

## Definition of “Qualified Institutional Buyer” in Rule 144A under the Securities Act <sup>1</sup>

### 1. “Qualified Institutional Buyer” shall mean:

- (i) Any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, 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:

- (A) Any *insurance company* as defined in section 2(a)(13) of the United States Securities Act of 1933 (the “**Securities Act**”);

Note: A purchase by an insurance company for one or more of its separate accounts, as defined by section 2(a)(37) of the Investment Company Act of 1940 (the “Investment Company Act”), which are neither registered under section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.

- (B) Any *investment company* registered under the Investment Company Act or any *business development company* as defined in section 2(a)(48) of that Act;
  - (C) 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 or any *Rural Business Investment Company* as defined in section 384A of the Consolidated Farm and Rural Development Act;
  - (D) 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;
  - (E) Any *employee benefit plan* within the meaning of title I of the Employee Retirement Income Security Act of 1974;
  - (F) Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a)(1)(i)(D) or (E) of this section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.
  - (G) Any *business development company* as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
  - (H) 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 Securities Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership, limited liability company, or Massachusetts or similar business trust;
  - (I) Any *investment adviser* registered under the Investment Advisers Act; and

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<sup>1</sup> See 17 CFR 230.144A(a), the full text of which is available at [https://www.ecfr.gov/current/title-17/chapter-II/part-230#p-230.144A\(a\)](https://www.ecfr.gov/current/title-17/chapter-II/part-230#p-230.144A(a)).

- (J) Any institutional accredited investor, as defined in rule 501(a) under the Securities Act (17 CFR 230.501(a)), of a type not listed in paragraphs (a)(1)(i)(A) through (I) or paragraphs (a)(1)(ii) through (vi).

Note 1 to paragraph (a)(1)(i)(J): An entity seeking qualified institutional buyer status under Rule 144A(a)(1)(i)(J) may be formed for the purpose of acquiring the securities being offered under this section.

- (ii) Any *dealer* registered pursuant to section 15 of the Securities Exchange Act of 1934 (the “**Exchange Act**”), acting for its own account or the accounts of other qualified institutional buyers, 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, *Provided*, That securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;

- (iii) Any *dealer* registered pursuant to section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer;

Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a qualified institutional buyer without itself having to be a qualified institutional buyer.

- (iv) Any investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, 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. *Family of investment companies* means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), *Provided That*, for purposes of this section:

- (A) Each series of a series company (as defined in Rule 18f-2 under the Investment Company Act [17 CFR 270.18f-2]) shall be deemed to be a separate investment company; and

- (B) Investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company’s adviser (or depositor) is a majority-owned subsidiary of the other investment company’s adviser (or depositor);

- (v) Any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; and

- (vi) Any *bank* as defined in section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, 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 the Rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.

2. In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.
3. The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market for purposes of this section.
4. In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under section 13 or 15(d) of the Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated financial statements of another enterprise.
5. For purposes of this section, *riskless principal transaction* means a transaction in which a dealer buys a security from any person and makes a simultaneous offsetting sale of such security to a qualified institutional buyer, including another dealer acting as riskless principal for a qualified institutional buyer.

## Definition of “Accredited Investor” under Rule 501(a) under the Securities Act<sup>2</sup>

“**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 United States Securities Act of 1933 (the “**Securities Act**”), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities 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 Securities 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

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<sup>2</sup> See 17 CFR 230.501(a), the full text of which is available at [https://www.ecfr.gov/current/title-17/chapter-II/part-230/subject-group-ECFR6e651a4c86c0174/section-230.501#p-230.501\(a\)](https://www.ecfr.gov/current/title-17/chapter-II/part-230/subject-group-ECFR6e651a4c86c0174/section-230.501#p-230.501(a)).

- (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 satisfying 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).

**Definition of “Qualified Purchaser” in Section 2(a)(51)<sup>3</sup> of, and Rules 2a51-1<sup>4</sup>, 2a51-2<sup>5</sup> and 2a51-3<sup>6</sup>  
under, the Investment Company Act**

- (A) “Qualified purchaser” means—
- (i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person’s qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;
  - (ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;
  - (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or
  - (iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.
- (B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.
- (C) The term “qualified purchaser” does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a–3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an “excepted investment company”), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a–3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment beneficial owners”), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

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<sup>3</sup> See 15 U.S.C. 80a-2(a)(51), the full text of which is available at <https://www.govinfo.gov/content/pkg/USCODE-2021-title15/pdf/USCODE-2021-title15-chap2D-subchapI-sec80a-2.pdf>.

