the definition of accredited investor will be open to comments from the public for 60 days from the date the proposed rule is published in the federal register.

SEC Chairman Jay Clayton opined that modernization of the definition of accredited investor is “long overdue” though there are a range of views on this proposal as demonstrated by the comments received in response to the [concept release](#) issued in June and the Commission’s 3-2 vote on Wednesday.

What Happens Next?



E-ALERT

We will be following the developments on this proposed amendment and will be happy to work with you on updating any necessary forms or documents as needed when the rule becomes final. Please feel free to reach out to us in the interim if you have any questions.