

**Comments on Proposed Amendments to Definition of the
“Accredited Investor”**

January 10, 2020

Ms. Vanessa A. Countryman,
Secretary,
Securities and Exchange Commission
100 F. Street, NE
Washington, D.C., 20549-1090

Re: Amending the “Accredited Investor” Definition

File No: S7-25-19

Dear Ms. Countryman,

I would like to thank the U.S. Securities and Exchange Commission (the “Commission”) for providing this opportunity to comment on the proposed amendments to the definition of “Accredited Investor” (the “Proposed Release”). Regarding the accredited investor definition for natural person, the Commission is proposing to add two new categories for individuals to qualify as accredited investors based on their professional knowledge and their status as a “knowledgeable employee”. The Proposed Release also requests for comments on whether the financial threshold should be revised. This comment covers the following areas:

- Qualifying as accredited investors based on professional certifications and designations and other credentials;
- Qualifying as accredited investors based on the status of a private fund’s “knowledgeable employee”; and
- Revising the current financial threshold in the accredited investor definition.

1. Professional Certifications and Designations and Other Credentials

The Proposed Release sets out four criteria that to be considered when determining which professional certifications and designations or other credentials

qualify for accredited investor status¹. Initially, investors with the following three certifications or designations are expected to qualify as accredited investors:

- i. Licensed General Securities Representatives (Series 7);
- ii. Licenses Investment Adviser Representative (Series 65); and
- iii. Licensed Private Securities Offerings Representative (Series 82).

The Proposed Release requests comments on whether investors holding the above certifications or designations should be required to maintain these certifications or designations in good standing. I support the requirement of maintaining in good standing, and I believe additional requirements like work experience may be requested depending upon whether the certifications or designations itself are subject to continuing education to maintain themselves in good standing.

According to Rule 501 of Regulation D, an investor shall be an accredited investor (or the issuer believe such investor is an accredited investor) “at the time of the sale of the securities to that person”. If an investor qualifies as an accredited investor by way of holding one or more of the above certificates or designations, such certificates or designations shall be active, or, in good standing, at the time of the sale of the offered securities. The timing is clearly provided in the Rule 501, and equally applies to this new approach of qualification. In my understanding, the underlying rationale of this new approach is that holding such certificates or designations is deemed as a proof of finance sophistication and ability to evaluate the merits of an investment.

In the case where such certificates and designations are subject to continuing educations or like requirements.

As mentioned above, for an investor holding such certificates or designations to qualify as an accredited investor at the time of purchasing the offered securities, these certificates and designations shall sufficiently constitute proof of the investor’s finance sophistication and ability to evaluate an investment. To

¹ See Proposing Release at 28.

constitute such proof, these corticates and designations shall be active, or in good standing at that time. If such certificates or designations are subject to continuing education to remain in good standing but the holder fails to take required continuing education, holding such certificates or designations may, at most, prove the investor had investment-related knowledge or abilities at the time he/she passed the exam, but not at the time of purchasing the securities.

In the case where no continuing education or likewise requirements to such certificates or designations.

If no continuing education or likewise requirements are required, additional proof shall be requested, like relevant work experience in the related fields in the recent two or three years, to prove the investor remains financially sophisticated at the time of purchasing. The rationale is that, without continuing education, the investor may no longer have up-to-date knowledge and information about the related fields, especially when considering the increasingly changing world of finance and investment, and even worse, the investor may not as knowledgeable as he/she was when passing the exam, as a result of years of little practice, along with no continuing education. However, recent work experience in the related fields likely shows that the investor remains financially sophisticated to evaluate an investment and hence to make an informed investment decision at the time of purchasing the offered securities.

Although the Commission may simply request related work experience in recent years, regardless of whether such certifications or designations require continuing education, the purpose to distinguish is to minimize the burden not only of the investors, but also of the Commission.

2. Knowledgeable Employees of Private Funds

The commission also proposes to add a category to the accredited investor definition that would enable “knowledgeable employees” of a private fund to qualify as accredited investors for investment in the fund². This new category of accredited

² See Proposing Release at 39.

investors would be the same in scope as the definition of “knowledgeable employees” in Rule 3c-5(a)(4)³. The rationale hereunder is that such employees are likely to be financially sophisticated and capable of fending for themselves in evaluating investments in such private funds through their knowledge and active participation of the investment activities of the fund⁴. The Proposed Release requests comments on whether certain types of employees of a non-fund issuer should be included in the accredited investor definition for purposes of a securities offering by that issuer⁵? I do not suggest the inclusion of the employees of non-fund issuers into the definition of accredited investors for following reasons.

