

117TH CONGRESS
2D SESSION

S. 3921

To amend the Securities Act of 1933 to expand the definition of a qualifying accredited investor, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2022

Mr. TILLIS (for himself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Act of 1933 to expand the definition of a qualifying accredited investor, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Opportunity for
5 all Investors Act”.

6 **SEC. 2. CERTIFICATION EXAMINATIONS FOR ACCREDITED**
7 **INVESTORS.**

8 (a) EXAMINATION ALTERNATIVE.—Section 2(a)(15)
9 of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is
10 amended—

1 (1) by redesignating clauses (i) and (ii) as sub-
2 paragraphs (A) and (B), respectively;

3 (2) in subparagraph (A), as so redesignated, by
4 striking “adviser; or” and inserting “adviser;”;

5 (3) in subparagraph (B), as so redesignated, by
6 striking the period at the end and inserting “; or”;
7 and

8 (4) by adding at the end the following:

9 “(C) any individual who is certified as an
10 accredited investor through an examination es-
11 tablished or approved by the Commission, the
12 securities commission (or any agency or office
13 performing like functions) of any State, or any
14 self-regulatory organization as defined in the
15 Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a)(26)) that—

17 “(i) measures whether an individual
18 certified as an accredited investor pursuant
19 to such examination understands and ap-
20 preciates the risks and opportunities of in-
21 vesting in securities;

22 “(ii) is designed to ensure that an in-
23 dividual with financial sophistication or
24 training would be unlikely to fail; and

1 “(iii) may be designed and/or adminis-
2 tered by any other person approved by the
3 Commission, such securities commission,
4 or such self-regulatory organization.”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall take effect on the date of the enact-
7 ment of this Act.

8 (c) EXAMINATION.—The Commission shall establish
9 or approve an examination that complies with subsection
10 (a) no later than 18 months after the date of enactment
11 of this Act.

12 **SEC. 3. ACCREDITED INVESTOR SELF-CERTIFICATION.**

13 Section 4(b) of the Securities Act of 1933 (15 U.S.C.
14 77d(b)) is amended by inserting “Unless the issuer knows,
15 or has a reckless disregard for whether, the purchaser is
16 not an accredited investor, obtaining a self-certification
17 from the purchaser that the purchaser meets the income
18 or net worth requirements of Rule 501 of Regulation D
19 shall constitute reasonable steps to verify that purchasers
20 of the securities are accredited investors.” after the period
21 at the end.

22 **SEC. 4. MODIFICATION OF RULES.**

23 (a) IN GENERAL.—Not later than 9 months after the
24 date of the enactment of this Act, the Securities and Ex-
25 change Commission shall revise its rules issued in section

1 230.501(a) of title 17, Code of Federal Regulations, to
 2 make parallel changes set forth in Section 2 and to add
 3 to the definition of accredited investor the following cat-
 4 egories:

5 (1) Any natural person with at least \$500,000
 6 worth of investments.

7 (2) Any natural person with total transactions
 8 during a 12-month period under section 230.506 of
 9 title 17, Code of Federal Regulations, and under
 10 section 4(a)(6) of the Securities Act of 1933 (15
 11 U.S.C. 77d(a)(6)) that are not greater than the
 12 highest amount of the following—

13 (A) 10 percent of the total investments of
 14 the person;

15 (B) 10 percent of the annual income of the
 16 person or 10 percent of the annual combined
 17 income with that person’s spouse; or

18 (C) 10 percent of the net worth of the per-
 19 son excluding the value of the person’s principal
 20 place of residence.

21 (b) DEFINITIONS.—

22 (1) DEFINITIONS.—In this subsection:

23 (A) CASH AND CASH EQUIVALENTS.—The
 24 term “cash and cash equivalents” includes—

1 (i) bank deposits, certificates of de-
2 posit, bankers acceptances and similar
3 bank instruments held for investment pur-
4 poses; and

5 (ii) the net cash surrender value of an
6 insurance policy.

7 (B) COMMODITY INTERESTS.—The term
8 “commodity interests” means commodity fu-
9 tures contracts, options on commodity futures
10 contracts, and options on physical commodities
11 traded on or subject to the rules of—

12 (i) any contract market designated for
13 trading such transactions under the Com-
14 modity Exchange Act (7 U.S.C. 1 et seq.)
15 and the rules issued under that Act; or

16 (ii) any board of trade or exchange
17 outside the United States, as described in
18 part 30 of title 17, Code of Federal Regu-
19 lations.

