



## ALERTS

### SEC Proposes To Amend “Accredited Investor” Definition, Expand Pool Of Investors Eligible To Invest In Private Offerings

December 30, 2019 | [Southeast Michigan](#) | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Dallas](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [Raleigh](#) | [Salt Lake City](#) | [South Bend](#) | [Washington, D.C.](#)

On December 18, 2019, the Securities and Exchange Commission (SEC) proposed amendments to the definition of “accredited investor” in the SEC’s rules under the Securities Act of 1933, which are expected to expand the pool of investors eligible to invest in private offerings. If the final rules are adopted, this expanded accredited investor definition may provide particular benefits to startups and early-stage companies that rely on private securities offerings to raise much-needed capital.

The proposed amendments will be subject to a 60-day public comment period once published in the Federal Register, which is expected to end in late February 2020.

According to the SEC, the proposed amendments are intended to update and improve the accredited investor definition to more effectively identify institutional and individual investors that have knowledge and expertise to participate in the U.S. private capital markets.

The current accredited investor definition is based almost exclusively on an investor’s financial profile, i.e., whether the investor meets certain income, net worth or asset ownership thresholds. For instance, a natural person can qualify as an accredited investor if the person has had, in each of the last two calendar years, individual income in excess of \$200,000 (or joint annual income with a spouse in excess of \$300,000), or a net worth of over \$1 million (individually or jointly with a spouse) not including the value of the investor’s home. An entity investor, i.e., corporation, partnership or limited liability company, will meet the

## RELATED PEOPLE



**David P. Hooper**

Partner  
Indianapolis

P 317-231-7333  
F 317-231-7433  
[david.hooper@btlaw.com](mailto:david.hooper@btlaw.com)



**Thomas J. Lyons, III**

Associate  
Indianapolis

P 317-261-7844  
F 317-231-7433  
[tlyons@btlaw.com](mailto:tlyons@btlaw.com)

## RELATED PRACTICE AREAS

Securities and Capital Markets

definition of an accredited investor if it, among other things, has total assets in excess of \$5 million. These financial thresholds have not been adjusted in almost 40 years and have been widely considered outdated.

Since almost all unregistered securities offerings conducted by private companies rely on investors meeting the accredited investor standard, expanding the accredited investor definition is vitally important to expand the number and kind of investors eligible to invest in these companies, especially small startup and “venture capital” companies that have struggled to raise capital.

Under the SEC’s proposed rules, the definition of accredited investor would be modernized and expanded to include new categories of natural persons that may qualify based on their professional knowledge, experience or certifications. The proposed amendments also would expand the list of entities that may qualify as accredited investors by, among other things, allowing any entity that meets an investments ownership test to qualify.

According to the SEC’s proposal, the new amendments would:

- add new categories to the definition 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;
- with respect to investments in a private investment fund (such as a private equity fund, venture capital fund, or hedge 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 of 1940, 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; 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.

With respect to Rule 144A offerings (which are most commonly used for offerings of debt or preferred equity by public companies, or common equity of private companies, to institutional investors such as insurance companies or mutual funds), the SEC also proposed amendments that would expand the pool of eligible investors. In this regard, the SEC proposed amendments to the “qualified institutional buyer” or “QIB”

definition in Rule 144A to add limited liability companies and RBICs to the types of entities eligible for QIB status if they own and invest, on a discretionary basis, at least \$100 million in the securities of non-affiliated issuers. The proposed amendments also would add a “catch-all” category that would permit institutional accredited investors under Securities Act Rule 501(a), that are of an entity type not already included in the QIB definition, to qualify as QIBs when they satisfy the \$100 million investments threshold.

The proposed amendments are part of the SEC’s stated objective to open up private markets to a wider range of investors. In this connection, whenever the pool of eligible investors increases, this is expected to improve the prospects of private companies of raising capital, especially early stage companies who have struggled in the past to catch the attention of high net worth individuals and institutional investors. By expanding the accredited investor pool to include investors based on measures of financial sophistication, and not merely dollar thresholds, the chances of private companies to raise the capital they need for growth and operations increases as well.

The SEC’s proposal has generally been well received by the investment and legal community as a balanced and sensible approach, but as with any proposal, there are differing views. Public comments will be accepted until February.

To obtain more information, contact the Barnes & Thornburg attorney with whom you work, David P. Hooper, chair of the Securities and Capital Markets Practice Group, at 317-231-7333 or [dhooper@btlaw.com](mailto:dhooper@btlaw.com), or Thomas J. Lyons, III, at 317-261-7844 or [thomas.lyons@btlaw.com](mailto:thomas.lyons@btlaw.com).

© 2019 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

*This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.*