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Locke Lord QuickStudy: SEC Adopts Amendments to Broaden the Accredited Investor and Qualified Institutional Buyer Definitions

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On December 18, 2019, the Securities and Exchange Commission (“SEC”) proposed certain amendments to the definitions of “accredited investor” in Regulation D and “qualified institutional buyer” (QIB) in Rule 144A, both under the Securities Act of 1933. On August 26, 2020, the SEC voted to adopt the amendments substantially as proposed. 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 QIB definition similarly expand the list of eligible entities under that definition.

Accredited Investor Definition

Historically, the accredited investor definition was intended to include “those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act’s registration process unnecessary.” Consistent with this understanding, the definition has been expanded to include establishing financial sophistication based on factors not solely related to wealth and income. To this end, the SEC amended Rule 501(a) under Regulation D to add new categories of accredited investors that include:

- Natural persons with certain designated professional certifications, designations or credentials, which the SEC may designate from time to time by order. In a [separate order](#), the SEC designated holders in good standing of the Series 7, Series 65, and Series 82 licenses as qualifying natural persons; and
- Natural persons who are “knowledgeable employees” of a private fund, as defined in the Investment Company Act, with respect to investments in the private fund. “Knowledgeable employees” includes trustees and advisory board members of the fund or an affiliated adviser of the fund, as well as non-clerical employees of the fund or an affiliated adviser of the fund that, in connection with their regular functions or duties, have participated in the investment activities of the private fund for at least 12 months.

Additionally, the current definition includes some limitations on the types of entities contemplated as accredited investors. To address this, the amendments have expanded the types of entities specifically identified in the definition to include:

- Limited liability companies (included in the list of entities set forth in Rule 501(a)(3));

- SEC and state registered investment advisers, exempt reporting advisers, and rural business investment companies (“RBICs”) investing on their own behalf;
- Any entity, including Indian tribes, labor unions, 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; and
- “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 amendment also added the term “spousal equivalents” to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors.

Qualified Institutional Buyer Definition

With similar goals, the SEC also amended 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 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 rule is available [here](#) and will also be published in the Federal Register. The final rule and order will become effective 60 days after they are published in the Federal Register.

As we have in the past, we will continue to monitor these issues and will provide future client updates. This QuickStudy is for guidance only and is not intended to be a substitute for specific legal advice.

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