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September 12, 2019

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Accredited Investor - Tribal Governments - 84 FR 30460, Document Number 2019-13255

Dear Chairman Clayton:

The Native American Finance Officers Association (NAFOA) represents 120 tribal governments concerning tribal financial management and economic development. We are writing to express our support for a regulatory fix that would define tribal governments as accredited investors for the purposes of Regulation D (17 C.F.R. §§ 230.501-230.508) of the Securities Act of 1933.

As defined in the Securities Act, an accredited investor is a state plan, person, or institution that the Securities Exchange Commission (SEC) deems capable of taking on the economic risk of investment in securities that are unregistered. Its purpose is to add a protective layer between investment securities and the general public; however, the regulation was developed without considering tribal governments as investors. While correcting this oversight is important for the continued growth and diversification of tribal economies, it is also important for the management of tribal government economic risk.

NAFOA has actively worked toward an acceptable solution for inclusion that would seek parity with other governments, protect certain tribal assets, and ensure a level of suitability for participation. NAFOA has convened meetings with tribal leadership, tribal professionals and diverse professionals from the different sectors of the investment community in developing our recommendation. To ensure parity, protection, and suitability, we are recommending the following provisions for regulatory consideration:

NAFOA requests that the SEC amend the eligible entities excluded under Regulation D (17 C.F.R. §§ 230.501 (a)(1) of the Securities Act to include “any plan established and maintained by a tribal government, its political subdivisions, or any agency or instrumentality of a tribal government or its political subdivisions, for the benefit of its citizens (members), if such plan has total assets in excess of \$5,000,000 in non-trust assets.” Additionally, the term “non-trust asset” should be defined as “an asset that is under

the direct control of a tribe or tribal entity, and which is not held in trust by the United States for the benefit of the tribe” to provide clarity.

Tribal governments have additional considerations that may influence their participation as accredited investors including tribal governments’ relationship with the federal government, tribal philosophy and the ability to invest inter-generationally including through the use of sovereign funds, and the growing capacity to manage investments that have grown in sophistication. The recommended fix for tribal government inclusion as an accredited investor accommodates these considerations.

Tribal governments have land and investment assets that are managed and held in trust by the federal government for the benefit of the tribal government and its members. The recommended fix protects these assets from consideration while excluding them from being considered for suitability purposes in meeting the \$5,000,000 threshold.

Additionally, tribal governments have the ability, as sovereigns, to invest in sovereign or permanent funds with many tribal governments having the long-term philosophical objective of investing for future generations. This extended time period often requires the ability to participate in private offerings with long-term horizons or risk considerations that support this extensive time horizon.

Finally, NAFOA, in partnership with the Harvard Business School, has developed a tribal-specific executive management program to build the investment and leadership capacity of tribal government leaders and high-level professionals that are making investment and governance decision on behalf of their citizens. The program builds tribal capacity to implement effective governance structures and utilize valuation techniques for assessing investment opportunities.

Indian Country suffers from a historical lack of access to capital and the exclusion of tribal governments as accredited investors further compounds this problem. We respectfully request the SEC give full consideration to our request to include tribal governments as accredited investors.

Please feel free to contact me by phone at [REDACTED] or by email at [REDACTED] if you have questions, concerns, or need further information.

Sincerely,

Dante Desiderio
Executive Director, NAFOA