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March 9, 2020

VIA ELECTRONIC SUBMISSION

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

Re: Amending the "Accredited Investor" Definition, Nos. 33-10734; 34-87784; File No. S7-25-19 (Dec. 18, 2019)

Dear Ms. Countryman:

We are submitting this letter on behalf of the Private Investor Coalition ("PIC") in response to Release Nos. 33-10734; 34-87784 (the "Proposing Release") in which the Securities and Exchange Commission (the "SEC") proposed certain amendments to the definition of "accredited investor" under Regulation D of the Securities Act of 1933 (the "Securities Act").

PIC is a nationwide organization consisting of single family offices ("SFOs") who share a common interest in public policy issues impacting the SFO community. PIC describes itself as the recognized authority on legislative and regulatory issues affecting SFOs and as the primary resource for disseminating information on legislative, regulatory and compliance issues impacting SFOs.

PIC supports the SEC's goal to amend the accredited investor definition as "an initial step in a broader effort to consider ways to harmonize and improve [the exempt offering] framework" and to make the "exempt offering framework, as a whole, … consistent, accessible, and effective for both issuers and investors."[1] Specifically, PIC applauds the SEC for adding "family office" and "family client" prongs to the definition of "accredited investor." This is consistent with the recommendations PIC made in its comment letter in response to the SEC's Concept Release on Harmonization of Securities Offering Exemptions.[2]

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1 Proposing Release at pp. 5 – 6.

2 SEC Release No. 33-10649 (June 18, 2019) (the "Concept Release"). See Comment Letter from Kenneth J. Berman, Debevoise & Plimpton LLP (on behalf of Private Investor Coalition) (Sep. 24, 2019), available at https://www.sec.gov/comments/s7-08-19/s70819-6190593-192463.pdf (the "PIC Concept Release Comment Letter").

SFOs that rely on Rule 202(a)(11)(g)-1 (the "Family Office Rule") under the Investment Advisers Act of 1940 (the "Advisers Act") ("Family Offices") or their clients ("Family Clients") frequently acquire securities in exempt offerings under the Securities Act, including interests in private equity funds and hedge funds that rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (the "Investment Company Act"). As discussed below, PIC supports the proposed revisions to the "accredited investor" definition to permit certain Family Offices and Family Clients (the "Proposed Family Office Amendments") to more easily participate in offerings relying on Regulation D under the Securities Act. PIC encourages the SEC to adopt as final the Proposed Family Office Amendments without revision. PIC also believes that the same approach should be extended to the definition of "qualified institutional buyer" in Rule 144A under the Securities Act.

PIC Supports the Proposed Addition of Certain Family Offices and Family Clients to the Definition of "Accredited Investor"

Under the Proposed Family Office Amendments, the "accredited investor" definition would include:

- any Family Office
    - with assets under management in excess of $5 million,
    - that is not formed for the specific purpose of acquiring the securities offered, and
    - whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such Family Office is capable of evaluating the merits and risks of the prospective investment and
- any Family Client of such a Family Office.

PIC strongly supports the Proposed Family Office Amendments. PIC agrees with the SEC that "the policy rationale for adopting the [Family Office Rule] also supports" amending the definition of "accredited investor" for Family Offices and their Family Clients.[3] As we noted in the PIC Concept Release Comment Letter, a Family Office and its managers are controlled by or for the family they serve, are financially sophisticated and manage significant assets. Therefore, PIC believes that certain protections otherwise afforded to less sophisticated financial consumers by federal securities laws are not necessary to protect the Family Office or its clients. In particular, a Family Office and its Family Clients clearly are as financially sophisticated as other persons and entities that meet the current definition of "accredited investor."

[3] Proposing Release at 62.

We believe that this approach is also consistent with the legislative intent underlying the Securities Act of 1933, as amended. This legislative intent was reflected in H.R. 3972, The Family Office Technical Corrections Act (the "FOTCA"), which would have enacted a substantially similar addition to the definition of accredited investor. The FOTCA was passed by the United States House of Representatives on October 24, 2017 by voice vote after having been passed out of the House Financial Services Committee by unanimous recorded vote. In approving this legislation, the House Financial Services Committee found that "[t]he public policy to support this exclusion is based on the notion that members of a family will protect each other and that the investor protections of the Advisers Act do not need to apply in this unique situation. This policy rationale should also extend to treat family offices as accredited investors under [Rule 506]."[4]

Responses to Specific Requests for Comment

The Proposing Release asked several questions concerning the Proposed Family Office Amendments. PIC provides the following responses to those questions. The question numbers are those set forth in the Proposing Release.

