

October 23, 2019

Mr. Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street Northeast
Washington, D.C. 20549

Dear Chairman Clayton:

We write today regarding the scope of the U.S. Securities and Exchange Commission's (SEC's) definition of a qualified institutional buyer (QIB) under Rule 144A.

As you know, Rule 144A provides a safe harbor for the unregistered resale of certain securities, meaning these securities are exempt from registration requirements under the Securities Act of 1933. Because these securities are exempt, only well-versed investors known as QIBs are eligible to purchase them on resale.

On June 26, 2019, the SEC issued a concept release seeking public comment on ways to improve exempt securities offerings and expand investment opportunities¹. Therefore, we write to draw your attention to a specific issue adversely affecting our states that could be alleviated by clarifying the definition of a QIB. SEC regulations describe that "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" qualifies as a QIB². Some states take advantage of this definition by investing state pension and retirement funds in Rule 144A securities. However, because of the limited scope of this definition, states oftentimes cannot invest other assets in these exempt securities.

We wholeheartedly agree that only sophisticated investors should be able to access exempt securities in order to maintain the soundness of the institutional resale market. With that being said, certain changes could responsibly be made to the QIB definition that would give states greater latitude to invest more of their funds in exempt securities, yet not compromise the market. Therefore, as the SEC continues evaluating securities offering exemptions, we encourage you to specifically review the definition of a QIB and consider clarifying that other state investment funds beyond employee-benefit plans qualify to purchase Rule 144A securities. Allowing states to invest more of their funds in these exempt securities could not only help them diversify their investments, but it could also unlock an additional source of liquidity for the institutional resale market.

Thank you for your attention to this matter. We look forward to hearing from you.

¹ <https://www.federalregister.gov/documents/2019/06/26/2019-13255/concept-release-on-harmonization-of-securities-offering-exemptions>

² 17 C.F.R. § 230.144A(a)(1)(i)(D)

Sincerely,



JOHN THUNE
United States Senator



JOHN BARASSO, M.D.
United States Senator



M. MICHAEL ROUNDS
United States Senator



MICHAEL B. ENZI
United States Senator