



*The wholly owned economic development arm of the
Ft. Belknap Indian Community*

The Honorable Jay Clayton
Chairman Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
VIA Email: rule-comments@sec.gov

RE: File Number S7-08-19
Accredited Investor - 84 FR 30460, Document Number 2019-13255
Inclusion of Tribal Governments, Adjustments for Regional Income Differences, and
Expansion of Co-Investment Opportunities

September 24, 2019

Dear Chairman Clayton:

Island Mountain Development Group (IMDG), the wholly owned economic development arm of the Ft. Belknap Indian Community, a federally recognized tribe in Montana, supports:

- (1) Inclusion of Tribes in the definition of Accredited Investors
- (2) Adjustment of the income thresholds for Accredited Investors to account for regional income and asset differences
- (3) Expansion of Accredited Investor exemptions to allow for significantly more co-investment opportunities for average Americans

FORT BELKNAP INDIAN COMMUNITY (FBIC)

The Fort Belknap Indian Reservation is homeland to the Gros Ventre (Aaniiih) and the Assiniboine (Nakoda) Tribes. The Fort Belknap Indian Reservation is geographically isolated in Montana, located forty miles south of the Canadian border and twenty miles north of the Missouri River. The Fort Belknap Indian Reservation encompasses an area consisting of 675,147 acres. The main industry is agriculture, consisting of small cattle ranches, raising alfalfa hay for feed and larger dry land farms. Fort Belknap has a tribal membership of 7,000 enrolled members, with a median income of less than \$12,000 each. The government of our reservation is the Fort Belknap Indian Community (FBIC), a federally recognized tribal nation.

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NO TRIBAL GOVERNMENTAL TAX REVENUE – IMPORTANCE OF PRIVATE ENTERPRISE

As a government, FBIC has all the responsibilities of any government, from education to roads to trash collection. As a tribal government, however, FBIC does not have access to the same forms of tax revenue as state and local governments to fund governmental services.

Tribal land is predominately held “in trust” by the federal government and therefore not subject to property taxes. Our population base is too small, and unemployment and poverty rates too high, to realistically impose an income tax. And while our treaties and federal law reaffirm that only tribes and the federal government can tax tribal commerce, case law has (improperly) evolved to allow states to tax sales to non-natives on sales within our lands.

Therefore, with no traditional tax base, we are dependent upon two primary sources of income for their governmental revenue, treaty based federal governmental appropriations, and competing in the private marketplace with our tribal government owned corporation.

DISPARATE TREATMENT OF TRIBES IN FEDERAL SECURITIES, FINANCE, & TAX LAW

Because of this need to participate in the private marketplace in order to generate governmental revenue, tribal governments create wholly owned tribal corporations whose focus is to generate profits as a source of governmental revenue. As such, tribes, and their tribal corporate arms, participate in the private marketplace in a completely different manner and for completely different reasons than most governments. They participate both as “governments” and as “corporations” (wholly owned by the government).

Unfortunately, most federal securities, finance, and tax laws have been written without any inclusion or understanding of Tribal nations. As a result, many key laws and regulations exclude tribal nations from both the benefits of being either a government or a corporation. Therefore, the governments most desperately in need, are faced with the “worst of both worlds,” with the federal benefits and status of neither governments nor corporations.

ECONOMIC DEVELOPMENT ON ISOLATED RESERVATIONS

In such rural and isolated location. reservations, it is difficult to grow businesses sufficient to support our government and the needs of our 7,000 tribal members. As such, the FBIC created an economic development holding company, the Island Mountain Development Group (IMDG) in 2009 which conducts business both locally and throughout the United States.

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The IMDG is dedicated to serving the Gros Ventre and Assiniboine Nations by creating a self-sustaining economy through the creation of business opportunities, jobs, workplace training, positive role models, and resource development. Approximately 20% of Ft. Belknap's revenue is now generated through our government owned companies.

Our nation has historically struggled with 80% unemployment. IMDG now employs over 200 full time employees, and we are growing. We recently had 2 job openings and 40-80 job applicants. In the southern part of the reservation where our headquarters are located, we have reduced public assistance by nearly 50%.