<sup>4</sup> See 17 CFR 270.2a51-1, the full text of which is available at <https://www.ecfr.gov/current/title-17/chapter-II/part-270/section-270.2a51-1>.

<sup>5</sup> See 17 CFR 270.2a51-2, the full text of which is available at <https://www.ecfr.gov/current/title-17/chapter-II/part-270/section-270.2a51-2>.

<sup>6</sup> See 17 CFR 270.2a51-3, the full text of which is available at <https://www.ecfr.gov/current/title-17/chapter-II/part-270/section-270.2a51-3>.

**Rule 2a51-1: Definition of investments for purposes of section 2(a)(51) (definition of “qualified purchaser”); certain calculations.**

(a) **Definitions.** As used in this section:

- (1) The term *Commodity Interests* means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:
  - (i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or
  - (ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 of the rules under the Commodity Exchange Act [17 CFR 30.1 through 30.11].
- (2) The term *Family Company* means a company described in paragraph (A)(ii) of section 2(a)(51) of the United States Investment Company Act of 1940 (the “**Investment Company Act**”) [15 U.S.C. 80a-2(a)(51)].
- (3) The term *Investment Vehicle* means an investment company, a company that would be an investment company but for the exclusions provided by sections 3(c)(1) through 3(c)(9) of the Investment Company Act [15 U.S.C. 80a-3(c)(1) through 3(c)(9)] or the exemptions provided by §§ 270.3a-6 or 270.3a-7, or a commodity pool.
- (4) The term *Investments* has the meaning set forth in paragraph (b) of this section.
- (5) The term *Physical Commodity* means any physical commodity with respect to which a Commodity Interest is traded on a market specified in paragraph (a)(1) of this section.
- (6) The term *Prospective Qualified Purchaser* means a person seeking to purchase a security of a Section 3(c)(7) Company.
- (7) The term *Public Company* means a company that:
  - (i) Files reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)]; or
  - (ii) Has a class of securities that are listed on a “designated offshore securities market” as such term is defined by Regulation S under the Securities Act of 1933 [17 CFR 230.901 through 230.904].
- (8) The term *Related Person* means a person who is related to a Prospective Qualified Purchaser as a sibling, spouse or former spouse, or is a direct lineal descendant or ancestor by birth or adoption of the Prospective Qualified Purchaser, or is a spouse of such descendant or ancestor, *provided that*, in the case of a Family Company, a Related Person includes any owner of the Family Company and any person who is a Related Person of such owner.
- (9) The term *Relying Person* means a Section 3(c)(7) Company or a person acting on its behalf.
- (10) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a-3(c)(7)].



(b) **Types of Investments.** For purposes of section 2(a)(51) of the Investment Company Act [15 U.S.C. 80a-2(a)(51)], the term *Investments* means:

- (1) Securities (as defined by section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)]), other than securities of an issuer that controls, is controlled by, or is under common control with, the Prospective Qualified Purchaser that owns such securities, unless the issuer of such securities is:
  - (i) An Investment Vehicle;
  - (ii) A Public Company; or
  - (iii) A company with shareholders' equity of not less than \$50 million (determined in accordance with generally accepted accounting principles) as reflected on the company's most recent financial statements, *provided that* such financial statements present the information as of a date within 16 months preceding the date on which the Prospective Qualified Purchaser acquires the securities of a Section 3(c)(7) Company;
- (2) Real estate held for investment purposes;
- (3) Commodity Interests held for investment purposes;
- (4) Physical Commodities held for investment purposes;
- (5) To the extent not securities, financial contracts (as such term is defined in section 3(c)(2)(B)(ii) of the Investment Company Act [15 U.S.C. 80a-3(c)(2)(B)(ii)] entered into for investment purposes;
- (6) In the case of a Prospective Qualified Purchaser that is a Section 3(c)(7) Company, a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Investment Company Act [15 U.S.C. 80a-3(c)(1)], or a commodity pool, any amounts payable to such Prospective Qualified Purchaser pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the Prospective Qualified Purchaser upon the demand of the Prospective Qualified Purchaser; and
- (7) Cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include:
  - (i) Bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; and
  - (ii) The net cash surrender value of an insurance policy.