34. Should family offices and their family clients qualify as accredited investors?

The primary underpinning of the "accredited investor" regulatory scheme is to ensure that the investor has the knowledge and sophistication to understand the investment and its risks. A Family Office is generally established for the purpose of staffing the Family Office with investment, legal, accounting and other professionals who can help the family evaluate investments, understand and implement general portfolio construction and risk management and execute transactions. Many family members, but not all, are sophisticated investors. However, because the professionals of the Family Office are hired, in part, specifically for their investment sophistication, and that sophistication is applied exclusively to investments made by the Family Office and its Family Clients, PIC believes that Family Offices and their Family Clients should qualify as accredited investors. In essence, the Proposed Family Office Amendments allow a Family Client to piggyback on the sophistication of the Family Office for purposes of meeting the accredited investor requirement as long as the Family Office is in fact involved in the investment decision-making process for the particular investment in question.

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[4] U.S. House of Representatives, 115th Congress, 1st Sess., H.R. Rep No. 115-362, at 2 (2017). A copy of this report is attached to this letter.

35. Do the proposed new categories for these investors have the proper scope? If not, what parameters would be more appropriate? If yes, which ones and why? If not, why not? Are we correct that all or most family offices and their clients would qualify as accredited investors under the proposed amendments?

PIC believes that the Proposed Family Office Amendments are properly scoped and recommends adoption of these Amendments as proposed. The Proposed Family Office Amendments limit the expansion of the accredited investor definition to cover Family Offices and their Family Clients. Both terms are well defined and have been successfully implemented since their adoption as part of the Family Office Rule in 2011. PIC believes that all or most Family Offices who currently meet the requirements of the Family Office definition under the Family Office Rule will also qualify as accredited investors. We believe adopting any more restrictive conditions in defining the types of family investment vehicles that can rely on the Proposed Family Office Amendments would create confusion, increase the regulatory compliance burden for Family Offices and defeat the underlying purposes of the Proposed Family Office Amendments.

36. Should we require that the purchase be directed by a person who has the requisite knowledge and experience in financial and business matters? How would issuers assess this in practice?

PIC believes this is an appropriate requirement. As stated above, the underlying premise of the Proposed Family Office Amendments is that the Family Office and its professionals have the knowledge, experience and sophistication to apply to investment decisions, even though a Family Client may not. In those cases where a Family Client does not separately have the requisite sophistication, the Family Client should not be able to fall within the "accredited investor" definition unless the Family Client relies on the Family Office for investment support with respect to the investment in question.

Issuers can assess this requirement through certifications from the Family Office itself and normal Know-Your-Client (KYC)/customer due diligence, similar to certifications and KYC that investors must go through today to verify their "accredited investor" status. Furthermore, the proposed Family Office and Family Client conditions to the "accredited investor" definition are structurally similar to the bank category in Rule 501(a)(1) when the bank is acting in its fiduciary capacity and the trust category in Rule 501(a)(7) which requires that the purchase of a trust be directed by a sophisticated person as described in Rule 506(b)(2)(ii).

37. Would it be appropriate to impose a financial threshold for a family office to qualify as an accredited investor as proposed? Should we also impose a financial threshold for a family client to qualify? In either case, what is the appropriate threshold? For instance, should there be a minimum investment amount or minimum assets under management?

PIC believes the $5 million minimum assets under management threshold is warranted to prevent market participants from claiming to have formed a Family Office as an artifice for purposes of satisfying the proposed new accredited investor category. However, imposing a financial threshold for Family Clients defeats the basic purpose of the Proposed Family Office Amendments. In short, the Proposed Family Office Amendments are designed to permit a Family Client who would not meet the minimum financial threshold under the accredited investor definition to nonetheless qualify as an accredited investor if the Family Office serving such Family Client meets the financial threshold ($5 million in assets under management) and relies on the Family Office's sophistication, knowledge and experience with respect to the investment in question.

38. Are there specific categories of family clients that should be excluded? For instance, should the proposed rule exclude anyone who is not a "family member," as defined in the family office rule? Should a family client qualify as an accredited investor if it becomes a "former family client," as defined in the family office rule?

PIC does not believe any category of Family Client should be excluded from the definition of accredited investor under the Proposed Family Office Amendments. The Family Office provides investment support to many entities and trusts that are not a "family member" but that benefit family members. Many of these entities and trusts are not themselves accredited investors. Limiting the applicability of the Proposed Family Office Amendments to "family members" only would essentially gut the main purpose of the Proposed Family Office Amendments because many family members invest through various types of entities that fall within the definition of Family Client (e.g., LLCs, partnerships, trusts whose owners are limited to Family Clients). In addition, the term Family Client also includes "key employees" (as such term is defined in the Family Office Rule). Allowing key employees of a Family Office to be treated as accredited investors (subject to the conditions of the Proposed Family Office Amendments) would be consistent with the proposed extension of accredited investor status to "knowledgeable employees" of private funds.

PIC further notes that the Family Office Rule provides sufficient limitations on the types of entities that are considered Family Clients and that taking different approaches between the Family Office Rule and the definition of "accredited investor" would be contrary to the SEC goal of harmonization of the federal securities laws.

