

Legal Update

Proposed Amendments to the Accredited Investor Definition

On December 18, 2019, the Securities and Exchange Commission ("SEC") proposed amendments to the definition of "accredited investor" and related amendments to the definition of "qualified institutional buyer."

The proposed amendments would have the effect, if adopted, of broadening the universe of individuals and entities that would qualify as accredited investors.

The proposed amendments are consistent with those discussed in the SEC's Concept Release on Harmonization of Securities Offering Exemptions, which was issued in June 2019, as well as with the recommendations made in the 2015 Staff Report on the Review of the Definition of "Accredited Investor" and by the SEC's Investor Advisory Committee.

The proposed amendments would add two new categories of accredited investors for natural persons, regardless of such person's net income and net worth. A natural person would qualify as an accredited investor if the person holds a professional certification that arises out of an examination administered by a self-regulatory organization or other industry body, which examination is intended to demonstrate comprehension and sophistication in the areas of securities and investing, and if information

regarding holders of the certification or designation is publicly available. Initially, the proposing release notes that a Series 7, Series 65 or Series 82 license would be included among the acceptable certifications. A second category would be added for knowledgeable employees¹ to qualify as accredited investors for purposes of investing in the funds sponsored by their employers.

The SEC proposes a note to Rule 501 that would clarify that in calculating net worth and net income for purposes of the net worth and net income tests, an investor can aggregate the investor's net worth or net income, as the case may be, with that of his or her spouse or spousal equivalent.

The proposed amendments would also add several categories of entities to the definition, including:

- SEC- and state-registered investment advisers;
- Rural business investment companies;
- Limited liability companies that satisfy the other requirements of the definition of "accredited investor" (i.e., total assets in excess of \$5 million and not formed for the specific purpose of acquiring the securities being offered);

- Any entity owning investments in excess of \$5 million that is not formed for the specific purpose of acquiring the securities being offered; and
- Any family office² with at least \$5 million in assets under management and its family clients.³

The proposing release also solicits comments on a variety of other aspects of the “accredited investor” definition, including matters as to which comments already were requested and submitted in conjunction with the concept release.

The SEC also proposes to amend the definition of qualified institutional buyer in Rule 144A to avoid inconsistencies and include the entities that qualify for accredited investor status when these entities meet the \$100 million in securities owned and invested threshold in Rule 144A.

Although the proposal is consistent with recommendations that have been made for several

years and consistent with the comments submitted in response to the concept release, the proposal was adopted in a 3-2 vote, with the two Commissioners who dissented citing investor protection concerns. The proposed amendments are subject to a 60-day public comment period before they can be adopted by the SEC.

For more information about the topics raised in this Legal Update, please contact any of the following authors.

Brian D. Hirshberg

+1 212 506 2176

bhirshberg@mayerbrown.com

Anna T. Pinedo

+1 212 506 2275

apinedo@mayerbrown.com

Endnotes

¹ “Knowledgeable employee” is defined as any executive officer, director, trustee, general partner, advisory board member or person serving in a similar capacity of the covered company, an affiliated management person of the covered company or an employee of the covered company, who, in connection with his or her regular functions or duties, participates in the investment activities of such covered company, other covered companies, or investment companies the investment activities of which are managed by such affiliated management person of the covered company provided that such employee has been performing such functions and duties for or on behalf of the covered company or the affiliated management person of the covered company or substantially similar functions or duties for or on behalf of another company for at least 12 months.

² “Family office” is defined as a company (including its directors, partners, members, managers, trustees and employees acting within the scope of their position or employment) that (i) has no clients other than family clients (as defined in footnote 3 below); (ii) is wholly-owned by family clients and is exclusively controlled (directly or indirectly) by one or more family members and/or family entities; and (iii) does not hold itself out to the public as an investment adviser.

³ “Family clients” include family members, former family members, key employees, non-profit and charitable organizations funded exclusively by family clients, estates of family members and certain former key employees, certain family client trusts, and companies wholly-owned by and operated for the sole benefit of family clients.

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world’s leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world’s three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Any tax advice expressed above by Mayer Brown LLP was not intended or written to be used, and cannot be used, by any taxpayer to avoid U.S. federal tax penalties. If such advice was written or used to support the promotion or marketing of the matter addressed above, then each offeree should seek advice from an independent tax advisor.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website.

“Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2020 Mayer Brown. All rights reserved.