



Privately Placed Securities under SEC Rule 144A

INTRODUCTION

In 2013, the California Debt and Investment Advisory Commission (CDIAC) published an issue brief which provided an overview of the Securities and Exchange Commission (SEC)'s Rule 144A, and recommended that local agencies refrain from holding restricted securities under Rule 144A in their investment portfolio for operating *surplus funds* due to their ineligibility under the SEC's definition of a "qualified institutional buyer" (QIB). At that time, local agencies' public funds, with a limited number of exceptions, such as pension funds,¹ did not meet the SEC's QIB criteria and were therefore excluded from participating in the private placement market.

Since then, the SEC has amended its definitions of both "accredited investor" and QIB under rules of the Securities Act of 1933 (Securities Act). These changes now allow certain local government agencies to qualify as QIBs—provided they meet the \$100 million threshold in securities owned and invested—and also satisfy the accredited investor criteria. This dual eligibility enables qualified local agencies to purchase privately placed securities under Rule 144A, a significant shift from prior regulatory interpretations.

The purpose of this issue brief is to revise CDIAC's original recommendations in light of these regulatory changes and to initiate a discussion on prudent investment practices for eligible local agency *surplus funds*. This brief aims to provide guidance on navigating both federal rules, state statute and local investment policy considerations when evaluating privately placed securities under Rule 144A.

BACKGROUND

In 1990, the SEC approved Rule 144A of the Securities Act. The intent of Rule 144A was to facilitate a more liquid and efficient institutional resale market for restricted securities.² Rule 144A is based on the idea that certain institutional investors are sophisticated enough to understand the complexities and risks inherent in private capital markets. While Rule 144A does not exempt issuers' initial sale from the registration requirements of the Securities Act, it carved out an exception for resales among QIBs.

In 1996, Congress enhanced the exemption of registration requirements with the National Securities Markets Improvements Act. This legislation limited the ability of state securities regulators to impose their own disclosure and qualification requirements for "covered securities", including "certain securities whose offer and sale is exempt from registration and report-filing requirements."³

ELIGIBILITY OF THE PURCHASER

The SEC adopted amendments in 2020 to update and improve the definition of "accredited investor" in Rule 501(a) and the definition of "qualified institutional buyer" in Rule 144A under the Securities Act. These changes are significant because they now allow certain local government agencies to qualify for participation in private placement markets if they meet both definitions.

ACCREDITED INVESTOR. The amendments to the "accredited investor" definition add new categories of qualifying natural persons and entities.⁴ Under Rule 501(a)(9), a local public agency may qualify as an accredited investor if it is:

Any entity, of a type not listed in paragraph (a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000.⁵

This provision is relevant for California local agencies because most do not fall under the categories listed in paragraphs (a)(1)–(8), such as banks or registered investment companies. Instead, they qualify under paragraph (a)(9) if they:

- Are a governmental entity (e.g., city, county, special district) not formed solely to purchase the securities being offered; and
- Own investments exceeding \$5 million at the time of purchase.

¹ This issue brief focuses on rules and regulation for local agency operating *surplus funds*. Pension funds, guided by other government code sections, are not in the scope of this issue brief.

² *Code of Federal Regulations*, paragraph (e) at [eCFR :: 12 CFR 220.131 -- Application of the arranging section to broker-dealer activities under SEC Rule 144A](https://www.ecfr.gov/current/title-17/chapter-II/part-230#p-230.131), accessed on 1/12/2026

³ *Library of Congress H.R.3005 - 104th Congress (1995-1996): National Securities Markets Improvement Act of 1996 | Congress.gov | Library of Congress* accessed on 10/31/2025

⁴ *SEC Press Release, SEC Modernizes the Accredited Investor Definition*, accessed on 10/31/2025

⁵ *Code of Federal Regulations, www.ecfr.gov/current/title-17/chapter-II/part-230#p-230.501(a)*, accessed on 12/17/2025

Meeting this accredited investor definition is the first step toward eligibility.

QUALIFIED INSTITUTIONAL BUYER. The amendments to the “qualified institutional buyer”(QIB) definition expanded the list to any institutional investors included in the “accredited investor” definition that are not otherwise enumerated in the definition of “qualified institutional buyer,” provided they:

- Act for its own account or the accounts of other QIBs; and
- Own and invest on a discretionary basis at least \$100 million in securities of issuers not affiliated with the institutional buyer.

