

Small Business Notes

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Securities and Exchange Commission Proposed Changes to Definition of “Accredited Investor” for Natural Persons

In its December 2019 proposal, the SEC did not raise the current net worth or income thresholds for determining accredited investor status under Rule 501 of Regulation D for investments in unregistered securities. Nor did the SEC index those thresholds for inflation going forward.

The financial threshold, then remains a net worth—individually or with a spouse—that exceeds \$1 million and income in excess of \$200,000 for the investor, or joint income with the investor’s spouse in excess of \$300,000, in each of the two most recent years with a reasonable expectation of having the same level in the current year.

The proposed changes did add two new categories of natural person “accredited investor” persons holding certain professional licenses or credentials; and “knowledgeable employees” of a private fund and who are investors in the fund.

The initially designated licenses will be Licensed General Securities Representative (Series 7), Licensed Investment Advisor Representative (Series 65), and Licensed Private Securities Offering Representative (Series 85).

“Knowledgeable employees” of a fund would include, among others, employees who in their regular employment duties have participated in the fund’s investment activities for at least 12 months.

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In Light of the Coronavirus Outbreak in China the U.S. Center for Disease Control Has Issued an Instruction to Employers Cautioning Against Discrimination toward Chinese Employees

Title VII of the Civil Rights Act prohibits discrimination in employment on the basis of national origin. This prohibition includes treating current employees or applicants unfavorably because they are of a certain national or ethnic background.

Cases have been reported of employees of U.S. firms that employ persons of Chinese origin who have recently been to China for business or personal reasons being harassed or subjected to disparate treatment in the workplace out of fear that the individuals may carry and/or spread the coronavirus.

The CDC's instruction notes: "Do not show prejudice to people of Asian Descent because of fear of this new virus. Do not assume that someone of Asian descent is more likely to have the 2019 coronavirus."

An employer may, however, take action against an employee – for example barring the employee from the workplace for a period of time – if the employee, regardless of race or national origin, exhibits symptoms of the virus or has recently been in an area of China where the virus is prevalent.

The instruction does note that: "All persons in the U.S. – Including those of Asian descent – who have not traveled to China or been in contact with someone with a confirmed or suspected case (of corona virus) in the last 14 days are at low risk of becoming sick.

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