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Our File No.
35556.102

January 13, 2020

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

Re: Amending the "Accredited Investor" Definition
Release Nos. 33-10734; 34-87784
File No. S7-25-19

Dear Ms. Countryman:

This comment letter is submitted with respect to the Securities and Exchange Commission's (the "Commission") proposed amendments to the "accredited investor" definition set forth in Release No. 33-10734 dated December 18, 2019. Specifically, this letter offers comments in response to the following requests for comment:

Request for Comment No. 22: *Should limited liability companies be added to the list of entities specified in Rule 501(a)(3), as proposed?*

The underlying rationale for inclusion of certain categories of persons and entities within the list of "accredited investors" is essentially that such categories of persons or entities do not need the protections associated with a registered public offering and are likely to be the type of investors that are able to understand and bear the risks associated with the investment.

By including Rule 501(a)(3) in Regulation D, the SEC was making a determination that if a corporation, business trust or partnership owns total assets in excess of $5 million and was not formed for the specific purpose of acquiring the securities offered, such entity is able to understand and bear the risks associated with the investment and does not need the protections associated with a registered public offering. For the purpose of Rule 501(a)(3), the crucial determination is the magnitude of asset ownership and what motivated the formation of the entity, not the type of organization. Accordingly, so long as a limited liability company satisfies the $5 million asset test and was not formed to acquire the offered securities, it should be treated the same as a corporation, business trust or partnership meeting such requirements and be deemed an accredited investor.

Alternatively, the Commission could consider simply substituting "[a]ny entity" for "[a]ny organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership", similar to the language in Rule 501(c)(8) with regard to entities all of whose owners are accredited investors. Form of entity should be irrelevant to Rule 501(a)(3)'s main focus on assets and organizational motive.

Request for Comment No. 23: *If limited liability companies are listed in Rule 501(a)(3), should we further amend our rules to specifically include managers of limited liability companies as executive officers under Rule 501(f)? Instead of all managers, should we limit this provision to managing members, which would preclude third-party managers from being considered executive officers under Rule 501(f)? Alternatively, should we include managers of limited liability companies in Rule 501(a)(4)'s list of insiders who may qualify as accredited investors?*

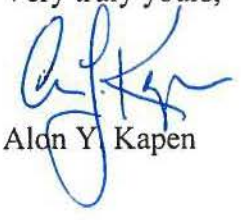
The Commission should expand the definition of executive officer to include any manager of a manager-managed limited liability company.

Rule 501(c)(4) provides that "any director, executive officer, or general partner" of the issuer is deemed an accredited investor with respect to securities issued by such issuer. These "insiders" are deemed to not need the protections provided by registration because their positions with the issuer provide them with access to information about the issuer and the securities offered (theoretically, all of the information that would otherwise be disclosed in a registration statement).

Limited liability companies are required to designate in their constituent documents (certificate of formation, operating agreement, etc.) whether their affairs are to be managed by their members or one or more managers. In particular, LLC operating agreements typically go into detail about what decisions are within the scope of their authority. Because an LLC and its members have the freedom of contract to determine the scope of the LLC's managers' authority and thus the extent to which such authority resembles that of a corporate officer, the Commission should expand the definition of "executive officer" to include LLC managers in manager-managed (and not member-managed) LLCs. It could be argued that shares offered and sold to such managers in manager-managed LLCs are not securities under the seminal *Howey* test, inasmuch as the purchasers' expectation of profit derives from their own efforts (and those of their fellow managers) and not on the efforts of others. In any event, just like corporate directors and executive officers, managers of manager-managed LLCs arguably do not need the protection of disclosure through registration and thus should be deemed accredited investors.

We hope these comments are helpful to the Commission as it deliberates this proposal and the comment file.

Very truly yours,



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