

Thank you for issuing the Concept Release on Harmonization of Securities Offering Exemptions. The acknowledgment that the patchwork of existing exemptions may be better harmonized through an overhaul is meaningful, and the realization that changes in information and communications technologies may impact how the securities market should be regulated is particularly useful. In addition, there currently seems to be a global shift in how issuers and investors think about capital markets and investing, with a significant number of people embracing the concept that access to investments should perhaps be made available to all investors, not just the few that are privileged. Even though the existing system has been and still is quite good, it's a great time to reconsider how securities are regulated from the ground up.

As one of the co-founders of VerifyInvestor.com, I've had the great fortune of talking to many issuers and many, many more investors. These investors range from the everyday non-accredited investor to celebrities, prestigious funds, multinational companies and even sovereign wealth funds. Given its market dominance, VerifyInvestor.com's exposure to the accredited investor definition and verification issues from issuers, accredited investors, and non-accredited investors is likely second only to that of the SEC.

I'd like to start by addressing the criticism offered by some people that those who advocate for access to the capital markets by non-accredited investors under the guise of equal access for all are disingenuous and don't actually care about the non-accredited investor. I will admit that there are certainly those issuers and service providers who don't really care about the non-accredited investor, but those same issuers or service providers may not care that much about accredited investors either. It will be up to proper regulation and enforcement to keep those persons in check. On the other hand, there also are a great number of issuers and service providers who genuinely care about the non-accredited investor and truly believe that they deserve to be afforded the same investment opportunities as accredited investors. Perhaps more importantly, a very large number of non-accredited investors have lamented (sometimes quite angrily) their inability to participate in offerings simply because they weren't accredited. Of the eight comments publicly displayed with respect to File No. S7-08-19 at the time of submission of this comment letter, six of them have addressed the current accredited investor definition as being too restrictive.

As an attorney that's practiced securities laws, I have grown to respect the existing laws and impossible task of balancing investor protections against the goal of ensuring efficient markets. In most cases, I believe our existing laws have done quite well. While I believe that a utopian paradise would not have any definition of an "accredited investor" nor distinguish between different types of investors, I do believe that our system of providing less protection to certain classes of investors has generally served our capital markets positively. The success of the American capital markets is testament to that. Nonetheless, I would like to propose some ideas for potential modification of the "accredited investor" definition as well as an alternative exemption (or a modification of an existing exemption) to allow non-accredited investors to invest alongside accredited investors under certain circumstances.

#### **POTENTIAL MODIFICATIONS TO THE "ACCREDITED INVESTOR" DEFINITION**

For years, issuers, service providers, and investors have noted that the definition of "accredited investors" excludes those who might be sophisticated enough to protect themselves – people who have sufficient financial literacy to make the decision of what to invest in as well as how much to invest or whether or not to invest at all. The Concept Release does a fantastic job of summarizing the market

sentiments and recommendations made in recent years. I'd like to offer my further support for adding sophistication categories to the accredited investor definition.

It seems ridiculous that any person (whether a natural person or entities) could be licensed or authorized to provide investment advice or securities related services yet not be able to invest themselves because they were not accredited. To address this, we should consider adding certain classes of appropriately licensed or sophisticated professionals (or entities) as accredited investors. This very concept, of course, has been consistently and widely recommended, as was acknowledged in the Concept Release. I would like to note that with respect to the recent annual Small Business Forums, it was not only consistently recommended year after year, but it was always recommended with the highest priority among all the other recommendations. This comment letter does not seek to identify the complete list of qualifying sophisticated professionals or entities, but I do think that we should consider whether certain classes of professionals should have extra qualifications prior to being accepted as a sophisticated professional. For example, any CFA or RIA might be suitable as a sophisticated professional, but your typical attorney might not be.

Although it may be of limited utility, we might also consider providing non-accredited investors who retain the services of a sophisticated professional with derivative accredited investor investment status, much like how a trust or benefit plan can derive accredited investor designation by having its investment decisions made by qualified persons.

Other natural persons who demonstrate sophistication should also be afforded accredited investor status. The SEC could approve certain tests which demonstrate a reasonable level of sophistication or approve certain organizations (please do not restrict this business only to FINRA) to provide these tests. Some commentators in previous years have advised that it would be difficult to ensure that such a test covers every aspect of investment, but I disagree. The test might simply need to determine whether general financial and investment concepts are understood by the investor rather than prove that the investor was an advanced investor in any particular industry or field. We should be testing for investors that demonstrate sophistication by comprehending general financial and investment concepts and knowing when to seek the services of a professional advisor, not for expert investors. Only natural persons should be able to obtain accredited investor status via a sophistication test as the test would be taken by natural persons. I have a detailed proposal for how a test might be created and administered, but that is outside the scope of the requested comments.

For any category to the accredited investor definition that is added based solely on sophistication, if the ability to bear an investment loss is of concern, exemptions can address this through some sort of limitation on investment dollars. I would note, however, that a sophisticated investor should generally be able to determine how much to risk on investments such that they may not need forced protection in this regard.