PIC strongly believes that all Family Clients should be included within the Proposed Family Office Amendments. Carving out a "former family member," for example, would undermine the ability of many Family Offices to serve their existing Family Clients as permitted under the Family Office Rule. Many former family members are fully integrated into the investment processes of the Family Office and requiring a Family Office to treat them differently than other Family Clients creates increased regulatory complexity without any seeming benefit.

39. Rule 202(a)(11)(G)-1 under the Advisers Act deems a person who receives assets upon the death of a family member (or other involuntary transfer from a family member) to be a family client ("a beneficiary") for only one year following the involuntary transfer. Should such a beneficiary qualify as an accredited investor during that year if the beneficiary would not otherwise qualify?

Yes. This involuntary transfer transition rule was designed to give the Family Office a year to unwind the relationship with a beneficiary if the beneficiary would not otherwise qualify as a Family Client. Such transitioning could include divestment and reinvestment decisions. Carving out a new "beneficiary" from the accredited investor definition could potentially prevent or complicate the orderly liquidation or transition of the new beneficiary from its status as a Family Client. If not a Family Client, the new "beneficiary" would only benefit from at most a one-year, temporary affiliation with the Family Office until such beneficiary is transitioned out of the Family Office.

PIC Believes that the Definition of Qualified Institutional Buyer Should Include Family Clients

PIC believes that the same approach taken with respect to Family Offices and Family Clients under the Rule 501 should also be taken under Rule 144A's definition of "qualified institutional buyer." The proposed change to the definition of "qualified institutional buyer" would pick up Family Offices (under proposed Rule 501(a)(12)) but would not pick up the Family Clients of such Family Offices. Similar to the proposed treatment under the accredited investor definition, Family Clients should be able to "piggyback" on the sophistication, resources and investment experience of the Family Office for purposes of meeting the qualified institutional buyer definition.

Therefore, PIC believes that the definition of "qualified institutional buyer" should include any Family Office that owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with that Family Office and any Family Client of such Family Office.

As the SEC notes, the definition of "qualified institutional buyer" is intended to focus on a "class of investor that can be conclusively assumed to be sophisticated and in

little need of the protection afforded by the Securities Act's registration provisions."[5] A Family Office with $100 million in discretionary assets under management would have "the financial sophistication and access to resources such that they do not need the protections of registration under the Securities Act."[6] Furthermore, a Family Office's relationship with its Family Clients is unique and, as discussed above, has been recognized by both the SEC and Congress as not requiring the protections of the federal securities laws.[7]

Further Harmonization of the Federal Securities Laws

As discussed in the PIC Concept Release Comment Letter, PIC believes that the SEC should take further steps to harmonize the manner in which the federal securities laws apply to Family Offices and Family Clients. PIC believes that adopting the Proposed Family Office Amendments will be an important first step in accomplishing that objective since they would substantially harmonize the treatment of Family Offices and Family Clients with respect to Regulation D under the Securities Act and the Advisers Act.

However, PIC believes that the SEC should take steps to further harmonize the treatment of Family Offices and Family Clients in order to facilitate investments by sophisticated Family Offices (and their Family Clients) in exempt offerings and to facilitate capital formation.

In particular, PIC believes that the SEC should also adopt a new rule under the Investment Company Act to include a new category of "qualified purchaser" for purposes of Section 3(c)(7) that would parallel the new categories for Family Offices and their Family Clients under the Proposed Family Office Amendments.[8] As discussed more fully in the PIC Concept Release Comment Letter, PIC believes that the policy rationale for the Proposed Family Office Amendments applies equally to the addition of a new category for Family Offices and their Family Clients in the definition of "qualified purchaser" under the Investment Company Act.

Furthermore, as more fully discussed in the PIC Concept Release Comment Letter, PIC believes that the SEC should also provide an exemption from the definition of "investment company" under the Investment Company Act for Family Offices and their Family Clients. Both Congress and the SEC have recognized that family

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5 Proposing Release at fn. 227.

6 Proposing Release at p. 92.

7 See *supra* note 3 and the accompanying paragraph (discussing the SEC's policy rationale for the Family Office and the proposed amendment to accredited investor); note 4 and the accompanying paragraph (discussing Congressional intent).

8 *See* PIC Concept Release Comment Letter.

investment vehicles are not the types of companies that are intended to be subject to the Investment Company Act regulation.[9]

PIC anticipates that it will provide the SEC with additional information concerning these further harmonization recommendations in the near future.

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PIC appreciates the opportunity to comment on the Proposed Family Office Amendments and would be pleased to answer any questions that the SEC or its staff might have concerning its comments.

Respectfully submitted,

Kenneth J. Berman

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[9] *See* PIC Concept Release Comment Letter at fn. 5 (citing Protecting Investors: A Half Century of Investment Company Act Regulation (1992)) and fn. 6 (citing several SEC exemptive orders granted to family investment vehicles).