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July 7, 2014

Kevin M. O'Neill, Deputy Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. 265-28: Definition of Accredited Investor

Dear Mr. O'Neill:

I am writing to join the chorus of comment letters urging the Commission *not* to further raise the financial thresholds in the current Regulation D definition of "accredited investor" as relates to natural persons.

I have a been a securities lawyer in private practice throughout the entire time that Regulation D has been in existence, and in that capacity have assisted issuers or investors in hundreds of Rule 506 private placement transactions. More recently I joined Maine Angels, an angel investor organization whose members over the past 10 years have invested in more than 50 companies in Maine, Massachusetts, and other New England states. These experiences have helped me appreciate the importance of the issues discussed below.

The "accredited investor" definition has been remarkably stable since being adopted in 1982. The $200,000/$300,000/$1,000,000 thresholds for natural persons have remained unchanged except for a recent (2012) tightening in the way that net worth is computed. When the Commission examines whether to further tighten these thresholds, I am hopeful that it will tread lightly. Without doubt, the ready availability of a simple and effective Rule 506 exemption has been pivotal to the impressive growth in coordinated angel investing, through hundreds of groups like Maine Angels.[1] This coordinated angel investing has become an essential source of seed capital in the United States, addressing a void that banks, venture capital firms, founders, and friends and family cannot adequately fund.

In this letter I focus on two important ways in which the definition of accredited investor affects the availability and cost of the Rule 506 exemptions.

[1] As cited by the Commission, U.S. companies in 2012 raised an estimated $898 billion through Rule 506 offerings, an amount nearly as large as the total capital raised in SEC-registered offerings. Although difficult to track, a very large amount of capital is also raised each year through straight 4(a)(2) offerings, without resort to safe-harbor exemptions. But when capital is sought privately from outside sources other than family members and close friends, Rule 506 is usually the exemption of choice.

Rule 506(b): Pre-Defined Content Requirements

As the Commission has noted, non-accredited investors purchased securities in only 11% of the Rule 506 offerings conducted between 2009 and 2012. As this statistic suggests, Rule 506 offerings are heavily skewed to "accredited-only" offerings. The key reason for this is that if sales are restricted to accredited investors, then the issuer need not meet the pre-defined content requirements found in Rule 502(b). As a securities lawyer, I have no quarrel with these content requirements and have helped many issuers craft "full-blown" offering memoranda to satisfy Rule 502(b) requirements. But the FBM is expensive – often entailing fees of between $25,000 and $50,000 depending on the complexity of the issuer's business and other factors. In the many accredited-only offerings I have worked on, I don't recall a single instance in which a prospective (accredited) investor insisted on having the issuer prepare a 502(b)-compliant memo. To the contrary, many investors strongly prefer that the issuer *not* incur the sizeable fees that the FBM entails – fees that will, directly or indirectly, be paid from the investors' own monies. Those investors believe there are other, more reliable, more cost-effective ways to conduct a proper investigation into the prospective investment.

To me, review of the "accredited investor" definition does not come down to the question of whether more people today meet a $200,000/$300,000/$1,000,000 threshold than in 1982. Without doubt, the size of that subgroup has expanded considerably.

Rather, in my view, the most important question here is whether people at the lower end of that subgroup today are, generally, in need of the protections of receiving the FBM. My experience is that these investors never request an FBM, and that in offerings where one is provided they often don't read the FBM thoroughly. The exercise of drafting an FBM does highlight – for both the issuer and prospective investors – the risks involved in the proposed investment. But even without the FBM, investors can and do find other ways of becoming conversant with those risks, and well-advised issuers can and do include detailed statements of risk factors within whatever written materials they provide to describe their business and the terms of the offering.

Because of the cost and effort involved in preparing the FBM, and because investors as a group have not placed a high value on receiving the FBM, issuers will continue to have a strong incentive to avoid Rule 502(b) by restricting sales only to accredited investors *even if* the income or net worth thresholds are further tightened. Those issuers will be at greater risk, however, if the pool of accredited investors is constricted as a matter of federal policy through significant definitional changes. Would-be investors who are cut out of the group will have reduced opportunities to engage in angel investing activities, and will be "protected" only in the sense that their money will no longer be at risk in accredited-only offerings.

