

WYRICK
ROBBINS
YATES
& PONTON
LLP
ATTORNEYS AT LAW

The Summit
4101 Lake Boone Trail
Suite 300
Raleigh, NC 27607.7506

PO Drawer 17803
Raleigh, NC 27619

ph 919.781-4000
fax 919.781-4865
www.wyrick.com

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VIA EMAIL (rule-comments@sec.gov)

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 33-8766; File No. S7-25-06

Dear Ms. Morris:

We at Wyrick Robbins Yates & Ponton LLP appreciate the opportunity to comment on Release No. 33-8766. For your information, we are an approximately 60-attorney law firm based in Raleigh, North Carolina. We represent investment funds and portfolio companies in a wide array of industries. Our comments are based both on our experience and on comments from some of these clients who have reviewed the proposed rule changes.

Our comments respond to the proposed amendment to Regulation D under the Securities Act of 1933, that, as set forth in the Release, we believe would have significant negative impact on not only investment funds and investors, but on the capital formation process in the United States as a whole. We do not address the part of the proposal regarding the anti-fraud provision of the Investment Advisors Act of 1940.

You have proposed amending the definition of "accredited investor" found in Rule 501 of Regulation D. The proposed amendment would require that individuals investing in any entity that was a "private investment vehicle" but that was not a "venture capital fund" would have to own not less than \$2.5 million in investments in addition to meeting all of the current requirements of an "accredited investor" set out in Rule 501(a)(5) and (6).

The proposed definition of “private investment vehicle” would lump together complex funds with simple ones, ignoring the fact that many thousands of funds are small, well-run and profitable. For example, some of our clients raise funds, under the exemption from registration provided by Section (3)(c)(1) of the Investment Company Act of 1940, to purchase real estate without significant leverage, a relatively simple and valuable investment for small accredited investors. The investment risk the SEC seeks to control is one of purpose and suitability. As such, the remedy should be disclosure of the fund’s investment strategy and operations and the risks attendant on its strategy and operations. We believe existing law, including Rule 10b-5 under the Securities Exchange Act of 1934, along with the proposed additional antifraud rules, addresses these matters adequately.

The proposed accredited investor rule strikes us as an overly broad attempt at merit-based regulation, which is counter to the disclosure-based core of the federal securities laws. The fundamental premise of the federal securities laws is the disclosure-based protection afforded investors by Rule 10b-5. Investors should be able to decide where to place their money upon disclosure provided by the issuer. There have been many highly public failures of companies and investment funds that were large and regulated.

The significant growth in the capital markets in the past several decades has been in large part based on the participation of smaller investors taking part in the capital formation process. The SEC has in the past championed this participation. In proposing the amendment to the definition of “accredited investor,” the SEC listed as support the fact that the \$2.5 million threshold would qualify approximately 1.3% of U.S. households. However, as the SEC points out in the proposal, it estimated in 1982 when Regulation D was adopted that approximately 1.87% of U.S. households would qualify as accredited investors. We believe that this is a move backward and that the SEC should be increasing access to investment vehicles rather than locking investors out of potentially higher yield investments based simply on size and 1940 Act registration.

Finally, we believe the new threshold, and the proposal to adjust it periodically for inflation, will cause a rush by funds to close transactions prior to effectiveness, thereby putting undue pressure on investors and possibly worsening the situation that the SEC hopes to remedy.

Thank you for considering our comments. If you have any questions or need additional information, please contact the undersigned or Alexander M. Donaldson of this office at (919) 781-4000.

Sincerely,



Donald R. Reynolds