In my understanding, employees of a private fund who fall within the definition of knowledgeable employee can be fairly treated as accredited investors because of both their financial sophistication and their ability to access to information about the offering, the combination of which render the investor protection unnecessary. Unlike knowledgeable employees⁶ in a private funds, who are of highly financial sophistication by nature of functions they perform, it is hard to draw a line to include adequate types of employees of a non-fund issuer in the pool of accredited investors. For example, an entry-level employee with a marketing degree may be selected to assist in his company’s offering of its securities. His duties are to, under supervision of some senior officers, introduce the company and the offered securities to prospective investors. In this case, the employee may have sufficient access to information regarding the offering, but he does not necessarily have sufficient knowledge about finance and investment to enable him to make a reasonable investment decision. On the other hand, if the line is drawn based upon the functions an employee performs in investment activities of such non-fund issuer, it would probably either too board to include employees in a need of protection provided by the Securities Act if by way of general description of the qualified functions, or unnecessarily narrow if by way of listing each qualified function. If such employees cannot directly prove their financial

³ See Proposing Release at 43.

⁴ See Proposing Release at 43.

⁵ See Proposing Release at 45.

⁶ The definition of which excludes employees performing solely clerical, secretarial or administrative functions.

sophistication by work they are doing or they have done, they may need to prove to that effect by holding certain types of certificates or designations, or passing certain exams, which would fall within another category of accredited investors as now proposed or considered by the Commission so that the category of non-fund issuer's knowledgeable employees would not be practically relied on.

3. Financial Threshold

The current accredited investor definition provides for \$1 million net worth threshold⁷ and \$200,000 individual income or \$300,000 joint income threshold for natural persons to qualify as accredited investors⁸. The Proposing Release requests comments on whether the financial standard for accredited investors shall consider geographic difference in income levels and living costs, and whether to exclude all or a portion of an individual's retirement accounts when calculating net worth⁹.

I believe geographic difference in income levels and living costs shall be considered in determining financial threshold for purposes of accredited investors. It is notable that income levels largely vary among different regions in the United States. For instance, the median household net worth in the northeast are almost twice as much as that in the south¹⁰. Meanwhile, costs of living vary as well, and typically we see a much less costs in the southern areas than those in the northeast. However, it is earlier to recognize the difference than to embody it into the definition of accredited investors. One possible approach is to design a mechanism based on the income levels, living costs and other relevant factors, without regard to the existing region categories, at least not completely and unconditionally restricted to them.

Regarding retirement accounts, I suggest excluding, at least partially, an individual's retirement accounts. This because that the senior citizens may satisfy the financial standard to qualify as accredited investors solely by fund in their retirement accounts, they typically lack securities- or investment-related knowledge to evaluate an investment or to avoid risks thereof, and hence need investor protection of the Securities

⁷ 17 CFR § 230.501 (a)(5).

⁸ 17 CFR § 230.501 (a)(6).

⁹ See Proposing Release at 85-87.

¹⁰ See Table 5 of Proposing Release at 81.

Act. Possible approaches to deal with this situation are: (i) setting forth a maximum amount of money from a retirement account which can be included in the calculation of net worth, (ii) using a discount or likewise formula to proportionately include the money from a retirement account into the calculation of net worth, and (iii) set a maximum amount that an investor may invest by fund from his/her retirement account. What's more, if an invest so qualifies as an accredited investor, I recommend requesting additional proof of (i) their knowledge about securities and investment, at least basic understandings, and (ii) having information about the offered securities (instead of merely ability to access to the information).

There is another situation worthy of discussion. If an investor is no longer an accredited investor due to a divorce or likewise occurrence, it seems unfair to exclude such investor from the pool of accredited investors simply because he/she no longer satisfies the financial threshold and unwilling/unable to obtain a professional certifications or designations, if such investor has significant investment experience to be deemed as financially sophisticated. In this case, an alternate is expected to be provided to show such investor's financial sophistication by, like, submitting a certified statement introducing remarkable investments he/she made in recent years.

Again, I appreciate this opportunity to share my thoughts on the proposed amendments to the definition of "accredited investors", and efforts of SEC staff in making this Proposed Release.

Thank you.

Best,

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