The amendments now in effect allow local agencies with portfolios exceeding \$100 million to satisfy the requirements of the definition of QIB (see [Appendix A: Qualified Institutional Buyer Definition – SEC Outline](#)). In practice, an agency must be considered a QIB in order to purchase institutional privately placed securities under Rule 144A. An agency with \$20 million under management can meet the definition of an accredited investor but not a QIB, and therefore would not be able to sign a QIB letter and buy privately placed securities.

Local agencies must ensure that their *surplus funds* meet the definitions of both QIB and accredited investor prior to the purchase of privately placed securities under Rule 144A (See [Appendix B: Accredited Investor Definition](#)). To determine whether a local agency owns and invests the requisite amount of securities, the value of the securities is typically calculated on book value or cost basis, which is generally the purchase price for the securities, plus additional costs such as the commission or other fees you paid to complete the transaction.⁶

However, the SEC uses fair market value in its definition of “assets under management” as it pertains to its own regulations.⁷ Given that cost basis and market value may lead to different conclusions regarding eligibility as an accredited investor and/or QIB, CDI-AC recommends that local agencies adopt a conservative approach by using the lesser of cost basis or market value in making their eligibility determination.

TYPES AND INHERENT RISKS OF PRIVATELY PLACED SECURITIES UNDER RULE 144A

Privately placed securities under Rule 144A, typically issued by corporate entities, can be traded among QIBs without SEC registration. Issuers are allowed to raise both debt and equity capital through Rule 144A private placements, although most capital is raised through debt financing. Private debt was one of the fastest growing asset classes during the protracted era of low interest rates in the wake of the 2008 global financial crisis, surging ten-fold between 2007

and 2023.⁸ Regulatory considerations have driven companies with demonstrated access to the public markets to engage in parallel public and private offerings.⁹

The U.S. commercial paper market is one of the largest debt markets, with large corporations and financial institutions acting as the main issuers of commercial paper. Both Section 3(a)(3) and Section 4(a)(2) of the Securities Act provide exemptions from registration for commercial paper. A commercial paper program pursuant to Section 3(a)(3) is a public offering, whereas Section 4(a)(2) commercial paper involves a private placement of securities.¹⁰ Most privately placed commercial paper is issued in Rule 144A programs. Figure 1 illustrates a comparison between the two types of commercial paper.

Compared with their counterpart public offerings, privately placed securities under Rule 144A carry distinct credit risk and liquidity risk because they are subject to limited disclosure and restricted purchase, less price discovery and regulatory oversight.

Figure 1

COMPARISON BETWEEN SECTION 3(A)3 AND SECTION 4(A)2 COMMERCIAL PAPER PROGRAMS

	SECTION 3(A)3 COMMERCIAL PAPER	SECTION 4(A)2 COMMERCIAL PAPER
MARKET TYPES	Public offering	Private placement
MATURITY	Nine months or less with no automatic roll-over	No limitation, can be greater than nine months, usually no more than 397 days
USE OF PROCEEDS	Current transactions or working capital needs	No current transaction requirement, can be used for other purposes e.g. acquisitions
INVESTOR RESTRICTIONS	Often issued in minimum denominations of \$100K to satisfy the requirement of “not ordinarily purchased by the general public”	QIB and/or accredited investor
CREDIT QUALITY	Prime quality, usually with tier-1 short-term ratings by NRSRO ¹¹	No requirement

⁶ The Financial Industry Regulatory Authority, [Cost Basis Basics | FINRA.org](#), accessed on 1/11/2026

⁷ Cornell Law School, [17 CFR § 230.144A - Private resales of securities to institutions. | Electronic Code of Federal Regulations \(e-CFR\) | US Law | LII / Legal Information Institute](#), accessed on 1/12/2026

⁸ CFA Institute, [Private debt continues growing amid gathering headwinds | CFA Institute](#), Published September 18, 2025, Accessed November 5, 2025

⁹ Amanda Lynam, [Dominique Bly, BlackRock Private Debt: The multi-faceted growth drivers | BlackRock](#) Published September 6, 2025, Accessed November 5, 2025

¹⁰ Carpenter Wellington PLLC, [Fundamentals of a Commercial Paper Program, Carpenter Wellington PLLC](#), Published September 24, 2024, Accessed December 2, 2025

¹¹ Tier-1 short-term ratings apply specifically as Moody’s P-1, S&P’s A-1+ or A-1, and Fitch’s F1+ or F1. Moody’s, S&P and Fitch are each a nationally recognized statistical rating organization (NRSRO) registered with SEC.

