

Client Bulletin

Private Equity Practice



Wildman Harrold
Attorneys and Counselors

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Comment Period Closes On SEC Proposed Revisions To Accredited Investor Standard

On March 9, 2007, the Securities and Exchange Commission (the "SEC") closed the comment period for two proposed rules that would revise the definition under the Securities Act of 1933 of "accredited investors" for natural persons investing in certain privately offered investment vehicles. *See Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles*, Securities Act Release No. 33-8766, Dec. 27, 2006 (the "Release"), available at: <http://www.sec.gov/rules/proposed/2006/33-8766.pdf>. The proposed revisions to the accredited investor standard are designed to help ensure that purchasers of private investment vehicle securities are capable of evaluating the merits and risks associated with such investment. The SEC is concerned that inflation and sustained growth in the 1990s has caused a substantial number of investors in private investment vehicles who do not have the requisite financial knowledge and sophistication to qualify as accredited investors.

The SEC's proposed rules add a new criterion to the definition of accredited investor with respect to natural persons. In addition to meeting either the net worth or income standards set forth in Rule 501(a) or Rule 215, a natural person accredited investor must also own individually, or jointly with the natural person's spouse, at least \$2.5 million in investment assets. This revised accredited investor standard would affect individuals investing in certain private investment funds and individuals who invest in such funds through an inter-

mediate entity formed for the purpose of making such investments. The \$2.5 million standard would be adjusted on April 1, 2012, and every five years thereafter for inflation. Under the proposed rules, current investors would be "grandfathered" from the revisions to the accredited investor standard except with regard to their future investments.

The revised accredited investor standard would apply to offers and sales of securities issued by certain private investment funds that are excluded from investment company status under Section 3(c)(1) (commonly know as the "not-more-than-100-investor exemption") of the Investment Company Act of 1940 (the "1940 Act"). The proposed rules would not apply to funds relying on Section 3(c)(7) of the 1940 Act or to investments in venture capital funds.

The SEC's proposed rules could have a chilling effect on the ability of the small private investment funds (sub \$250 M) to attract capital from accredited investors. The heightened accredited investor standard for natural persons would reduce the pool of individual accredited investors available to invest in micro private investment funds, thereby making it more difficult for such funds to obtain capital.

The Private Equity Practice at Wildman Harrold is dedicated to keeping our clients advised of new legislative and judicial developments as they occur. If you have any questions regarding these issues, please feel free to contact your primary attorney at Wildman Harrold or email us at sudan-act@wildmanharrold.com for further information.

Client Bulletin

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