

VIA E-MAIL SUBMISSION

March 13, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

Re: **Amending the “Accredited Investor” Definition; File No. S7-25-19**

Dear Ms. Countryman:

The author is an upper-class student at the Hofstra University Maurice A. Deane School of Law and the Hofstra University Frank G. Zarb School of Business.¹ The author greatly appreciates the opportunity to Comment on this momentous issue. An amendment to the definition of “accredited investor” will permanently alter our private capital markets. The author praises the Securities and Exchange Commission (“Commission”) for proceeding in accordance with section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The author embraces the reexamination of ideas put forth in the 2015 Staff Report.³ The Commission’s prioritization of the proposal referenced above will receive responses from sophisticated industry professionals and educators which share in this author’s gratitude for the Commission’s request for Comment.⁴

This Comment Letter will answer pointedly specific requests for Comment and discuss the value in preserving notions emanating from the current definition of “accredited investor.” The author respectfully suggests the 1982 Commission only considered net worth in its initial definition of “accredited investor.” The definitions in 17 CFR 230.215 (“Rule 215”) and 17 CFR 230.501 (“Rule 501”) display one factor of qualification for an individual to be an “accredited investor.” The author suggests other factors found in Section 2(a)(15) of the Securities Act of

¹ The author completed undergraduate studies at Colgate University and is pursuing a joint JD/MBA degree at Hofstra University with coursework in accounting, business organizations, economics, financial reporting, managerial finance, securities regulations, and quantitative analysis. The author has interned with an investment management firm, the City of Newark Law Department, and has experience working in corporate law. All views expressed herein are purely personal to the author.

² Pub. L. No. 111-203, 124 Stat. 1376 (2010).

³ See Report on the Review of the Definition of “Accredited Investor,” at 43-46 (Dec. 18, 2015) (“2015 Staff Report”), available at <https://www.sec.gov/files/review-definition-of-accredited-investor-12-18-2015.pdf>.

⁴ The Commission Proposal (“Amending the “Accredited Investor” Definition,” Release Nos. 33-10734; 34-87784; File No. S7-25-19, (Dec. 18, 2019) (“Proposal”).

1933 (“Securities Act”) should be considered as qualification factors in the “accredited investor” definition.⁵

The first section will offer up ideas for changing the “accredited investor” definition. The author feels the current and proposed definition criteria revolving around wealth is unsatisfactory. The second section will include the consideration of alternative qualifications, such as educational degrees as qualification for an individual to be an “accredited investor.” The author wishes to express gratitude for being given ample time to consider the proposal and leave directed Comments.

I. Definitional Challenges for the Individual

The author holds that we should not maintain the current financial thresholds in the definition of “accredited investor.” As a secondary effect of the author’s proposal, the need to index thresholds to inflation on a going-forward basis will become less pivotal. The Proposal’s purpose in improving the definition is to identify investors with “knowledge and expertise to participate in our private capital markets...” allowing more individuals to qualify as an “accredited investor.”

It is essential to observe the root of the “accredited investor” definition from Section 2(a)(15) of the Securities Act. The revered Congress of 1933 put forward a series of factors, which the author views as a disjunctive test for qualification as an “accredited investor.” The definition states an “accredited investor” is qualified by considering a list of factors. Such factors include “financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management.” The author suggests other factors be used along with net worth when determining qualification as an “accredited investor.” The author feels the Commission has chosen net worth as a locus for regulation without its connection to the other factors. Under Rule 215 and Rule 501, the Commission has put forth a definition. An individual qualifies as an “accredited investor” if that “natural person whose individual net worth... exceeds \$1,000,000.”⁶ The Proposal identifies this value as criticized on the basis of inflation and the method of accounting. The author takes no particular stance and is amenable to arguments for calculation methods of net worth.

1. Financial Sophistication

The drafters of the Securities Act recognized the importance of protection for investors. The author understands the reasoning that financial sophistication has a bearing on the level of protection required. The contributions toward financial sophistication are what must be weighed.

⁵ 15 U.S.C. 77b *et seq.*

⁶ The author takes no issue with the Proposal’s allowance of spousal pooling or the addition of “spousal equivalent.” The 2015 Staff Report had previously addressed this issue and the Commission has answered concerns in the Proposal adequately. The author has chosen not to discuss entity considerations in this Comment Letter, but invites any readers to draw inferences from the discussion of the individual for application to family offices and their family clients. The author suggests that qualification on an individual basis creates an unequivocal answer for “accredited investor” consideration.

This factor can be quantified by a combination of other factors. A level of financial sophistication can be drawn from an individual's profession, education, or tangible experience in the private capital markets. It is the author's position that financial sophistication can be shown in various ways, with no singular method being superior. Demonstration through alternative qualifications will be explored in subsequent sections of this Comment.

2. Net Worth

In her public statement, Commissioner Allison Herren Lee addresses a concern with the increasing amount of wealth concentrating in older households.⁷ The author agrees that concern is warranted under the current Rule 215 and Rule 501 definition of "accredited investor." Rule 215 and Rule 501 should be revised to reflect language in Section 2(a)(15) of the Securities Act. The author proposes the factors listed in the Securities Act should be weighed disjunctively to measure an individual's qualification. Net worth could remain a factor along with the others found in the definition of "accredited investor" in Section 2(a)(15) of the Securities Act.

A large net worth should not be considered indicative of high levels of sophistication for the other factors. The notion that wealth presumes a high level of sophistication and market experience is incorrect. It is the author's opinion that family names in connection of wealth have been sought after in various market ventures to bring a level of qualification to the venture. This practice may have been true in the past but the focus on net worth in modern times is misguided. A New York Yankee surely meets the net worth requirements pursuant to Rule 215 and Rule 501. To wit, anyone could acquire a large enough net worth to qualify as an "accredited investor" without satisfying any other factor listed in the Securities Act. The circumstances surrounding one's net worth should be analyzed when qualifying an individual as an "accredited investor." One who increases net worth through business acumen would likely have strong evidence to support the other factors, compared to a lottery winner.

