

September 24, 2019

VIA ELECTRONIC SUBMISSION

Ms. Vanessa Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**SUBJECT: File Number S7-08-19, Concept Release on Harmonization of Securities Offering Exemptions (Responses to Questions 20, 22, 24, and 30)**

Dear Secretary Countryman,

I appreciate the opportunity to comment on the Concept Release on Harmonization of Securities Offering Exemptions (the “Concept Release”) issued by the U.S. Securities and Exchange Commission (“SEC”) on June 18, 2019. I am currently Chair of the Entrepreneurship Department at Central Michigan University.<sup>1</sup> Previously, I counseled entrepreneurial ventures through law firms and law clinics in Silicon Valley and Chicago. I have also mentored students and other entrepreneurs in North Carolina and Michigan. While the Concept Release covers several important issues, this letter addresses some of the questions raised in the section entitled “Accredited Investor Definition.” More specifically, this letter addresses questions 20, 22, 24, and 30.

**20. Should we change the definition of accredited investor or retain the current definition? If we make changes to the definition, should the changes be consistent with any of the recommendations contained in the Accredited Investor Staff Report? Have there been any relevant developments since the 2015 issuance of the Accredited Investor Staff Report, such as changes to the size or attributes of the pool of persons that may qualify as accredited investors; developments in the market or industry that may assist in potentially identifying new categories of individuals that may qualify as accredited investors; changes in the risk profile, incidence of fraud, or other investor protection concerns in offerings involving accredited investors that we should consider? How do those changes affect investors, issuers, and other market participants?**

I believe the SEC should change the accredited investor (“AI”) definition. Further, I believe changes should be consistent with some of the suggestions contained in the 2015 issuance of the Accredited Investor Staff Report (the “SEC Staff Report”). More specifically, for reasons I provided in a forthcoming article in the Michigan Business & Entrepreneurial Law Review (the “MBELR article”),<sup>2</sup> I encourage the SEC to expand the AI definition to welcome individuals who pass a relevant exam. Developments since the SEC Staff Report include: (i) an increase in the amount of exempt offerings both absolutely and relative to registered offerings; (ii) an increase in the number of attractive high-growth firms staying private longer (thereby keeping non-AIs from sharing in such growth); (iii)

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<sup>1</sup> The comments and opinions expressed herein are my own and should not be attributed to my employer.

<sup>2</sup> Jeff Thomas, *Redefining Accredited Investor: That’s One Small Step for the SEC, One Giant Leap for Our Economy*, MICH. BUS. & ENTREPRENEURIAL L. REV. (Forthcoming), available at: <https://ssrn.com/abstract=3452062>.

Final Reports from SEC Government-Business Forums on Small Business Capital Formation (*i.e.*, from 2018, 2017, and 2016) indicating that expanding the AI definition is their number one priority; (iv) the SEC Advisory Committee on Small and Emerging Companies indicating (on July 20, 2016) that it is not aware of any evidence suggesting fraud in the private markets is driven or affected by the levels at which the AI definition is set;<sup>3</sup> (v) recent research indicating venture capital and banks are poor substitutes for investments made by individual AIs;<sup>4</sup> and, (vi) increased standardization of exempt offerings and better access to the deal documents and other resources used to conduct these offerings (thereby making a meaningful AI exam more feasible).<sup>5</sup>

**22. As recommended by the Advisory Committee on Small and Emerging Companies in 2016, the 2016, 2017, and 2018 Small Business Forums, and the 2017 Treasury Report, should we revise the accredited investor definition to allow individuals to qualify as accredited investors based on other measures of sophistication? If so, should we consider any of the following approaches to identify individuals who could qualify as accredited investors based on criteria other than income and net worth:**

- **Permit individuals with a minimum amount of investments to qualify as accredited investors;**
- **Permit individuals with certain professional credentials to qualify as accredited investors;**
- **Permit individuals with experience investing in exempt offerings to qualify as accredited investors;**
- **Permit knowledgeable employees of private funds to qualify as accredited investors for investments in their employer’s funds;**
- **Permit individuals who pass an accredited investor examination to qualify as accredited investors; and**
- **Permit individuals, after receiving disclosure about the risks, to opt into being accredited investors.**

