March 11, 2020

Via email (rule-comments@sec.gov)

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attention: Vanessa A. Countryman, Secretary

Re: Amending the "Accredited Investor" Definition (File Number S7-25-19)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is writing in response to the amendments proposed by the Securities and Exchange Commission (the "Commission") to the definition of "accredited investor" ("AI") in Rule 501 and the definition of "qualified institutional buyer" ("QIB") in Rule 144A, each under the Securities Act of 1933 (the "Proposal").[2] We appreciate the opportunity to provide comments to the Commission on the Proposal.

In our comment letter in response to the Commission's concept release on the harmonization of securities offering exemptions (the "Concept Release"),[3] we offered suggestions for, among other things, possible changes to the AI and QIB definitions. The Proposal reflects consideration of our and others' suggestions, and we are generally supportive of the proposed amendments. In this letter, we suggest some additional changes to both the AI and QIB definitions that we believe would appropriately expand the scope of these definitions, ease compliance burdens, and streamline the revised rules.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate for legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, DC, SIFMA is the US regional member of the Global Financial Markets Association (GFMA).

[2] *Amending the "Accredited Investor" Definition*, 85 Fed. Reg. 2,574 (proposed Jan. 15, 2020).

[3] *Concept Release on Harmonization of Securities Offering Exemptions,* 84 Fed. Reg. 30,460 (Jun. 26, 2019).

1. AI Definition

SIFMA generally supports the Commission's proposed changes to the institutional AI definition, including the addition of a catch-all for all non-enumerated entities with $5 million in investments. As noted in our comment letter on the Concept Release, a catch-all category like that proposed would eliminate existing confusion about the qualifications of certain entities such as sovereigns, native tribes and municipalities.

With respect to the Commission's proposal to allow natural persons to qualify as an AI based on certain professional certifications or designations, we defer to the Commission's judgment as to which certifications or designations are appropriate to demonstrate financial sophistication, but we reiterate our belief, reflected in the Commission's proposed approach, that bright-line tests that are easy to verify are important to minimizing transaction costs and evidentiary burdens.

In addition to the amendments included in the Proposal, we ask the Commission to consider providing that natural persons with $5 million in investments qualify as AIs, as an alternative qualification to the existing net worth and income tests. In proposing a $5 million investment threshold for the entity catch-all discussed above, the Commission expressed the view that the investment test is appropriate as it demonstrates that an entity has investment experience and financial sophistication similar to those of other AIs. We do not see a reason to distinguish entities from natural persons in this regard. We also note that the Commission itself proposed an investment test for the natural person AI definition in 2007,[4] and a 2015 staff report on the AI definition also recommended that the Commission consider using an investments-owned test for natural person AI qualification.[5]

A $5 million investment test is also used for purposes of the natural person qualified purchaser ("QP") definition.[6] While acknowledging the Commission's statement in the Proposal that the QP definition serves a different purpose than that of the AI definition, both are designed to indicate financial sophistication, and we believe the harmonization of the two definitions in this area would be helpful in reducing the burden of confirming AI status for natural persons who are already verified as QPs and therefore have the requisite financial sophistication to merit AI status.

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[4] *Revisions of Limited Offering Exemptions in Regulation D*, 72 Fed. Reg. 45,116, 45,123 (proposed Aug. 10, 2007).
[5] *Report on the Review of the Definition of "Accredited Investor"* (Dec. 18, 2015), available at https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf.
[6] § 2(a)(51)(A)(i) of the Investment Company Act of 1940.

2. QIB Definition

SIFMA also welcomes the proposed expansion of the QIB definition to include a catch-all covering all non-enumerated entities that own and invest at least $100 million of securities of non-affiliated issuers, for the same reasons as we discussed above. In response to Question 63 in the Proposal, SIFMA supports further simplifying the QIB definition beyond what is currently proposed by amending Rule 144A(a)(1)(i) to provide that any entity of a type not listed in paragraphs (a)(1)(ii) through (vi) that meets the $100 million investment test qualifies as a QIB. We suggest this change because we do not see a reason to enumerate specific entities and also include a catch-all when the numerical test is the same for all, and we believe it is clearer to refer simply to any entity rather than to what could appear to be a subset of entities that are subsumed under the term institutional accredited investor.

SIFMA also suggests that the Commission consider amending Rule 144A(a)(1)(iv) to permit both registered investment vehicles and unregistered investment vehicles to aggregate their investments to meet the $100 million threshold, provided that in either case they are advised by a registered investment adviser. The ability to aggregate is currently available only to registered investment companies, but we see no reason to distinguish between registered and unregistered vehicles so long as the entity directing the investments is an investment adviser registered with the Commission. We believe this is the more pertinent inquiry than whether the vehicle itself is registered. This change would significantly ease the burden of verifying QIB status in situations that currently require fund-by-fund certifications.

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If you have any questions regarding SIFMA's views or require additional information, please do not hesitate to contact the undersigned at 202-962-7300, or our counsel on this matter, Leslie N. Silverman or Jeffrey D. Karpf of Cleary Gottlieb Steen & Hamilton LLP, at 212-225-2000.

Very truly yours,

Aseel M. Rabie
Managing Director and Associate General Counsel