In addition, I generally support the suggestions made by the Reardon letter to amend Rule 501(a)(8) as summarized by the Concept Release with the following considerations. We might consider clarifying that if qualification is on the basis that investments are made by accredited investors, that those accredited investors should also be equity owners. We might consider whether supermajority ownership by accredited investors is appropriate or whether that threshold should be a significantly higher threshold such that there is only a de minimus allowance for non-accredited investors. We might also perhaps add a third prong for an entity that is controlled by accredited investors (without regard to

how many non-accredited investors are equity holders and whether the investment decisions have been delegated to a non-accredited investor).

In addition to the suggestions made by the Reardon letter, I would also propose that we add a category for entities in which all of the equity owners are of the same family, and either the investment decisions are made by the accredited investors that were equity owners of the entity or the entity was controlled by accredited investors. This would allow accredited investors to invest through entities they had set up with their family to conduct investments.

We may also consider whether “equity owners” could be replaced by a control concept instead which might be easier to interpret.

I also support grandfathering investors who had previously qualified as accredited investors for additional offerings by the same issuer. This is important so that investors can continue to support the company they had already invested in.

To the extent any changes are made to the definition of accredited investor while a Rule 506(c) verification regime is intact in its current form, I would strongly recommend that we carefully consider the practicality of 506(c) compliant verification and provide appropriate relief or guidelines. In addition, with respect to Rule 506(c) and verification, it would be helpful to provide some safe harbors and guidance for reasonable steps verification of entities. For example, explicitly creating another non-exclusive safe harbor similar to Rule 506(c)(2)(ii)(C) but for entity verifications would seem reasonable and advisable. I may submit a separate comment letter analyzing the interplay between Rule 506(c) and the definition of accredited investor together with suggestions for improvement.

There are many additional modifications that I would suggest in an overhaul of the accredited investor definition, and I welcome participation in any drafting session of such proposed regulations.

### **ALLOWING NON-ACCREDITED INVESTORS TO INVEST ALONGSIDE ACCREDITED INVESTORS**

I present one possible alternative to allow non-accredited investors the opportunity to invest in the same opportunities as accredited investors which I believe strikes a balance between access to capital, access to opportunities, and reasonable protection for non-accredited investors. The proposed exemption (or modification of an existing exemption) presents ideas already contained within the Concept Release in one uniform proposal.

Non-accredited investors would be allowed to invest alongside accredited investors subject to: (a) limits on self-stated income or net worth and (b) minimum requirements for co-investment by accredited investors (both by dollar amount and number (or ratio) of accredited investors). In addition, there should be a standardized one or two page disclosure that everyone signs acknowledging the risks of private placement investments (this does not seek to replace the requirement of typical anti-fraud disclosures but is additional).

This alternative assures (i) a basic level of disclosure that is consistent between all offerings/investors, (ii) the opportunity for non-accredited investors to co-invest alongside accredited investors, and (iii) limits on how much non-accredited investors can risk. It does not eliminate the distinction between accredited and non-accredited investors and does not eliminate anti-fraud responsibilities which are the foundation of investor protection. If necessary, greater penalties could be placed on offerings that

accepted non-accredited investors, but I do not think that would be necessary and may have a chilling effect on an issuer's willingness to allow non-accredited investors into the offering. This alternative otherwise leaves intact the Rule 506(b) vs Rule 506(c) treatment on general solicitation, though I may submit a separate comment letter analyzing the harmonization of Rule 506(b) and Rule 506(c).

If the argument is that accredited investors are more sophisticated, then this alternative allows non-accredited investors who might not be that sophisticated to piggy-back on the accredited investors just as they might be able to piggy-back on a purchaser representative in some cases. If the argument is that accredited investors can afford to lose the money, then the limitations on investment will help seek a balance between allowing them the opportunity to invest in similar opportunities while protecting them against losing too much. I recognize that for some non-accredited investors, the loss of even a small percentage of their net worth or income could be very material, but I believe that risk can be mitigated with the introduction of standardized disclosure. In addition, the benefit of providing them with some degree of personal financial freedom (and responsibility) outweighs the risk especially when there are already investment caps put in place. As many others have pointed out through the years, there's nothing stopping people from gambling their life savings away on lotteries, casinos, or sports betting, and there are no laws preventing them from irresponsibly spending or incurring debt. Surely, we can provide these same people with greater access to investment opportunities that may provide them with some return.

One issue that this alternative does not adequately address is adverse deal selection and whether issuers that could take non-accredited investors would in fact take non-accredited investors. While this alternative allows an issuer to accept non-accredited investors, issuers might be reluctant to welcome them if it comes along with extra burdens (similar to Rule 506(b) and why many do not take advantage of the 35 non-accredited investors allowance) or simply because it might be troublesome to have many smaller investors. Other than incentivizing issuers to proactively seek non-accredited investors, which I would not support, I'm not sure how to handle this issue.

Thank you for the opportunity to provide some comments on these topics. I hope they are helpful to the Commission, the Staff, and the general community.