

GAO Releases Studies on Accredited Investor Definition, Conflict Minerals Rule and SEC Personnel Management

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The U.S. Government Accountability Office has released three studies on the SEC and its initiatives, pursuant to the Dodd-Frank Act. The GAO [examined](#) the criteria for qualifying as an individual accredited investor. The SEC requires such an investor to have an annual income over \$200,000 (\$300,000 for a married couple) or a net worth over \$1 million, excluding a primary residence. These thresholds were set in the 1980s and in 2010. Beginning in 2014, the SEC must review the accredited investor definition every four years to determine whether it should be adjusted.

The GAO examined eight alternative criteria for the accredited investor standard, including separate certification and licensing, and ultimately recommended that the SEC consider two alternatives to assess an investor's financial resources and understanding of financial risks. A liquid investments requirement, meaning a minimum dollar amount of investments in assets that can be easily sold, are marketable, and the value of which can be verified, would be a useful indicator of financial resources. In addition, the use of a registered investment adviser was viewed as a possible gauge of sophistication about financial risks. In its response, the SEC agreed to examine these and other alternatives when the agency reviews the standard next year.

The accredited investor definition is becoming more relevant in light of the private offering reforms the SEC recently adopted, which we discussed [here](#). The GAO study found that in 2012, over 18,000 offerings were made under Regulation D while there were less than 6,000 registered public offerings.

The GAO also reported on the effectiveness of the conflict mineral rules, which it is required to do annually, beginning in 2012. Since the initial company disclosures are not due until May 2014, the [report](#) was limited in scope. The report examined whether the rule fulfills its purpose of denying armed groups in the DRC benefits from conflict minerals, and found that several initiatives, such as the development of guidance documents, audit protocols, and in-region and global sourcing initiatives, have enhanced this objective. However, efforts to achieve conflict-free mineral sourcing are blocked by the lack of security, lack of infrastructure and capacity constraints.

In addition, companies that are not required to file disclosures under the conflict minerals rule may be affected as suppliers. Estimates indicate that about 280,000 manufacturers could provide products to 6,000 companies subject to the rules and therefore be asked to obtain information on conflict minerals. The availability of data was imprecise, but the GAO reported that over half of the 278 smelters and refiners of conflict minerals it identified were located in Asia, many processed tin, and most did not have a conflict minerals policy publicly available.

The longest [report](#) was reserved for an analysis of personnel management at the Commission. The GAO determined that "SEC's organizational culture is not constructive and could hinder its ability to effectively fulfill its mission," as its interviews with employees cited "low morale, distrust of management, and the compartmentalized, hierarchical, and risk-averse nature of the organization." According to a survey of federal employees, the SEC currently ranks 19th of 22 similarly sized federal agencies based on employee satisfaction and commitment.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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