FLORIDA LOCAL GOVERNMENT INVESTMENT POOL EXAMPLE

Managed by the State Board of Administration (SBA), the Florida Local Government Investment Pool (LGIP) purchased \$2 billion of private placement commercial paper in the summer of 2007. By the end of 2007, news that the LGIP was holding billions in illiquid commercial paper sparked an old-fashioned “run on the bank.” Assets under management by the LGIP plummeted from \$33 billion to \$14 billion in a few weeks, forcing trustees to freeze the fund. As a result, investors’ faith was shattered and the SBA executive director abruptly resigned.^{12, 13} This case underscores the investment risk, legal risk, and political risk to private placement investments under Rule 144A, even for entities that may qualify as QIBs today.

STATE STATUTE AND LOCAL INVESTMENT POLICY CONSIDERATIONS

Government Code Section 53600.5 stipulates that the primary objective of a trustee of public funds is to safeguard the principal of the funds under its control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds (Section 27000.5 specifies the same objectives for county treasurers and boards of supervisors).¹⁴ A local agency must ensure the safety and liquidity of the public funds while pursuing risk-adjusted return.

Government Code Sections 53646(a)(1-2) currently states that public agencies may provide an annual investment policy to the legislative body and any investment oversight committee of each local agency.¹⁵ While not technically required by statute, it is in the best interest of the local agency to present and discuss an investment policy with the agency’s

legislative body or oversight committee, and then have the policy approved by the legislative body. The policy serves as a guide for the agency’s program objectives, risk preferences, authorized investments, and reduces the exposure to liability of both the investment staff and the legislative body or oversight committee. The existence of an approved investment policy provides a level of accountability for investment officials and promotes public trust in investment decisions.

The process of developing, reviewing, and monitoring the investment policy may be applied as a tool to initiate a discussion among the investment official, the agency’s management, and the governing body about the agency’s investment practices regarding privately placed securities. A suitable policy reflects the agency’s specific investment objectives, cash-flow requirements, and risk preferences.

Privately placed securities require the same, if not more rigorous, buyer due diligence and credit analysis to be performed as any other permissible type of investment. Privately placed securities tend to have more complexity than public offerings. Investment officials authorized to make investment decisions on behalf of local agencies are subject to the prudent investor standard. Continuous analysis and fine tuning of the investment portfolio are considered part of prudent investment management.¹⁶

Government Code Sections 53601 and 53635 are prescriptive of the types of permissible investments for local agency *surplus funds*. It specifies, among other things, the issuer, the type of obligation, credit quality, and the maturity of permissible investments. While the Government Code identifies the types of permissible investments local agencies may choose when investing *surplus funds*, a local agency is responsible for ensuring that an investment meets the

statutory requirements of the Government Code at the time of purchase.

Commercial paper and medium-term notes are permissible investments under Government Code Section 53601(h) and (k). Private placement commercial paper programs and medium-term notes must meet the credit rating, organized and operating, and maturity requirements of Section 53601(h) and (k). In addition, investment officials must ensure that the agency’s investment policy does not have any existing restrictive language, prior to the purchase of privately placed securities.

The process to develop and include policy elements regarding private placement investments in an investment policy should be considerate of the following factors:¹⁷

- **RISK TOLERANCE.** The risk tolerance of the local agency management and the elected officials should be defined in developing the policy. Privately placed securities may bring higher return, but they are also associated with higher risks.
- **STAFF CAPABILITIES.** The local agency should examine whether the skills and knowledge of internal staff and/or consultant expertise are commensurate with the requirements of private placement investments.
- **RESOURCES.** The evaluation should consider the extent to which the agency is able to support the investment management tools and credit evaluation services needed for the higher level of due diligence and analysis.
- **INVESTMENT EVALUATION.** The local agency should examine how the investment program and investment results will be evaluated. The evaluation should relate investment objectives to quantifiable performance measurements.

¹² [Institutional Investor, Ash Williams Works to Restore Broken Trust at Florida SBA | Institutional Investor](#), Published October 11, 2009, Accessed November 5, 2025.

¹³ Forbes, [Florida Fund Meltdown: Bad To Worse](#), Published December 6, 2007, Accessed November 5, 2025.