BARRIERS TO ACCESSING CAPITAL IN INDIAN COUNTRY

Tribal nations and individual Native Americans have significant barriers in accessing capital. Just a few of those barriers include:

- (1) Lack of tax parity for investors who invest in tribal corporations (such as lack of parity with either S- or C- Corps). For example, federal tax law prohibits non-Tribal equity in tribal corporations.
- (2) Lack of parity for tribes and tribal corporations in federal securities, finance, and tax laws. For example, tribes have more requirements than states and local governments to issue tax-exempt government bonds which result in it being cost prohibitive.
- (3) Lack of tribal owned land to use as collateral (land held in federal trust).
- (4) Unwillingness of banks to locate on tribal lands.
- (5) Personal discriminatory beliefs held by local bankers against local tribes and tribal people (e.g., Wells Fargo), often resulting in unreasonable and inequitable covenants.
- (6) Lack of basic understanding of federal Indian and tribal laws in the financial sectors and within federal securities and financial agencies.

Thus, many tribes do not have ready access to the more affordable financing normally available to other governments, such as government tax-exempt bonds and bank loans with reasonable terms. As such, many tribes and tribal corporations are often dependent on high-cost capital, frequently from high net worth individuals or funds with higher risk tolerance.

As some tribes experience more financial success through competing in the private marketplace, they frequently want to invest in other tribal nations to address this extensive problem of accessing capital.

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Ensuring tribes and tribal corporations have parity in securities and finance laws will help facilitate and encourage inter-tribal investment and investments from outside sources at more reasonable terms.

IMPROVING THE ACCREDITED INVESTOR EXEMPTIONS

(A) TRIBAL GOVERNMENT INEQUITIES – OMISSION OF TRIBAL GOVERNMENTS

State governments are included in the definition of “Accredited Investor,” tribal governments are not.

States: “any plan 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, if such plan has total assets in excess of \$5,000,000” 17 C.F.R. §§ 230.501 (a)(1)

IMDG has participated in the Native American Financial Officers Association (NAFOA) consultations on this issue and supports NAFOA’s recommendation for tribal government parity. IMDG 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:

Tribal: “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.”

It is the generally accepted interpretation of federal Indian law, and IMDG’s intention that the SEC would also interpret that tribal government owned economic development arms/corporations are included in the definition of “any agency or instrumentality of a tribal government.” Many tribal nations run their economic development decisions including investment decisions from their economic development/corporate arms.

Additionally, we support NAFOA’s position that 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 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.

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(B) REGIONAL INEQUITIES – NET WORTH ADJUSTMENTS FOR REGIONAL DIFFERENCES

The current definition of individuals deemed “Accredited Investors” is biased towards the east and west coasts and excludes well educated, financially stable, sophisticated investors in much of middle American, including many states where there are large tribal populations.

“Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds \$1,000,000.” 17 C.F.R. §§ 230.501 (a)(5)

In many of our tribal regions, the net worth individuals as measured by income and assets may well be under \$1,000,000. In drafting the new rule, we urge the SEC to adopt a more flexible definition of individual net worth which considers regional variations.

(C) AMERICAN INEQUITIES – NEED FOR EXPANDED CO-INVESTMENT

We we certainly understand the importance of protecting the American investor and appreciate that it is a difficult balancing act. However, most of the best investment opportunities exclude most Americans from participation due to Rule 506(b). First, the onerous requirements for disclosure to any non-Accredited Investors results in zero non-Accredited Investors being able to participate. Second, the number 35 as the allowable number of non-Accredited Investors seems arbitrary.

As previously discussed, capital in Indian Country is very difficult to access. Some of the most interested capital comes from “impact investors.” While there are high net worth impact investors, the younger generation is particularly inspired by and interested in not only impact investing in general, but specifically investing in Indigenous communities. Most of these younger investors will not qualify as Accredited Investors.

We urge the SEC to reconsider Rule 506(b) to allow more flexibility for co-investing. We believe this flexibility would entail a downward adjustment to the increased disclosure requirements, as well as a shift in the 35 limitation. Perhaps a percentage is more appropriate or should at least be listed in the alternative. For example, as long as X% of the funds have been raised by Accredited Investors then X% can come from non-Accredited Investors. Perhaps defining a subset of Accredited Investors that is even more likely to complete extensive due diligence and de-risk the investment for the non-Accredited Investors would be appropriate as well.

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CONCLUSION

Thank you for taking time to consider the tribal perspective while updating and streamlining the SEC rules. Please do not hesitate to contact me for any additional questions.

Terry Brockie
CEO, Island Mountain Development Group



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