Income and net worth don't accurately predict an individual's investment savvy, but common sense tells us that income and net worth do bear *some* correlation to financial sophistication and/or ability to absorb loss. The correlation is not perfect, but doesn't need to be. Even under the current definition, accredited investors constitute a very small subgroup of the U.S. population. Of the accredited investors subgroup, only a modest fraction actually engage in angel investing. Among those who do, nary a one of them reports feeling victimized by the absence of an FBM.

Rule 506(c): Use of General Solicitations

The "accredited investor" definition now also plays a key role in limiting the availability of the Rule 506(c) exemption. That new exemption allows an issuer to use general solicitation or general advertising for its offering, but only if (i) purchases are limited solely to accredited investors and (ii) the issuer takes reasonable steps to verify the accredited investor status of each purchaser.

Both the current Rule 506(c) and its proposed additional conditions are controversial, and so it is understandable that those who oppose Rule 506(c) are inclined to argue for a much narrower pool of qualifying purchasers.

Obviously, it is too early to measure whether accredited investors at the lower end of the financial scale will prove especially vulnerable to questionable offerings conducted through general advertising. Because such a small portion of accredited investors actually engages in angel investing, arguing about whether a "typical" $200,000 earner is more vulnerable seems besides the point – historically, the "typical" $200,000 earner chooses *not* to participate in *any* Rule 506-type offerings. Whether the presence of general advertising will significantly change these behaviors remains to be seen.

The Commission could adopt one definition for purposes of Rule 506(b) and another definition for purposes of Rule 506(c). Certainly, I would not want qualms about Rule 506(c) to result in what I would consider an unnecessary expansion of the FBM mandate under Rule 506(b). My strong preference would be to leave the definition essentially unchanged in both contexts, and then revisit the question periodically in the future as more experience is gained with Rule 506(c).

If the Commission is inclined to make changes in the "accredited investor" definition, I would suggest that in doing so it consider making the net worth standard more susceptible to third-party verification. For example, the Canadian standard measures net financial assets as a reasonable proxy for financial capacity. This approach is more readily verifiable, and thus would reduce uncertainty in determining accredited investor status. If net worth were to be measured solely by reference to financial assets (and liabilities secured by pledge of those assets)[2], consideration should be given to whether retaining the $1,000,000 threshold would significant constrict the pool of accredited investors. Alternatively, the Commission could leave the net worth calculation unchanged[3] but also allow an additional subcategory of accredited investors who have financial assets in excess of some stated threshold.

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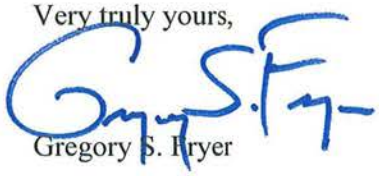
[2] Limiting the net worth calculation to a particular class of assets (in this case, financial assets and associated liabilities) is arguably analogous to the Commission's prior decision to exclude of certain other significant assets (primary personal residence and associated liabilities).

[3] Under Section 4(a)(6)(h)(2), the same method used to measure net worth for purposes of the accredited investor definition is also used to measure net worth for purposes of per-purchaser investment limits in crowdfunding offerings. In measuring net worth for crowdfunding purposes, the Commission may prefer to utilize the more comprehensive (albeit more complex and less verifiable) standard that the accredited investor definition currently requires.

The relative simplicity and flexibility of accredited-only offerings under Rule 506 have been extraordinarily useful in allowing the growth of coordinated angel investing. Given the importance of this source of capital and given the lack of evidence that investors at the lower end of the accredited investor thresholds want or are in special need of the full-blown offering memorandum, I urge the Commission not to further constrict the pool of investors eligible to be treated as accredited investors.

Very truly yours,



Gregory S. Fryer

GSF/ddm