



441 G St. N.W.  
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November 12, 2020

The Honorable Mike Crapo  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Maxine Waters  
Chairwoman  
The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Accredited Investor Definition*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC) entitled “Accredited Investor Definition” (RIN: 3235-AM19). We received the rule on August 31, 2020. It was published in the *Federal Register* as a final rule on October 9, 2020.<sup>1</sup> 85 Fed. Reg. 64234. The effective date of the rule is December 8, 2020.

According to SEC it is adopting amendments to the definition of “accredited investor” to add new categories of qualifying natural persons and entities and to make certain other modifications to the existing definition. SEC stated that 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 of 1933. 15 U.S.C. §§ 77a–77aa. SEC stated further that it is also adopting 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.

Enclosed is our assessment of SEC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about

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<sup>1</sup> The due date for this major rule report was October 26, 2020. We did not determine that the rule had been published in the *Federal Register* until after this date, which delayed our issuance of this report.

this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Vanessa Countryman  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
“ACCREDITED INVESTOR DEFINITION”  
(RIN: 3235-AM19)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. This analysis included an introduction and broad economic considerations. It also identified the affected parties and established a baseline against which the changes imposed by this final rule could be measured for the anticipated economic effects. The discussion regarding the anticipated economic effects included an analysis of the (1) potential benefits to issuers; (2) potential benefits to investors; (3) potential costs to issuers; (4) potential costs to investors; (5) variation in economic effects; (6) efficiency, competition, and capital formation; and (7) alternatives.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The SEC prepared a Final Regulatory Flexibility Analysis. The analysis included the (1) need for, and objectives of, the final rule; (2) significant issues raised by public comments; (3) small entities subject to the amendments; (4) projected reporting, recordkeeping, and other compliance requirements; and (5) the agency's action to minimize the effect on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, SEC is not subject to the Act. See 2 U.S.C. §§ 658(1), 1502(1).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On January 15, 2020, SEC published a proposed rule. *Amending the “Accredited Investor” Definition*, 85 Fed. Reg. 2574 (Jan. 15, 2020) (Proposing Release). SEC noted that the Proposing Release is part of the broader effort to simplify, harmonize, and improve the exempt offering framework under the Securities Act to promote capital formation and expand investment opportunities while maintaining and enhancing appropriate investor protections. See *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, 85 Fed. Reg. 17956 (Mar. 31, 2020); *Concept Release on Harmonization of Securities Offering Exemptions*, 84 Fed. Reg. 30460 (June 26, 2019) (Concept Release).

According to SEC, it received more than 200 unique comments. SEC stated that many commenters supported expanding the accredited investor definition, while some commenters did not. SEC also stated that other commenters recommended eliminating the definition altogether so that anyone could invest in exempt offerings. SEC stated further that several

commenters were in general support of expanding the definition of qualified institutional buyer in Rule 144A.

According to SEC, in response to the Concept Release, SEC's Small Business Capital Formation Advisory Committee adopted a recommendation regarding changes to the accredited investor definition, and the 2019 SEC Government-Business Forum on Small Business Capital Formation provided a recommendation on the accredited investor definition. SEC stated that prior to the Concept Release, SEC's Investor Advisory Committee adopted a recommendation regarding changes to the accredited investor definition. SEC stated further that it considered commenters' views on different aspects of the proposal, as well as its effects, and discussed them topically throughout the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

SEC determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to sections 2(a)(11), 2(a)(15), 4(a)(1), 4(a)(3)(A), 4(a)(3)(C), 19(a) and 28 of the Securities Act, Act of May 27, 1933, ch. 38, title I, 48 Stat. 74; and sections 3(a)(51)(B), 3(b), 15(c), 15(g), and 23(a) of the Exchange Act, Act of June 6, 1934, ch. 404, 48 Stat. 881.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.