



March 16, 2020

*Via Electronic Submission (www.sec.gov)*

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

**Re: Proposing Release, Amending the “Accredited Investor”  
Definition, SEC Rel. No. 33-10734; File No. S7-25-19**

Dear Ms. Countryman:

GW&K Investment Management, LLC (“GW&K”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“Commission’s” or “SEC’s”) proposal to amend the definitions of “accredited investor” in Regulation D under the Securities Act of 1933, as amended (“Securities Act”) and “qualified institutional buyer” (“QIB”) in Rule 144A under the Securities Act.<sup>1</sup> As described in further detail below, our comments are focused on the QIB definition.

GW&K is an SEC-registered investment advisory firm with approximately \$42 billion of assets under management, and more than 40,000 clients.<sup>2</sup> GW&K is headquartered in Boston, Massachusetts, and manages a broad range of investment strategies including municipal bond strategies, equity strategies (including U.S., international, global and emerging markets mandates), and taxable fixed income strategies (including mandates that invest in high yield bonds). GW&K’s clients include private clients (some of whom are direct clients, and many more through third-party “wrap” or advisory programs) and institutional clients. More than 90% of GW&K’s assets under management are in separate accounts, and GW&K also manages various mutual funds, UCITS funds, collective trusts, private funds and other pooled vehicles.

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<sup>1</sup> *Amending the “Accredited Investor” Definition*, SEC Rel. No. 33-10734 (Dec. 18, 2019) (“Proposing Release” or “Proposal”), available at <https://www.sec.gov/rules/proposed/2019/33-10734.pdf>. The Commission issued the Proposing Release after considering comments on its June 2019 Concept Release on Harmonization of Securities Offering Exemptions. *See Concept Release on Harmonization of Securities Offering Exemptions*, SEC Rel. No. 34-86129 (June 18, 2019), 84 FR 30460, 30467 (June 26, 2019) (“Concept Release”), available at <https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf>.

<sup>2</sup> More information on GW&K can be found at [www.gwkinvest.com](http://www.gwkinvest.com), and in GW&K’s Form ADV at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

With respect to GW&K's taxable bond strategies, GW&K currently manages about 6,300 separate accounts for high net worth clients and other non-QIB institutional clients. These accounts constitute approximately \$4 billion of assets under management. GW&K also manages, on a subadvisory basis, two mutual funds that invest in taxable bonds and that, in the aggregate, constitute approximately \$245 million in assets.

GW&K is a member of the Investment Adviser Association ("IAA"), and we echo and reiterate the comment letter submitted to the Staff by the IAA on these matters (the "IAA Letter").

As a fundamental matter, we believe that comprehensive access to the capital markets, and the breadth of liquidity across the capital markets, is critical for our clients. With respect to our taxable bond strategies, we are particularly concerned about the Rule 144A marketplace, which has substantially evolved in recent years, and now constitutes a considerably larger and mainstream portion of high yield bond issuance. We support the SEC's proposals to expand the accredited investor and QIB definitions in the Proposing Release. However, we encourage the SEC to broaden its approach to further amend the QIB definition to allow an SEC-registered investment adviser, such as GW&K, to purchase Rule 144A bonds for our non-QIB client separate accounts, which account owners have delegated investment discretion to GW&K and have selected an applicable GW&K taxable fixed income strategy.

