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# STATE OF UTAH

## OFFICE OF THE STATE TREASURER

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February 26, 2020

Attention Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: File Number S7-25-19**

Dear Ms. Countryman,

Thank you for the opportunity to comment on the proposed changes to the definition of “qualified institutional buyer” (QIB) under Rule 144A. By expanding the list of entities eligible to be QIBs, certain governmental entities responsible for the management of funds, like local government investment pools, would benefit from the ability to further diversify their portfolios and enhance risk-adjusted returns by including additional types of investments in their portfolios. The proposed changes would also benefit issuers and investors by providing greater depth in the capital markets.

The Utah Office of State Treasurer (Office) does not qualify as a QIB under current rules, although the office is responsible for managing an \$18 billion local government investment pool (LGIP) known as the Public Treasurers’ Investment Fund (PTIF). Under current Rule 144A, the office is not allowed to purchase commercial paper issued by many of the same corporate issuers from which it allowably purchases senior unsecured bonds. The Office can only purchase commercial paper issued under Section 3(a)(3), which is relatively rare, compared to commercial paper issued under Section 4(a)(2). The proposed changes would provide additional opportunities for issuer diversification by allowing the Office to purchase private placement corporate bonds.

The Office also manages approximately \$900 million in long-term investment portfolios that would also benefit from the proposed changes, likewise providing the opportunity to invest in additional asset classes that are predominantly structured as private investments.

Comments to specific questions regarding the changes to the definition for QIBs are provided below. We eagerly await these changes and are wholeheartedly supportive of them.

### Question 63

- **Should we add a new paragraph (J) to Rule 144A(a)(1)(i) to expand the list of entities eligible to be qualified institutional buyers to include institutional accredited investors under Rule 501(a) that meet the \$100 million in securities owned and invested threshold and that are an entity type not already included in paragraphs 144A(a)(1)(i)(A) through (I) or 144A(a)(1)(ii) through (vi)?**
  - Answer – Yes, as a state governmental entity with investment management responsibilities for almost \$19 billion in assets, we have the expertise and understanding necessary to invest in securities sold under Rule 144A. Our investments would be greatly advantaged through increased diversification and marginally enhanced yield by expanding the pool of available securities to include corporate bonds and commercial paper available only to QIBs. Currently the criteria for QIBs in 144A (a)(1)(i) does not include an entity type that includes governmental entities investing pooled state and local government assets.
- **Are there any types of entities that should be included under new paragraph (J) that would be excluded because of the limitation that these additional entity types may not include entities otherwise listed in existing paragraphs (a)(1)(i) through (vi) of Rule 144A?**
  - Answer – It is our understanding that the addition of paragraph (J) would not provide additional limitations on entities that otherwise qualify under existing paragraphs (a)(1)(i) through (vi).
- **To the extent that there is overlap between the types of entities listed in the accredited investor definition and those listed in the qualified institutional buyer definition, would adding new paragraph (J) render existing paragraphs (A) through (I) under Rule 144A(a)(1)(i) unnecessary?**
  - Answer – Perhaps, but we do not believe this creates any material risk.

### Question 64

- **Are there certain types of entities that are less likely to have experience in the private resale market for restricted securities and may have more need for the protections afforded by the Securities Act's registration provisions?**
  - Answer - We are not aware of any entities that otherwise meet the criteria of Accredited Investors and Qualified Institutional Buyers that should be excluded from participation and should require the additional protections afforded through the registration provisions.
- **Are there concerns about amending the definition of “qualified institutional buyer” to encompass an expanded list of entities in Rule 144A(a)(1)(i) that meet the \$100 million in securities owned and invested threshold?**
  - Answer- We have no concerns with the contemplated expansion of the list of entities. In fact, we consider it a welcome and prudent change.

### Question 65

- **If we were to expand the definition of qualified institutional buyer in this manner, would there be a greater likelihood of restricted securities sold under Rule 144A flowing into the public market?**

- Answer – We do not believe that expanding the definition of QIBs would materially increase the likelihood of additional 144A securities flowing into the public market because sales of 144A securities would still generally require the services of regulated broker dealers who understand the restrictions on these securities and are subject to audit and penalties for non-compliance.
- **If so, should we consider additional modifications to Rule 144A to address this possibility?**
  - Answer – Not applicable.

If you require any clarification regarding these comments, please contact me directly by phone or email.

Sincerely,



David C. Damschen, CTP  
Utah State Treasurer

[Redacted]  
[Redacted]