



Expanded Opportunities for Exempt Securities Offerings as SEC Updates the Definition of “Accredited Investor”

Publication:

Corporate Client ALERT re Expanded Opportunities for Exempt Securities Offerings as SEC Updates the Definition of “Accredited Investor”

On August 26, 2020, the United States Securities and Exchange Commission (the “SEC”) issued [Press Release 2020-191](#), announcing amendments to the “accredited investor” definition under Rule 501(a) of Regulation D of the Securities Act of 1933.

By way of background, the SEC regulates the sale of stock and other securities by requiring registration of offerings unless an exemption applies. “Accredited investors” are those who are deemed sophisticated enough to adequately assess an investment opportunity and bear potential losses, thus justifying an exemption from registration under Rule 506 of Regulation D for offerings aimed mostly or entirely at such investors. While the exemption made available by Rule 506(b) permits up to 35 non-accredited investors to participate in an exempt offering, it prohibits general solicitations and imposes additional disclosure requirements with respect to non-accredited investors that issuers of securities often view as burdensome and costly. However, if the issuer is willing to sell only to accredited investors, the exemption made available by Rule 506(c) permits the issuer greater latitude with respect to solicitation and disclosure. Thus, private companies and private funds, including venture capital funds, real estate investment partnerships, private equity funds, and hedge funds, frequently rely on the Rule 506(c) exemption to finance their start-up, growth and acquisitions and prohibit non-accredited investors from participating.

A person deemed to be an accredited investor prior to this amendment was a natural person who: 1) had an individual income in excess of \$200,000, or \$300,000 jointly with his or her spouse, in each of the two most recent years and a reasonable expectation of reaching the same income level in the current year; or 2) had an individual

net worth, or joint net worth with his or her spouse, in excess of \$1,000,000, not counting his or her primary residence. Entities with over \$5,000,000 in assets were also generally considered accredited investors.

The expanded accredited investor definition now includes:

1. Any natural person holding in good standing one or more “professional certifications or designations or credentials from an accredited educational institution.” Examples of qualifying designations or credentials include those with Series 7, Series 65, and Series 82 licenses. The SEC retains the ability to reevaluate or add certifications, designations, or credentials in the future.
2. With respect to investments in a private fund, any natural person who is a “knowledgeable employee” of the fund.
3. Limited liability companies with \$5 million in assets.
4. SEC- and state-registered investment advisers, exempt reporting advisers, and rural business investment companies (RBCs).
5. Any entity, including Indian tribes, governmental bodies, funds, and entities organized under the laws of foreign countries, that own investments in excess of \$5 million and that was not formed for the specific purpose of investing in the securities being offered.
6. “Family offices” with at least \$5 million in assets under management and their “family clients.”

In addition, where the term “spouse” is used in the definition of “accredited investor,” that term now includes a “spousal equivalent,” *i.e.*, a cohabitant occupying a relationship generally equivalent to that of a spouse.

This amendment expands the pool of eligible parties that can participate in private capital markets. Investors who previously were denied such opportunities, such as someone who worked in the securities industry but who did not meet the income or net worth thresholds, can now participate if they have obtained the qualifying certifications or licenses. Accordingly, private companies and funds in need of capital can now tap new eligible investors that could not previously invest without triggering costly SEC registration and/or disclosure requirements.

Issuers relying on a Rule 506 exemption are still required to verify that all purchasers of the securities they issue (or all but 35 of them, in the case of a Rule 506(b) exemption) meet the definition of an accredited investor, and face significant consequences for failing to do so.

If you have any questions, please contact [Jason Navarino](#), [Christine Restrepo](#), [Brensis Navia](#), or any other attorney in Riker Danzig's [Corporate Group](#).

Attorney:

Jason D. Navarino

Practice:

Corporate Law