II. Alternative Qualifications

The remaining factors of financial knowledge, experience in financial matters, and amount of assets under management will be explored in connection with relevant topics from the Proposal. The author does not dispute that a level of financial knowledge and experience in financial matters may be demonstrated by a combination of others factors, along with certifications and degrees. That level of financial knowledge must meet some level of minimum requirement. The amount of assets under management is an easily quantifiable qualification. The author suggests the amount of assets as the least influential factor. Professional certifications, educational degrees, and professional experience each have value, but not each as means for qualifying as an "accredited investor."

⁷ See Statement on the Proposed Expansion of the Accredited Investor Definition (Dec. 18, 2019), available at <https://www.sec.gov/news/public-statement/statement-lee-2019-12-18-accredited-investor>.

1. Professional Certifications

The author concurs with the Commission that certain professional certifications and designations, or other credentials, should qualify an individual as an “accredited investor.” The Proposal recognizes these individuals may not meet the net worth thresholds, nonetheless qualify. These certifications should act as evidence in support of the factors found in Section 2(a)(15) of the Securities Act. The nature of which a certification is obtained is of no consequence to the author. If an individual possesses a certification such as the CFA, then this information may be taken into account to demonstrate mastery in financial sophistication and knowledge.

2. Educational Degrees

Reviewing the myriad of degrees available would be a drain on the Commission’s resources. Education is more prejudicial than probative as a measurement of qualification for an “accredited investor.” It is reasonable that a CPA may be more or less qualified than an individual with an MBA. No single determining factor will tip the scale in favor of the CPA or MBA being qualified as an “accredited investor.” The coursework individuals accomplish in pursuit of educational degrees will likely have an impact on qualification. However, the nature of the qualification stems from the financial knowledge that one acquires from the education experience. The author finds it reasonable to assume a level of financial knowledge is connected with various educational degrees, but section 2(a)(15) of the Securities Act does not list education in its set of factors. The Financial Industry Regulatory Authority (“FINRA”) operates “BrokerCheck,” a service used to research financial brokers.⁸ BrokerCheck lists a broker’s work experience, passed examinations, and licenses. If the need for education was apparent, it is likely FINRA would have included an educational background with the BrokerCheck service in order to create a safe environment for investors. The author sees no reason for the individual to make a showing of education for qualification, when our institutions do not ask that of the Series 7 holder.

The development of an “accredited investor” examination is favored by the author. Such an exam could be administered as a capstone test for an educational degree or professional certification. The Proposal suggests exams such as the Series 7 and other equivalent examinations act as satisfactory qualification. If significant findings indicate these exams are satisfactory, then the author takes no issue in allowing the exams to qualify individuals who pass the exam to be defined as an “accredited investor.” An examination would allow all those interested in qualifying an opportunity to do so. The author would accept the use of the Securities Industry Essentials Examination (“SIE Exam”) as means of qualifying credentials if the exam is deemed to be an effective gauge of knowledge of the securities industry. A parallel can be drawn between the real estate license process and a process involving the SIE Exam. Passing this examination may be indicative of the bare minimum essentials for an individual to qualify as an “accredited investor,” not as a showing that an individual is qualified as a broker. This examination process would contribute toward multiple factors, indicating qualification. An individual given the opportunity may demonstrate sophistication, knowledge, and experience

⁸ BrokerCheck by FINRA, *available at* <https://brokercheck.finra.org/>.

while lacking net worth and assets under management. As a disjunctive test, the factors in Section 2(a)(15) of the Securities Act will help those that do not meet the financial thresholds requirement of the current definition. The author does not see value in applying an examination process to entities.

3. Professional Experience

Many vehicles exist through which an individual may demonstrate professional experience. An individual's profession is proof enough, but the author is not satisfied with using profession as an effective gauge of qualification. The current Rule 215 and Rule 501 definition draws an arbitrary line when weighing profession as a qualification. Individuals may earn vastly different income while performing the same qualifying job. The author is dissatisfied with the notion that certain qualified individuals will always be limited by their financial circumstances.

FINRA has published the New Account Application Template ("Application") online.⁹ This brokerage account form is provided as a resource to firms when they design or update their new account forms. A qualified individual would be able to demonstrate capability by expertly navigating the Application. FINRA along with industry professionals contributed to language found in the Application. It is likely a qualified person could be identified by the choices indicated in the Application. An individual indicating a risk tolerance level of moderately aggressive, with over five years of experience in the market, in combination with over fifteen transactions per year, would likely contribute to individual's display of financial sophistication.

Conclusion

The author commends the Commission for its persistence in addressing this matter via Comment period. It is a privilege to operate in our private capital markets and the author appreciates the Commission's dedication to best regulation. The 1982 Commission's sole inclusion of net worth in its initial definition of "accredited investor" was a step in the right direction. Amending the "accredited investor" definition from net worth to the factors described above is the next step. Rule 215 and Rule 501 demonstrate how one of the factors found in Section 2(a)(15) of the Securities Act can be explored. The author respectfully suggests that the statute's authority is best exploited by considering the factors listed as a disjunctive test. Those factors would illustrate relevant considerations to an individual's qualification as an "accredited investor."

The undersigned thanks the Securities and Exchange Commission for the opportunity to share the thoughts included herein.

Sincerely,

Michael Gargiulo

⁹ The New Account Application Template, *available at* <https://www.finra.org/compliance-tools/new-account-application-template>.