¹⁴ [Local Agency Investment Guideline](#) Update for 2026, CDIAC 26.01, p.15

¹⁵ [California Public Fund Investment Primer](#), December 2009, CDIAC No. 09-02, p.117

¹⁶ [Local Agency Investment Guideline](#) Update for 2026, CDIAC 26.01, p.16

¹⁷ [California Public Fund Investment Primer](#), December 2009, CDIAC No. 09-02, p.119

- INVESTMENT TYPE RESTRICTION. To achieve the investment objectives stipulated in Section 53600.5, the local agency may decide to prohibit or restrict investment in privately placed securities. If certain types of privately placed securities are prohibited, such as asset-backed commercial paper or asset-backed securities, it may be appropriate to add the permitted types in the policy description.

CONCLUSION

The complexities and inherent risks pertaining to privately placed securities under Rule 144A can present challenges for eligible local agencies. California Government Codes contain provisions that are intended to promote the use of reliable, diverse, and safe investment instruments to better ensure a prudently managed portfolio worthy of

public trust.¹⁸ Therefore, agencies considering these investments should:

- Verify eligibility under SEC definitions of both QIB and accredited investor and maintain documentation for audit purposes.
- Review and update investment policies to address private placements, risk controls, reporting requirements and compliance with California statutes.
- Conduct rigorous due diligence on issuers and securities to assess credit, liquidity, and legal risks.
- Engage governing bodies and legal counsel to ensure transparency and accountability.

By implementing these practices, local agencies can navigate the complexities of privately placed securities under Rule 144A while

safeguarding public funds and maintaining public trust.

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¹⁸ [Local Agency Investment Guideline](#) Update for 2026, CDIAC 26.01, p. 16

APPENDIX A: QUALIFIED INSTITUTIONAL BUYERS DEFINITION – SEC OUTLINE

Below is the definition for Qualified Institutional Buyer as defined in Rule 144A under the Securities Act, which was amended on August 26, 2020, and went into effect on December 8, 2020. The amendments to Rule 144A are indicated below in bracketed language.¹⁹

For purposes of SEC rules and regulations, any entity that meets any one of the following categories at the time of the sale of securities to that entity:

- Any of the following entities, acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:
 - Any insurance company;
 - Any investment company registered under the Investment Company Act or any business development company as defined in section 2(a)(48) of that Act;
 - Any Small Business Investment Company licensed by the US Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
 - [Any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act;]
 - Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
- Any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974;
- Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans established for the benefit of state employees or employee benefit plans, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;
- Any business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act, a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act, a foreign bank or savings and loan association, or equivalent institution), partnership, [limited liability company,] or Massachusetts or similar business trust;
- Any investment adviser registered under the Investment Advisers Act; [and]
- [Any institution that qualifies as an accredited investor under Rule 501(a) under the Securities Act of a type not listed in the bullets above or below, including those entities formed for the purpose of acquiring the securities being offered.]
- Any registered dealer, acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer.
- Any registered dealer acting in a riskless principal transaction on behalf of a qualified institutional buyer.
- Any investment company registered under the Investment Company Act, acting for its own account or for the accounts of other QIBs, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies.
- Any entity, all of the equity owners of which are QIBs, acting for its own account or the accounts of other QIBs.
- Any bank or any savings and loan association or other institution, acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under Rule 144A in the case of a US bank or savings and loan association, and not more than 18 months preceding the date of sale for a foreign bank or savings and loan association or equivalent institution.

¹⁹ “Qualified Institutional Buyer,” Glossary definition from *Thompson Reuters Practical Law*, Accessed on November 5, 2025 [https://content.next.westlaw.com/Document/I03f-4da34eee311e28578f7ccc38dcbee/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://content.next.westlaw.com/Document/I03f-4da34eee311e28578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true).

APPENDIX B: ACCREDITED INVESTOR DEFINITION IN REGULATION D

(a) ACCREDITED INVESTOR. *Accredited investor* shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the Commission under section 203(l) or (m) of the Investment Advisers Act of 1940; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed

plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds \$1,000,000;

(i) Except as provided in [paragraph \(a\)\(5\)\(ii\)](#) of this section, for purposes of calculating net worth under this [paragraph \(a\)\(5\)](#):

(A) The person's primary residence shall not be included as an asset;

(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(ii) [Paragraph \(a\)\(5\)\(i\)](#) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010.

Note 1 to paragraph (a)(5):

For the purposes of calculating joint net worth in this [paragraph \(a\)\(5\)](#): Joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard of this [paragraph \(a\)\(5\)](#) does not require that the securities be purchased jointly.

