

D: [REDACTED]

F: [REDACTED]



September 24, 2019

VIA ELECTRONIC MAIL  
*rule-comments@SEC.gov*

Vanessa A. Countryman  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File No. S7-08-19; Fed. Reg. 30460 (June 26, 2019)  
SEC Concept Release on Harmonization of Securities Offering Exemptions  
Release Nos. 33-10649; 34-86129; IA-5256; IC-33512**

Dear Ms. Countryman:

The Coalition of Collective Investment Trusts (the “Coalition”)<sup>1</sup> appreciates the opportunity to submit these comments to the Securities and Exchange Commission (the “Commission” or “SEC”) on the above-referenced Release, which solicits comments on several exemptions from registration under the Securities Act of 1933, as amended (the “Securities Act”) that facilitate capital raising. The Coalition has a particular interest in Rule 144A(a)(1)(i)(F) (the “Trust Fund Provision”), which classifies as “qualified institutional buyers” or “QIBs”, certain trust funds with requisite qualifying assets whose trustee is a bank or trust company, and whose participants are exclusively certain types of retirement plans.

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<sup>1</sup> The Coalition has membership of more than 45 member firms comprised of a diverse group of fund sponsors, money managers and service providers. Additional information is accessible via: <https://www.ctfcoalition.com>.

The Coalition urges the Commission to address an aspect of the Trust Fund Provision which causes collective investment trusts (“CITs”) with H.R. 10 plans (“Keogh Plans”), which are tax-deferred pension plans available to self-employed individuals or unincorporated businesses set-up for retirement purposes, to lose its status as QIBs under Rule 144A. This provision introduces unnecessary complexity within the exempt securities framework and promotes an inefficiency that limits investor participation and secondary market liquidity, and places an undue burden on CITs without any rational increased investor protection. We believe that this complexity and result were not intended when Rule 144A was originally adopted.

CITs are tax-exempt, pooled investment vehicles. Interests in CITs are exempt from registration pursuant to section 3(a)(2) of the Securities Act. That section provides an exemption from registration where a fund is “maintained by a bank” and participation in the fund is limited to certain investors (such as a pension or profit sharing plan qualified under Section 401 of the Internal Revenue Code of 1954 or a governmental plan as defined in Section 414(d) of the Internal Revenue Code of 1954). Likewise, CITs avoid registration as investment companies under the Investment Company Act of 1940, as amended (the “1940 Act”) in reliance on an exclusion from the definition of “investment company” found in section 3(c)(11) of the 1940 Act. Section 3(c)(11) excludes, among other entities, CITs maintained by a bank, the assets of which consist solely of certain types of retirement plans. Additionally, since CITs hold qualified retirement plan assets, CIT trustees are held to heightened fiduciary standards under applicable banking law, and the Employee Retirement Income Security Act of 1974 (“ERISA”), when ERISA assets are invested in the CIT.

CITs rely on the Trust Fund Provision in order to qualify as a QIB and therefore invest in securities offered in reliance on Rule 144A. Under this provision, a CIT must: (i) have a trustee who is a bank or trust company, (ii) own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the CIT, and (iii) limit its plan participants to only (a) plans established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees or (b) an employee benefit plan within the meaning of Title I of ERISA. The Trust Fund Provision specifically excludes CITs that have Keogh Plan investors from qualifying as a QIB. This means that a Keogh Plan that may itself qualify as a QIB will cause a CIT to lose its status as a QIB by virtue of that plan’s investment in the CIT.

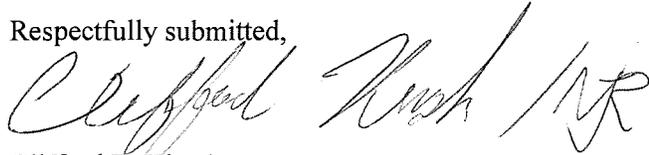
Today, many CITs have Keogh Plan investors; however, a CIT with as little as one Keogh Plan investor cannot invest in securities offered in reliance on Rule 144A, even if the Keogh Plan itself qualifies as a QIB. CITs, in shaping their investment strategies, are faced with the choice of either banning a Keogh Plan from investing or foregoing the ability to invest in securities offered in reliance on Rule 144A. In this way, everyone loses. Keogh Plans may be prevented from investing in CITs they may otherwise wish to (harming Keogh Plan participants) or CITs determine not to invest in securities offered in reliance on Rule 144A when they otherwise would wish to (potentially reducing performance for all investors in the CIT).

The current regulatory framework prohibits a CIT from allowing Keogh Plan investors if the CIT invests in securities offered in reliance on Rule 144A. No investor protections are gained by excluding a Keogh Plan—which may itself be a QIB—from investing in a CIT that can invest in securities offered in reliance on Rule 144A. Further, the heightened fiduciary standard applicable to CITs provides sufficient investor protection to offset any concerns about the sophistication of Keogh Plans. The Coalition urges the Commission to amend or otherwise provide staff guidance which would serve to modify the Trust Fund Provision to allow a CIT to accept investments from Keogh Plan, without any negative implications for the CIT’s status as a QIB.

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Members of the Coalition very much appreciate consideration of their views. The Coalition stands ready to provide any addition information that would be helpful to assist the Commission and its staff in any way as it conducts its review of the rules and requirements discussed above. Please do not hesitate to contact the undersigned at [REDACTED] or at [REDACTED].

Respectfully submitted,



Clifford E. Kirsch

**For the Coalition of Collective Investment Trusts**

cc: Ms. Carol T. McClarnon, Partner, Eversheds Sutherland  
Ms. Stephani M. Hildebrandt, Partner, Eversheds Sutherland