As a critical source of capital formation in the United States, the Rule 144A market for taxable fixed income bonds has grown dramatically. In the past 10 years, the pace of this change has accelerated, as more and more fixed income issuers are opting to rely on the Rule 144A process for bond issuance, rather than going through the more expensive and burdensome public registration process.<sup>3</sup> As the Commission has noted, the majority of private debt offerings are now conducted using Rule 144A, and 99% percent of Rule 144A offerings are debt offerings.<sup>4</sup> Rule 144A bonds also outnumber

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<sup>3</sup> See, e.g., "Only Special Investors Get to Buy These Bonds. They Make Up More Than Half of the High Yield Bond Market," by Ellen Carr, *Institutional Investor*, Feb. 21, 2020 (last accessed Feb. 24, 2020), available at <https://www.institutionalinvestor.com/article/b1kft61brvkkx6/Only-Special-Investors-Get-to-Buy-These-Bonds-They-Make-Up-More-Than-Half-of-the-High-Yield-Bond-Market>. See also [http://www.skyhcm.com/documents/weekly/SKY\\_Harbor\\_Weekly\\_Briefing\\_17Feb2020.pdf?pdf=17Feb2020](http://www.skyhcm.com/documents/weekly/SKY_Harbor_Weekly_Briefing_17Feb2020.pdf?pdf=17Feb2020).

<sup>4</sup> See *Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities*, SEC Rel. No. 33-10762 (Mar. 2, 2020), available at <https://www.sec.gov/rules/final/2020/33-10762.pdf> (citing SEC Division of Economic and Risk Analysis, Access to Capital and Market Liquidity 96 (Aug. 2017), available at <https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-2017.pdf>, at p. 38; SEC Division of Economic and Risk Analysis, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2014 (Oct. 2015), available at [https://www.sec.gov/dera/staff-papers/white-papers/30oct15\\_white\\_unregistered\\_offering.html](https://www.sec.gov/dera/staff-papers/white-papers/30oct15_white_unregistered_offering.html)).

registered issues both in number and in volume and currently make up more than half of the high yield bond market.

As set forth below, GW&K’s review of the continuing evolution of the Rule 144A marketplace for high yield debt issuance confirms the rapid changes that have occurred. Our analysis is also supported by data from broadly recognized third-party broker-dealers and research providers.<sup>5</sup> References to “Rule 144A for Life” relate to Rule 144A bonds that are never registered, and thus never available for purchase for non-QIBs. References to “Rule 144A with registration rights” relate to bonds that are initially issued via Rule 144A, and may in the discretion of the issuer be registered with the SEC at a later date.

This table shows the evolution of the constituents of the Bloomberg Barclays High Yield Total Return Index, with each issuance valued at par.

Evolution of High Yield Debt Marketplace:  
*Bloomberg Barclays US Corporate High Yield Total Return Index – Constituents (at par)*

Date	SEC Registered	“Rule 144A for Life”	Rule 144A with Registration Rights
January 2012	70%	19%	11%
January 2020	40%	55%	5%
Change	-30%	+36%	-6%

The following table shows the evolution of trading volume in the high yield marketplace.

Evolution of High Yield Debt Marketplace:  
*High Yield Trading Volume*

Date	Rule 144A Bonds	SEC Registered Bonds
September 2014	35%	65%
January 2020	50%	50%
Change	+15%	-15%

<sup>5</sup> Sources of data cited in this letter include Barclays, JP Morgan and MarketAxess.

Finally, this table shows the evolution of “Rule 144A for Life” as a percentage of new issuance in the high yield marketplace.

Evolution of High Yield Debt Marketplace:  
*New High Yield Issuance – “Rule 144A for Life”*

Date	“Rule 144A For Life”	Other
2003	Minimal	Nearly 100%
2010	25%	75%
2015	50%	50%
2017	68%	32%
2019	79%	21%
Change Since 2003	+79%	-79%

These are significant changes in the high yield debt marketplace. These changes have meaningfully limited the ability of retail and non-QIB institutional investors to access the bond markets, even when they have hired sophisticated discretionary investment advisers (i.e., SEC-registered firms such as GW&K) that owe them a fiduciary duty, and that are subject to a comprehensive set of compliance and regulatory requirements with respect to their management of client assets.

