Public Statement

Commissioner Roisman Statement on Amending the “Accredited Investor” Definition

Commissioner Elad L. Roisman

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Today, the Commission considered and updated a definition in our rules that has long been an insurmountable hurdle for most people who may wish to access investment opportunities outside of our public markets.

For decades, only the wealthiest among us have qualified as accredited investors.[1] This group has been afforded the broadest access to investment opportunities, not only those in our public markets (those that anyone can invest in), but also in our private markets (where the wealthy and institutional investors such as pension funds and venture capital funds have continued to invest given the beneficial returns). Private market opportunities can range from investing in your brother’s or sister’s new restaurant to buying stakes in private equity, hedge funds, or potential unicorn companies when they are in their infancy. Such investments—like all investments—involve risk. But, our rules have only allowed people of means to weigh these risks against the potential benefits of investing. In other words, only the wealthiest are allowed this level of control over their own money in the securities markets. These rules originated from good intentions; they were designed to protect smaller investors from exposure to loss in private markets that were far smaller and much different than they are today. Nevertheless, I have long advocated that such a system is fundamentally unfair, unequal, and unjustified. As I have previously stated, wealth is a crude measure of a person’s ability to make financial decisions.[2]

Today, I am glad to have the opportunity to change these rules. I appreciate the leadership of Chairman Jay Clayton in undertaking to review our accredited investor definition and prioritize this matter on the Commission’s policy agenda. I am thankful for the many SEC staff members who worked on this rulemaking, including those in the Division of Corporation Finance, the Division of Investment Management, the Division of Economic and Risk Analysis, and the Office of the General Counsel as well as the commenters who responded to the proposal.

The amendments we adopt today introduce a demonstrable knowledge-based component that will provide additional ways for people to qualify as accredited investors, including by obtaining certain professional certifications, designations, and other credentials. In terms of numbers of potential new accredited investors, these changes are modest, but incremental. In fact, today the Commission published an order with a list of those certifications or designations that would qualify a person to be an accredited investor.[3] There are only three, and I anticipate that most who hold those professional certifications are already accredited investors by virtue of their wealth. I encourage members of the public to contact me and the SEC staff, and let us know whether we should consider adding others.

I support the amendments we adopted today because they are our first steps away from the current, single criterion wealth-based system of eligibility. Nevertheless, I would have supported venturing further down this path of expanding the definition to include knowledge-based eligibility. For example, members of the expert staff we have here at the SEC, who review registration statements for material disclosure and investigate potentially fraudulent activity in our markets, will not qualify as accredited investors because the eligibility criteria are still very limited. It certainly seems a strange outcome that so many individuals who enforce our securities laws and regulate financial markets are not considered sophisticated enough to invest in those very same markets.[4] To me, the conclusion is that our work is not done.

I look forward to the Commission's next review of the accredited investor definition, which should occur four years hence.[5] Should we do away with monetary thresholds altogether? Some argued that we should have increased the monetary thresholds, for example, by adjusting for inflation. While I appreciate their view, I believe continuing to build on this poor metric would further entrench it and the fallacy that it was an accurate measurement in the first place. The fact of the matter is this: there was no magic to the income and wealth requirements when they were initially adopted. The Commission did not explain why the numbers it chose were appropriate or even provide an economic analysis of who they would affect and how.[6] Knowing what we do today, and considering the feedback we have received,[7] I think it would be wrong not to ask ourselves the following questions in considering whether to raise the monetary thresholds that we already have in place: Do such rules disproportionately limit opportunities for women and minorities, including those who wish to invest and those who wish to tap into the investor network they have available to start a new business or keep an existing business afloat? Should we alter the thresholds to account for geographic differences in income or average wealth? Do our rules discourage businesses from setting up shop in areas where there is a lower cost of living or where it is more difficult to get the attention of venture capital funds and other accredited investors? I encourage commenters and interested members of the public to continue providing feedback to us. We are still listening.

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[1] Under the previous definition of accredited investor, amended today, individuals could only qualify as accredited investors if (i) their net worth exceeded $1 million (excluding the value of the investor's primary residence), (ii) their income exceeded $200,000 in each of the two most recent years, or (iii) their joint income with a spouse exceeded $300,000 in each of those years and the individual had a reasonable expectation of reaching the same income level in the current year.

[2] *See* Commissioner Elad L. Roisman, "Statement at Open Meeting on Proposed Amendments to the Accredited Investor Definition," (Dec. 19, 2019), https://www.sec.gov/news/public-statement/statement-roisman-2019-12-18-accredited-investor.

[3] Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status Pursuant to Rule 501(a)(10) under the Securities Act of 1933, Release No. 33-10823 (Aug. 26, 2020), https://www.sec.gov/rules/other/2020/33-10823.pdf.

[4] As I previously noted, I am an SEC Commissioner and one of five votes every time the SEC decides to bring charges against a company we determine has made any untrue statement of a material fact, violated Regulation D, or failed to restate its financial statements when required. One might think I would be capable of understanding the risks of a private investment opportunity and recognize the information I would need to make an informed decision. Yet, I am not an accredited investor—not under the previous rules and not even after these approved amendments take effect.

[5] Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") states that this Commission review must be conducted not earlier than four years after the enactment of the Dodd-Frank Act and not less frequently than once every four years afterward. The next review is required to be conducted in or by 2023.

[6] As the adopting release states: "It is not clear what specific factors the Commission took into account in 1982 when it established the individual income and net worth thresholds." *See* Amending the "Accredited Investor" Definition, Release No. 33-10824 (Aug. 26, 2020), https://www.sec.gov/rules/final/2020/33-10824.pdf.

[7] *See, e.g.*, comment letter from the Center for Capital Markets Competitiveness (Mar. 16, 2020), https://www.sec.gov/comments/s7-25-19/s72519-6960329-212743.pdf; and U.S. Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, "Fiscal Year 2019 Annual Report," https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf: "Women, minorities, and rural communities have expressed disproportionate challenges with the [accredited investor] standard, which often draws a line between the investors' network and qualification for the most attractive offering exemptions."