Yes, I believe the SEC should expand the AI definition to also allow individuals to qualify as AIs based on other measures of sophistication (*i.e.*, based on measures besides net worth or income levels). Moreover, I believe many of the approaches listed above could be an improvement to the status quo. However, for reasons stated in the MBELR article, I believe an AI exam offers the best approach.<sup>6</sup> Also, per the MBELR article, an AI exam could be linked to a licensing system which, in turn, could be linked to other desired criteria such as investment limits and/or relevant investment experience.<sup>7</sup>

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<sup>3</sup> See, *e.g.*, Advisory Committee on Small and Emerging Companies: Recommendations Regarding the Accredited Investor Definition (Jul. 20, 2016), <https://www.sec.gov/info/smallbus/acsec/acsec-recommendationsaccredited-investor.pdf> (Noting consideration #7: “[s]ome commentators have urged that the accredited investor thresholds be increased in order to prevent fraud against investors who may be unable to fend for themselves. The Committee is not aware of any evidence suggesting that fraud in the private markets is driven or affected by the levels at which the accredited investor definition is set.”).

<sup>4</sup> Laura Anne Lindsey & Luke C.D. Stein, *Angels, Entrepreneurship, and Employment Dynamics: Evidence from Investor Accreditation Rules*. Sixth Annual Conference on Financial Market Regulation (Jan. 1, 2019), working paper available at: <https://ssrn.com/abstract=2939994> or <http://dx.doi.org/10.2139/ssrn.2939994>.

<sup>5</sup> Thomas, *supra* note 2 at 17.

<sup>6</sup> *Id.* at 12.

<sup>7</sup> *Id.* at 19.

**24. What are the advantages and disadvantages to issuers and investors of changing — by either narrowing or expanding — the accredited investor definition?**

As summarized in the MBELR article, the AI definition has several implications for primary offerings, secondary offerings, and other situations.<sup>8</sup> Expanding the AI definition to welcome those who pass a relevant exam would: (i) increase opportunities for Main Street investors who have proven they can fend for themselves (thereby allowing them to share in economic gains generated by private companies, diversify their portfolios, invest more locally, and have increased liquidity); (ii) provide a new (and much needed) source of capital to startups and other high-growth ventures; and, (iii) strengthen our economy (*e.g.*, by fueling innovation, creating jobs, and making private markets more competitive and efficient). Disadvantages include investors losing money – too much money. However, failure is a key part of entrepreneurship. We need to accept the risk of failure – even complete losses. Further, an AI exam could educate and assess investors about such risks and appropriate investment amounts. An AI exam could also be linked to an AI licensing system which, in turn, could be linked to investment limitations.<sup>9</sup>

**30. If we were to expand the definition of an accredited investor and/or limit the types or amounts of investments by accredited investors in exempt offerings, what challenges would exist in the application and enforcement of the revised criteria?**

If you were to expand the AI definition to welcome those who pass a relevant exam, it would be challenging to have an exam that covers all of the applicable items (*e.g.*, issues specific to all of the various markets one might invest in). Thus, as suggested in the MBELR article, the exam should NOT expect test takers to demonstrate they have all of the answers; instead, it should enable them to spot areas where knowledge gaps and other risks are likely to exist, and empower them to seek help to mitigate some of those risks and factor in the others.<sup>10</sup> Further, as references provided in the Concept Release indicate, issuers and others will appreciate certainty (*i.e.*, being able to easily determine whether one is an AI or not). An AI exam and licensing system could provide that certainty.

Thank you, Secretary (and other members of the SEC Team) for considering my comments and for your hard work on matters relating to the Concept Release. It is important and challenging to balance the goal of protecting investors with the goal of making it easier for companies to raise funds they desperately need to launch and grow. I hope the suggestions in this letter support both of these important goals.

Please feel free to contact me at [REDACTED] if I may be of assistance.

Sincerely,

Jeff Thomas

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.*