We are therefore deeply concerned that our separate account clients are being disadvantaged by the decreasing availability of registered bond offerings. Furthermore, we are concerned that a rapidly increasing number of issuers, and bond issuances, are “Rule 144A for Life.” Should this trend continue, GW&K (and other SEC-registered investment management firms like GW&K that offer taxable bond strategies to non-QIB clients in separate account form) will no longer be able to find the necessary liquidity in order to manage money for separate account clients that select an investment strategy that invests a portion of its assets in high yield debt.

To address this concern and consistent with the IAA Letter, we recommend that the SEC expand the QIB definition to include investors that receive discretionary investment advice from SEC-registered advisers if the adviser manages in the aggregate in excess of \$100 million in securities of issuers that are not affiliated with the adviser or the client on behalf of which the adviser is making the investment. The \$100 million threshold and SEC-registration requirements should ensure that the adviser has the requisite financial sophistication not to need the protections of registration under the Securities Act in connection with its discretionary management of client assets.

While we acknowledge that investors that are not QIBs may invest in mutual funds that own Rule 144A bonds (we sub-advise two such funds, as noted previously), many investors (including our approximately 6,300 separate account clients) instead choose an adviser to manage a separate account. These investors have thus determined that they prefer to own the bonds directly rather than owning an interest in a mutual fund that invests in the bonds, particularly in light of some of the meaningful limitations of the mutual fund structure (such as lack of control on tax distributions or realized gains, the potential for mutual funds to be subject to large redemptions in times of market uncertainty, and other structural limitations). Moreover, in many cases, mutual funds charge a higher expense ratio to investors than separate accounts managed by GW&K or other SEC-registered advisers.<sup>6</sup>

We believe that the costs of this distinction are no longer worth the benefits. SEC-registered advisers to mutual funds are considered sufficiently sophisticated to invest in Rule 144A bonds for the funds (and the funds' underlying non-QIB shareholders), and we believe that discretionary investment advisers that meet the financial threshold should be considered similarly sophisticated on behalf of their separate account clients. Simply put, we believe that an SEC-registered investment adviser should be able to buy the same bonds for its separate account clients as for mutual funds that it manages in the same investment strategy.

Finally, we note that at the present time, this is principally an issue for the high yield marketplace. Our research indicates that investment grade issuers do not frequently issue Rule 144A debt because the most widely recognized index of U.S. investment grade bonds, the Bloomberg Barclays U.S. Aggregate Bond Index (the "Index"), currently requires bonds to be registered in order to be included in the Index. However, in light of the evolution and broad acceptance<sup>7</sup> of Rule 144A issuances, if the Index changes its rules to allow the inclusion of Rule 144A bonds, we expect that many more corporate bonds issuers would use the more efficient and cost-effective Rule 144A process. In this event, we are concerned that the trends described in this Letter will spike dramatically, will spill over into the investment grade marketplace, and will therefore reduce liquidity and available bond offerings for non-QIB separate account investors even more significantly.

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<sup>6</sup> According to Morningstar, the average net expense ratio for high yield mutual funds with greater than \$5 billion of assets is 0.91%, while the average net expense ratio for all high yield mutual funds is 1.03%.

<sup>7</sup> Our research and experience, and that of other firms in our industry, indicates that the marketplace does not distinguish between comparable registered and Rule 144A bonds from the same issuer. Indeed, these bonds trade nearly identically and with similar liquidity profiles. See <https://www.ddjcap.com/wp-content/uploads/DDJ-Thought-Piece-144As-A-Large-But-Often-Misunderstood-Segment-of-the-High-Yield-Bond-Market.pdf>.



We appreciate your consideration of our comments on these important matters. Please feel free to contact us at 617-236-8900 with any questions or if we can provide any additional information.

Respectfully,

GW&K INVESTMENT MANAGEMENT, LLC

/s/ Mary F. Kane

By: Mary F. Kane, CFA

Title: Partner and Portfolio Manager

/s/ Lewis Collins

By: Lewis Collins

Title: Partner and General Counsel

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner

William Hinman, Director, Division of Corporation Finance  
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