(c) **Investment Purposes.** For purposes of this section:

- (1) Real estate shall not be considered to be held for investment purposes by a Prospective Qualified Purchaser if it is used by the Prospective Qualified Purchaser or a Related Person for personal purposes or as a place of business, or in connection with the conduct of the trade or business of the Prospective Qualified Purchaser or a Related Person, *provided that* real estate owned by a Prospective Qualified Purchaser who is engaged primarily in the business of investing, trading or developing real estate in connection with such business may be deemed to be held for investment purposes. Residential real estate shall not be deemed to be used for personal purposes if deductions with respect to such real estate are not disallowed by section 280A of the Internal Revenue Code [26 U.S.C. 280A].

- (2) A Commodity Interest or Physical Commodity owned, or a financial contract entered into, by the Prospective Qualified Purchaser who is engaged primarily in the business of investing, reinvesting, or trading in Commodity Interests, Physical Commodities or financial contracts in connection with such business may be deemed to be held for investment purposes.
- (d) **Valuation.** For purposes of determining whether a Prospective Qualified Purchaser is a qualified purchaser, the aggregate amount of Investments owned and invested on a discretionary basis by the Prospective Qualified Purchaser shall be the Investments' fair market value on the most recent practicable date or their cost, *provided that*:
  - (1) In the case of Commodity Interests, the amount of Investments shall be the value of the initial margin or option premium deposited in connection with such Commodity Interests; and
  - (2) In each case, there shall be deducted from the amount of Investments owned by the Prospective Qualified Purchaser the amounts specified in paragraphs (e) and (f) of this section, as applicable.
- (e) **Deductions.** In determining whether any person is a qualified purchaser there shall be deducted from the amount of such person's Investments the amount of any outstanding indebtedness incurred to acquire or for the purpose of acquiring the Investments owned by such person.
- (f) **Deductions: Family Companies.** In determining whether a Family Company is a qualified purchaser, in addition to the amounts specified in paragraph (e) of this section, there shall be deducted from the value of such Family Company's Investments any outstanding indebtedness incurred by an owner of the Family Company to acquire such Investments.
- (g) **Special rules for certain Prospective Qualified Purchasers—**
  - (1) **Qualified institutional buyers.** Any Prospective Qualified Purchaser who is, or who a Relying Person reasonably believes is, a qualified institutional buyer as defined in paragraph (a) of § 230.144A of this chapter, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser, shall be deemed to be a qualified purchaser provided:
    - (i) That a dealer described in paragraph (a)(1)(ii) of § 230.144A of this chapter shall own and invest on a discretionary basis at least \$25 million in securities of issuers that are not affiliated persons of the dealer; and
    - (ii) That a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of § 230.144A of this chapter, or a trust fund referred to in paragraph (a)(1)(i)(F) of § 230.144A of this chapter that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.
  - (2) **Joint Investments.** In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held jointly with such person's spouse, or Investments in which such person shares with such person's spouse a community property or similar shared ownership interest. In determining whether spouses who are making a joint investment in a Section 3(c)(7) Company are qualified purchasers, there may be included in the amount of each spouse's Investments any Investments owned by the other spouse (whether or not such Investments are held jointly). In each case, there shall be deducted from the amount of any such Investments the amounts specified in paragraph (e) of this section incurred by each spouse.

- (3) *Investments by Subsidiaries.* For purposes of determining the amount of Investments owned by a company under section 2(a)(51)(A)(iv) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(A)(iv)], there may be included Investments owned by majority-owned subsidiaries of the company and Investments owned by a company (“Parent Company”) of which the company is a majority-owned subsidiary, or by a majority-owned subsidiary of the company and other majority-owned subsidiaries of the Parent Company.
- (4) *Certain Retirement Plans and Trusts.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person’s Investments any Investments held in an individual retirement account or similar account the Investments of which are directed by and held for the benefit of such person.
- (h) ***Reasonable Belief.*** The term “qualified purchaser” as used in section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] means any person that meets the definition of qualified purchaser in section 2(a)(51)(A) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(A)] and the rules thereunder, or that a Relying Person reasonably believes meets such definition.

