

LEGAL ALERT

Securities Law and Practice Updates

August 2020

AMENDMENTS TO SEC ACCREDITED INVESTOR DEFINITION

On August 26, 2020, the Securities and Exchange Commission (“SEC”), adopted amendments to the definition of “accredited investor” in Rule 501 of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”) to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition. According to the SEC, the amendments are intended to update and improve the definition to identify more effectively investors that have sufficient knowledge and expertise to participate in investment opportunities that do not have the rigorous disclosure and procedural requirements, and related investor protections, provided by registration under the Securities Act.

Specifically, the amendments add new categories of natural persons that may qualify as accredited investors based on certain professional certifications or designations or other credentials or their status as a private fund’s “knowledgeable employee,” expand the list of entities that may qualify as accredited investors, add entities owning \$5 million in investments, add family offices with at least \$5 million in assets under management and their family clients, and add the term “spousal equivalent” to the definition.

The SEC also adopted amendments to the “qualified institutional buyer” definition in Rule 144A under the Securities Act to expand the list of entities that are eligible to qualify as qualified institutional buyers.

We are able to provide counsel and guidance in SEC and New Mining Disclosure matters. For additional information, please contact the attorneys named below or the attorney with whom you have a primary relationship.

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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 SEC may designate from time to time by order. In conjunction with the adoption of the amendments, the SEC designated by order holders in good standing of the Series 7, Series 65, and Series 82 licenses issued by the Financial Industry Regulatory Authority, Inc. ("FINRA") as qualifying natural persons;
- include as accredited investors, with respect to investments in a private fund, natural persons who are "knowledgeable employees" of the fund, as defined in Rule 3c-5(a)(4) under the Investment Company Act of 1940, as amended (the "Investment Company Act");
- 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 of 1940, as amended; and
- add the term "spousal equivalent" (i.e., a cohabitant occupying a relationship generally equivalent to that of a spouse) to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors.

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 amendments will become effective 60 days after the adopting release has been published in the federal register.