

advisory

SEC ADOPTS A NEW DEFINITION OF ACCREDITED INVESTOR

On August 26, 2020, the Securities and Exchange Commission (the “SEC”) adopted amendments to the definition of “accredited investor.” The amendments permit investors to qualify as accredited investors based upon additional criteria focused on financial sophistication, in addition to the historic tests relating to their income or net worth. The amendments become effective sixty (60) days after publication in the Federal Register.

Background

The definition of “accredited investor” has always been extremely important because it determines which persons or entities may participate in private (unregistered) offerings of securities. The current federal regulatory rules start with the proposition that any offering of securities must be registered with the SEC unless an exemption for the registration requirements is available. Registration refers to the complex and expensive process typical of an initial public offering (“IPO”) and is simply not a practical alternative for many smaller or development stage companies.



There are a number of exemptions from registration available to companies seeking to raise capital, including the commonly used exemptions set forth in Rules 504, 505 and 506 of Regulation D. However, as is often the case, the “devil is in the details” and how a company must qualify for those exemptions is largely dependent upon whether the securities will be offered only to accredited investors, or conversely, whether non-accredited investors will be given an opportunity to invest. If the securities are offered to even a single non-accredited investor (whether intentionally or unintentionally and whether or not the non-accredited investor actually purchases any of such securities), all potential investors must receive an enhanced level of disclosure in a specified format in order to qualify for the exemption from registration. That is both substantially more expensive in terms of legal fees, etc. and much more time consuming.

The purposes of the new amendments are to improve the exempt offering framework to include individuals and entities that are equipped to evaluate the merits of an offering they are considering, while at the same time protecting those investors who are not so equipped.

Summary of Amendments to Accredited Investor Definition

The new amendments:

- Add a new category to the definition to permit natural persons who hold certain professional certifications, designations or credentials designated from time to time by order of the SEC Commissioner to qualify as accredited investors. These initially include holders in good standing of SEC Series 7 (Licensed General Securities Representative), Series 65 (Licensed Investment Advisor) and Series 82 (Licensed Private Securities Offering Representatives) licenses.
- With respect to a particular private fund, include as accredited investors natural persons who are “knowledgeable employees” of such fund.
- Add “family offices” with at least \$5 million in assets under management and their “family clients” as those terms are defined in the Investment Advisors Act to qualify as accredited investors.

Some Practical Advice

The new additions expand the definition of accredited investors, and thus provide a benefit to smaller and development stage companies by expanding the pool of potential investors. If you have questions about this issue or other business matters, please contact PLDO Partner William F. Miller at 508-420-7159 or email wmler@pdlolaw.com.



William F. Miller

Partner

PANNONE LOPES
DEVEREAUX & O'GARA LLC
c o u n s e l o r s a t l a w

This memorandum is intended to provide general information of potential interest to clients and others. It does not constitute legal advice. The receipt of this memorandum by any party who is not a current client of Pannone Lopes Devereaux & O'Gara LLC does not create an attorney-client relationship between the recipient and the firm. Under certain circumstances, this memorandum may constitute advertising under the Rules of the Massachusetts Supreme Judicial Court and the bar associations of other states. To insure compliance with IRS Regulations, we hereby inform you that any U.S. tax advice contained in this communication is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed in this communication.