**Rule 2a51-2: Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.**

- (a) **Beneficial ownership: General.** Except as set forth in this section, for purposes of sections 2(a)(51)(C) and 3(c)(7)(B)(ii) of the United States Investment Company Act of 1940 (the “**Investment Company Act**”) [15 U.S.C. 80a–2(a)(51)(C) and –3(c)(7)(B)(ii)], the beneficial owners of securities of an excepted investment company (as defined in section 2(a)(51)(C) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(C)]) shall be determined in accordance with section 3(c)(1) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)].
- (b) **Beneficial ownership: Grandfather provision.** For purposes of section 3(c)(7)(B)(ii) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)(B)(ii)], securities of an issuer beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)(A)]) (“owning company”) shall be deemed to be beneficially owned by one person unless:
- (1) The owning company is an investment company or an excepted investment company;
  - (2) The owning company, directly or indirectly, controls, is controlled by, or is under common control with, the issuer; and
  - (3) On October 11, 1996, under section 3(c)(1)(A) of the Investment Company Act as then in effect, the voting securities of the issuer were deemed to be beneficially owned by the holders of the owning company’s outstanding securities (other than short-term paper), in which case, such holders shall be deemed to be beneficial owners of the issuer’s outstanding voting securities.
- (c) **Beneficial ownership: Consent provision.** For purposes of section 2(a)(51)(C) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(C)], securities of an excepted investment company beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)(A)]) (“owning company”) shall be deemed to be beneficially owned by one person unless:
- (1) The owning company is an excepted investment company;
  - (2) The owning company directly or indirectly controls, is controlled by, or is under common control with, the excepted investment company or the company with respect to which the excepted investment company is, or will be, a qualified purchaser; and
  - (3) On April 30, 1996, under section 3(c)(1)(A) of the Investment Company Act as then in effect, the voting securities of the excepted investment company were deemed to be beneficially owned by the holders of the owning company’s outstanding securities (other than short-term paper), in which case the holders of such excepted company’s securities shall be deemed to be beneficial owners of the excepted investment company’s outstanding voting securities.
- (d) **Indirect ownership: Consent provision.** For purposes of section 2(a)(51)(C) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(C)], an excepted investment company shall not be deemed to indirectly own the securities of an excepted investment company seeking a consent to be treated as a qualified purchaser (“qualified purchaser company”) unless such excepted investment company, directly or indirectly, controls, is controlled by, or is under common control with, the qualified purchaser company or a company with respect to which the qualified purchaser company is or will be a qualified purchaser.
- (e) **Required consent: Consent provision.** For purposes of section 2(a)(51)(C) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)(C)], the consent of the beneficial owners of an excepted investment company (“owning company”) that beneficially owns securities of an excepted investment

company that is seeking the consents required by section 2(a)(51)(C) (“consent company”) shall not be required unless the owning company directly or indirectly controls, is controlled by, or is under common control with, the consent company or the company with respect to which the consent company is, or will be, a qualified purchaser.

Notes to § 270.2a51–2:

1. On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Investment Company Act as then in effect provided that: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company’s outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company’s total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).
2. Issuers seeking the consent required by section 2(a)(51)(C) of the Investment Company Act should note that section 2(a)(51)(C) requires an issuer to obtain the consent of the beneficial owners of its securities and the beneficial owners of securities of any “excepted investment company” that directly or indirectly owns the securities of the issuer. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

**Rule 2a51-3: Certain companies as qualified purchasers.**

- (a) For purposes of section 2(a)(51)(A) (ii) and (iv) of the United States Investment Company Act of 1940 (the “**Investment Company Act**”) [15 U.S.C. 80a–2(a)(51)(A) (ii) and (iv)], a company shall not be deemed to be a qualified purchaser if it was formed for the specific purpose of acquiring the securities offered by a company excluded from the definition of investment company by section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] unless each beneficial owner of the company’s securities is a qualified purchaser.
- (b) For purposes of section 2(a)(51) of the Investment Company Act [15 U.S.C. 80a–2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company’s securities is a qualified purchaser.