

# **Don't overlook securities laws when planning your estate**

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For a variety of estate planning and asset management purposes, many affluent families hold their assets in trusts, family investment vehicles or charitable foundations. If assets held in this manner include interests in hedge funds, private equity funds or other “unregistered” securities, it's important to ensure that the entity is qualified to hold such investments.

Certain exemptions under the federal securities laws require that investors in private funds and other unregistered securities qualify as “accredited investors” or “qualified purchasers.”

## **What is an accredited investor?**

Accredited investors include financial institutions and other entities that meet certain requirements, as well as certain officers, directors and other insiders of the entity whose securities are being offered. They also include individuals with either (1) a net worth of at least \$1 million (excluding their primary residences), or (2) income of at least \$200,000 in each of the preceding two years, and with a reasonable expectation of meeting the requirements in the current year.

A trust (including a foundation organized as a trust) can qualify as an accredited investor in one of three ways:

1. Its assets are greater than \$5 million, it wasn't formed for the specific purpose of acquiring the securities in question and a sophisticated person directs its investments.
2. A national bank or other qualifying financial institution serves as trustee.
3. The trust is revocable and the grantor qualifies as an accredited investor individually.

Family investment vehicles are accredited investors if their assets exceed \$5 million and they weren't formed for the specific purpose of making the investment in question. Alternatively, they can qualify as accredited if all of their equity owners are accredited.

## **What is a qualified purchaser?**

Individuals are qualified purchasers if they have at least \$5 million in investments. Other qualified purchasers include:

- An entity that has at least \$5 million in investments, with all of its beneficiaries being either closely related family members; estates, foundations, or charitable organizations of such family members; or trusts created by or for the benefit of the family member described;
- A trust that doesn't meet the family exception above, so long as the trust wasn't established solely for the purpose of making the investment, and every individual associated with the trust as either creator, contributor or investment decision-maker is considered a qualified investor; or
- An entity with not less than \$25 million in investments.

Determining whether a family entity is an accredited investor or a qualified purchaser can be complex, as there are nuances in the definitions. The information provided is intended to be a guideline — your specific circumstances could vary from the general rules. Please contact us with any questions.

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