20 (C) DIGITAL ASSETS.—The term “digital
21 assets”—

22 (i) means a digital representation of
23 value that—

1 (I) is used as a medium of ex-
 2 change, unit of account, or store of
 3 value; and

4 (II) is not legal tender, whether
 5 or not denominated in legal tender;
 6 and

7 (ii) does not include—

8 (I) a transaction in which a mer-
 9 chant grants, as part of an affinity or
 10 rewards program, value that cannot
 11 be taken from or exchanged with the
 12 merchant for legal tender, bank cred-
 13 it, or virtual currency; or

14 (II) a digital representation of
 15 value issued by or on behalf of a pub-
 16 lisher and used solely within an online
 17 game, game platform, or family of
 18 games sold by the same publisher or
 19 offered on the same game platform.

20 (D) INVESTMENT PURPOSES.—The term
 21 “investment purposes”—

22 (i) includes—

23 (I) real estate owned by a pro-
 24 spective purchaser who is engaged pri-
 25 marily in the business of investing,

trading, or developing real estate in
connection with such business; and

(II) a commodity interest or
physical commodity owned, or a finan-
cial contract entered into, by the pro-
spective purchaser who is engaged pri-
marily in the business of investing, re-
investing, or trading in commodity in-
terests, physical commodities, or fi-
nancial contracts in connection with
such business; and

(ii) does not include real estate held
for investment purposes by a prospective
purchaser if the real estate is used by the
prospective purchaser, a sibling, spouse or
former spouse, a direct lineal descendant
by birth or adoption, or spouse of such lin-
eal descendant or ancestor for personal
purposes or as a place of business, or in
connection with the conduct of the trade or
business of the prospective purchaser or
such related person.

(E) INVESTMENTS.—The term “invest-
ments” means—

1 (i) securities, as defined in section
2 2(a) of the Securities Act of 1933 (15
3 U.S.C. 77b(a)), other than securities
4 issued by an issuer that is controlled by
5 the prospective purchaser that owns such
6 securities;

7 (ii) real estate held for investment
8 purposes;

9 (iii) commodity interests held for in-
10 vestment purposes;

11 (iv) physical commodities held for in-
12 vestment purposes;

13 (v) digital assets held for investment
14 purposes;

15 (vi) to the extent not securities, finan-
16 cial contracts (as such term is defined in
17 section 3(c)(2)(B)(ii) of the Investment
18 Company Act of 1940 (15 U.S.C.
19 80a3(c)(2)(B)(ii))) entered into for invest-
20 ment purposes; and

21 (vii) cash and cash equivalents (in-
22 cluding foreign currencies) held for invest-
23 ment purposes.

24 (F) PERSONAL PURPOSES.—The term
25 “personal purposes” does not include residential

1 real estate if deductions with respect to such
 2 real estate are not disallowed by section 280A
 3 of the Internal Revenue Code of 1986.

4 (G) PHYSICAL COMMODITIES.—The term
 5 “physical commodities” means any physical
 6 commodity with respect to which a commodity
 7 interest is traded on a market described in sub-
 8 paragraph (B)(i).

9 (c) SELF-EXECUTION.—If the Securities and Ex-
 10 change Commission does not revise its rules in accordance
 11 with the deadline set forth in subsection (a), then any per-
 12 son described in subsection (b) shall be deemed to be an
 13 accredited investor for all purposes under the Federal se-
 14 curities laws (including regulations).

15 **SEC. 5. ADJUSTING THE ACCREDITED INVESTOR STAND-**
 16 **ARD.**

17 Section 413 of the Private Fund Investment Advisers
 18 Registration Act of 2010 (15 U.S.C. 77b note) is amended
 19 by striking subsection (b) and inserting the following:

20 “(b) REVIEW AND ADJUSTMENT.—

21 “(1) IN GENERAL.—The Commission may un-
 22 dertake a review of the definition of the term ‘ac-
 23 credited investor’, as such term applies to natural
 24 persons, to determine whether the requirements of
 25 the definition, excluding the requirement relating to

1 the net worth standard described in subsection (a),
2 should be adjusted or modified for the protection of
3 investors, in the public interest, and in light of the
4 economy.

5 “(2) ADJUSTMENT OR MODIFICATION.—Upon
6 completion of a review under paragraph (1), the
7 Commission may, by notice and comment rule-
8 making, make such adjustments to the definition of
9 the term ‘accredited investor’, excluding adjusting or
10 modifying the requirement relating to the net worth
11 standard described in subsection (a), as such term
12 applies to natural persons, as the Commission may
13 deem appropriate for the protection of investors, in
14 the public interest, and in light of the economy.”.

○