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in [§ 230.506\(b\)\(2\)\(ii\)](#);

(8) Any entity in which all of the equity owners are accredited investors;

Note 1 to paragraph (a)(8):

It is permissible to look through various forms of equity ownership to natural persons in determining the accredited investor status of entities under this [paragraph \(a\)\(8\)](#). If those natural persons are themselves accredited investors, and if all other equity owners of the entity seeking accredited investor status are accredited investors, then this [paragraph \(a\)\(8\)](#) may be available.

(9) Any entity, of a type not listed in paragraph (a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;

Note 1 to paragraph (a)(9):

For the purposes this [paragraph \(a\)\(9\)](#), “investments” is defined in rule 2a51-1(b) under the Investment Company Act of 1940 ([17 CFR 270.2a51-1\(b\)](#)).

(10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this [paragraph \(a\)\(10\)](#), the Commission will consider, among others, the following attributes:

(i) The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;

(ii) The examination or series of examinations is designed to reliably and validly demonstrate an individual’s comprehension and sophistication in the areas of securities and investing;

(iii) Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and

(iv) An indication that an individual holds the certification or designation is either made publicly available by the relevant self-regulatory organization or other industry body or is otherwise independently verifiable;

Note 1 to paragraph (a)(10):

The Commission will designate professional certifications or designations or credentials for purposes of this [paragraph \(a\)\(10\)](#), by order, after notice and an opportunity for public comment. The professional certifications or designations or credentials currently recognized by the Commission as satisfy-

ing the above criteria will be posted on the Commission’s website.

(11) Any natural person who is a “knowledgeable employee,” as defined in rule 3c-5(a)(4) under the Investment Company Act of 1940 ([17 CFR 270.3c-5\(a\)\(4\)](#)), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in section 3 of such act, but for the exclusion provided by either section 3(c)(1) or section 3(c)(7) of such act;

(12) Any “family office,” as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 ([17 CFR 275.202\(a\)\(11\)\(G\)-1](#)):

(i) With assets under management in excess of \$5,000,000,

(ii) That is not formed for the specific purpose of acquiring the securities offered, and

(iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(13) Any “family client,” as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 ([17 CFR 275.202\(a\)\(11\)\(G\)-1](#)), of a family office meeting the requirements in [paragraph \(a\)\(12\)](#) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii).

(b) AFFILIATE. An *affiliate* of, or person *affiliated* with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(c) AGGREGATE OFFERING PRICE. *Aggregate offering price* shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any por-

tion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

(d) BUSINESS COMBINATION. *Business combination* shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Act ([17 CFR 230.145](#)) and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent’s stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(e) CALCULATION OF NUMBER OF PURCHASERS. For purposes of calculating the number of purchasers under [§ 230.506\(b\)](#) only, the following shall apply:

(1) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same primary residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in [paragraph \(e\)\(1\)\(i\)](#) or [\(e\)\(1\)\(iii\)](#) of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in [paragraph \(e\)\(1\)\(i\)](#) or [\(e\)\(1\)\(ii\)](#) of this section collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors’ qualifying shares) or equity interests; and

(iv) Any accredited investor.

(2) A corporation, partnership or other entity shall be counted as one purchaser. If,

however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under [paragraph \(a\)\(8\)](#) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D ([§§ 230.501-230.508](#)), except to the extent provided in [paragraph \(e\)\(1\)](#) of this section.

(3) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note:

The issuer must satisfy all the other provisions of Regulation D for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered the “purchasers” under Regulation D regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.

(f) EXECUTIVE OFFICER. Executive officer shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed ex-

ecutive officers of the issuer if they perform such policy making functions for the issuer.

(g) FINAL ORDER. *Final order* shall mean a written directive or declaratory statement issued by a federal or state agency described in [§ 230.506\(d\)\(1\)\(iii\)](#) under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(h) ISSUER. The definition of the term issuer in section 2(a)(4) of the Act shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code ([11 U.S.C. 101](#) et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(i) PURCHASER REPRESENTATIVE. *Purchaser representative* shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(1) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any persons related to him as specified in [paragraph \(i\)\(1\)\(i\)](#) or [\(iii\)](#)

of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in [paragraph \(i\)\(1\)\(i\)](#) or [\(ii\)](#) of this section collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors’ qualifying shares) or equity interests;

(2) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(3) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(4) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

(j) SPOUSAL EQUIVALENT. The term spousal equivalent shall mean a cohabitant occupying a relationship generally equivalent to that of a spouse.