

January 15, 2020

U.S. Securities and Exchange Commission  
Attention: Vanessa A. Countryman, Secretary  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File no. S7-25-19  
Amending the "Accredited Investor" Definition  
Release no. 33-10734

Ladies & Gentlemen:

Thank you for providing the opportunity to comment on the Commission's release no. 33-10734, Amending the "Accredited Investor" Definition (the "Release").

On behalf of clients including issuers, investors, investment advisers and broker-dealers, we urge the Commission to amend the definition of "accredited investor" contained in rule 501(a) under the Securities Act of 1933<sup>1</sup> to include any investor (whether a natural person, a company or a trust) that is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940<sup>2</sup> at the time of the sale of the securities to that investor.

Most qualified purchasers, it is true, are already accredited investors under the current definition. However, not all of them are. We believe that all of them should be. The protections of the Securities Act's registration process are not more necessary (and may be less necessary) for the protection of qualified purchasers than they are for the protection of accredited investors who are not qualified purchasers. Amending rule 501(a) to include qualified purchasers as a category could only benefit issuers, prospective investors, and ancillary participants in exempt offerings by providing a degree of clarity that simplifies planning, analysis, and transaction execution, thus reducing costs. It would be consistent with the policies underlying Section 4(a)(2) of the Securities Act and Regulation D as described by the Commission in Section II.A. of the Release. It would advance the Commission's goal, expressed in Section I of the Release, of harmonizing the exempt offering framework under the Securities Act. Finally, it would be similar to what the Commission did in 1998 when it amended<sup>3</sup> the definition of "qualified client" contained in rule 205-3 under the Investment Advisers Act of 1940<sup>4</sup> to include qualified purchasers as a category of qualified client.<sup>5</sup>

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Should the Commission consider this proposal to be too broad, then in the alternative we urge the Commission to amend the definition of “accredited investor” in rule 501(a) to include, at least, any trust that is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act at the time of the sale of the securities to that trust.

We urge this because a common type of investor which, although a qualified purchaser, is not an accredited investor as currently defined, is an irrevocable trust each of whose settlors and trustees is a natural person and a qualified purchaser,<sup>6</sup> but which has total trust assets of less than \$5 million.<sup>7</sup> Such a trust is deemed sophisticated enough to invest in a private fund that is exempt from registration under the Investment Company Act pursuant to section 3(c)(7) of that Act.<sup>8</sup> It is deemed sophisticated enough to be charged performance fees by an investment adviser because of rule 205-3 under the Investment Advisers Act.<sup>9</sup> But Regulation D in its current form deems that trust to be not sophisticated enough to invest in any exempt offering whose issuer has chosen to limit participation to accredited investors, unless the trust had been rather laboriously constructed in view of certain tax, bankruptcy and other laws so as to be accredited under the Staff’s published interpretations of paragraph (8) of rule 501(a).<sup>10</sup> Few trusts are so constructed, leading to this anomalous result.

We therefore respectfully request the Commission to define “accredited investor” to include any qualified purchaser, or at least, any trust that is a qualified purchaser. We very much appreciate the opportunity you have given us to supply these comments.

Gratefully yours,



Gerald A. Monroe

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<sup>1</sup> 17 CFR § 230.501(a).

<sup>2</sup> 15 U.S.C. 80a-2(a)(51)(A).

<sup>3</sup> SEC release no. IA-1731, 63 F.R. 39022 (July 21, 1998).

<sup>4</sup> 17 CFR § 275.205-3(d)(1).

<sup>5</sup> 17 CFR § 275.205-3(d)(1)(ii)(B).

<sup>6</sup> Cf. 15 U.S.C. 80a-2(a)(51)(A)(iii).

<sup>7</sup> Cf. 17 CFR § 230.501(a)(7).

<sup>8</sup> 15 U.S.C. 80a-3(c)(7)(A).

<sup>9</sup> 17 CFR § 275.205-3(d)(1).

<sup>10</sup> See, e.g., SEC Compliance and Disclosure Interpretations, <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>, question 255.24; Herbert S. Wander, SEC No-Action Letter, 1983 SEC No-Act. LEXIS 3005 (November 25, 1983); Herrick, Feinstein LLP, SEC No-Action Letter, 2001 SEC No-Act. LEXIS 24 (January 5, 2001).