



SEC EXPANDS DEFINITION OF ACCREDITED INVESTOR

Entrepreneurs looking to raise capital for their new venture should be pleased about the **recent published final rule** by the Securities and Exchange Commission (“SEC”) expanding the definition of an “accredited investor” for the first time in years. Generally speaking, raising capital from accredited investors is much more attractive to entrepreneurs than raising capital from unaccredited investors. The reporting obligations, disclosure obligations and internal reporting requirements are all significantly reduced if the start-up has raised capital from only accredited investors.

The baseline definition of a “natural person” as an accredited investor has remained largely unchanged since 1982 and was based entirely on the person’s net worth or earned income with no consideration of the person’s professional judgment or experience: a person that either: 1) has a net worth of at least \$1,000,000 (excluding their primary residence); or 2) earned at least \$200,000 in the two most recent years (or \$300,000 combined with their spouse). As the SEC noted in the final rule, “the number of U.S. households that qualify as accredited investors has grown from approximately 2% of the population of U.S. households in 1983 to 13% in 2019 as a result of inflation.” The SEC specifically considered raising these limits but decided “that it is not necessary or appropriate to modify the definition’s financial thresholds at this time.”

The SEC has now adopted two non-financial criteria for being designated an accredited investor: persons holding one or more designated professional certifications and persons who are “knowledgeable employees” of a private fund that is raising capital. The latter expansion is similar to a previous expansion to the definition of accredited investor that added directors, executive officers, or general partners of the start-up raising capital. However, the “professional certification” expansion is unprecedented, even if the fine print makes this expansion rather limited. The SEC ultimately decided that the only “professional certifications” that met the SEC’s standards were “the following certifications or designations administered by the Financial Industry Regulatory Authority, Inc. (FINRA): the Licensed General Securities Representative (Series 7), Licensed Investment 14 Adviser Representative (Series 65), and Licensed Private Securities Offerings Representative (Series 82).”

Although the SEC received many comments recommending that CPAs and attorneys be automatically added to the definition of accredited investors, the SEC ultimately decided that these professional designations did not “provide a reliable indication that an investor has a sufficient level of financial sophistication to participate in investment opportunities.”

The final rule adopted several other, more technical, changes to the accredited investor definition, including:

- Natural persons can now include joint income from “spousal equivalents” instead of just legal spouses.
- Adding Limited Liability Companies and other entities such as labor unions to the list of acceptable entities that can be designated accredited investors (this has long been an unofficial SEC rule).
- Adding family offices and family clients of family offices.



Scott Foster

✉ sfoster@bulkley.com
☎ 413-272-6258



Mark Cress

✉ mcress@bulkley.com
☎ 413-272-6255



Ryan Barry

✉ rbarry@bulkley.com
☎ 413-272-6264



Sarah Willey

✉ swilley@bulkley.com
☎ 413-272-6228