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March 16, 2020

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

Re: Amending the "Accredited Investor" Definition;
Release Nos. 33-10734 and 34-87784; File No. S7-25-19

Dear Ms. Countryman:

Thank you for the opportunity to comment on the above-referenced Release. I have practiced securities law for the entire time that Regulation D has been in effect, and have represented parties in several dozen Rule 506 offerings, nearly all of which were accredited-only offerings. During that period I have witnessed the benefits to issuers, and society at large, from the rise of organized angel capital groups as an important source of funding for early-stage companies. That phenomenon owes much to the availability of a simple, nationwide safe-harbor exemption that, since 1997, has preempted the various (and varying) state registration exemption regimes.

It is in the nature of early-stage investing that most angel investments in startup companies result in losses. Even so, post-failure legal challenges from accredited investors are few and far between. Angel investors understand that investing in startups is a risky endeavor, and most protect themselves as best they can through screening of investments, negotiation of contractual preferences and rights, limiting their dollar exposure, and diversifying their investments. In my view, these individual, market-driven protections have proven far more efficacious than the disclosure-content mandates and (in some states) formulaic "fairness" standards of the exemptions that Rule 506 displaced.

I applaud the Commission's consideration of a range of proposals that would update and liberalize the accredited investor definition. The following are some suggestions and comments:

1. Rule 506(c) allows for third-party validation of accredited investor status – a sensible and potentially very useful approach that could be improved if the definition of an individual accredited investor were more susceptible to verification. The "net worth" standard in current Rule 501(a)(5) is difficult to verify except in cases where the third-party is confident that it has intimate knowledge of the individual's (or couple's) borrowings. The "income standard" in current Rule 501(a)(6) is easier to verify but still requires the third party to feel comfortable with a written representation from the individual that he or she "has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year." My suggestion would be to add a third test, for "investment assets," that could be verified by reviewing recent quarterly statements from qualified custodians. I note that Canada has a similar test as one basis for accredited investor status: "an individual who, either alone or

with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000." An investment assets test is easily verifiable and at levels at or above, say, $1,000,000 strikes me as consistent with the overall objectives of Rule 506(c).

2. One challenge of angel investing is achieving portfolio diversification. This goal would be facilitated by a simpler standard for testing a limited-purpose LLC or partnership or voting trust by which individual investors could easily pool smaller investments in a single issuer. The entity test under current Rule 501(a)(3) is doubly unsatisfactory – it disqualifies single-purpose entities formed to invest in a startup company and imposes a $5,000,000 asset threshold that is too large for most angel offerings. And the entity test under current Rule 501(a)(8) becomes unwieldy if the issuer and those organizing the pass-through entity cannot easily and reliably verify the accredited status of each and every participant. It would be useful if current Rule 501(a)(8) allowed the issuer and investment entity organizers to presumptively rely on self-certification of accredited investor status of each participant whose investment is less than some stated dollar cap of, say, $15,000. An issuer or organizer with knowledge to the contrary would not be entitled to rely on a self-certification. Anyone whose investment exceeds this regulatory dollar cap would be subject to potentially more stringent verification, under standards for individuals generally.

3. The treatment of trusts under current Rule 501(a) is complex, and it often is the case that a set of well-advised trusts established by a very wealthy person for different family members do not each hold in excess of $5,000,000 of total assets. I would favor dropping the asset threshold in current Rule 501(a)(7) to $1,000,000 while retaining the requirement that the purchase be directed by a "sophisticated person," as defined.

If you have any questions about these comments or wish to discuss them further, please do not hesitate to contact me.

Very truly yours,

Gregory S. Fryer

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