

March 16, 2020
Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

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

Dear Ms. Countryman,

The High Level Working Group on Cryptocurrency and Digital Assets Self-Regulation (“HLWG”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “SEC” or “Commission”) in response to the Commission’s proposal to amend the definition of “accredited investor” (“Proposed Rule”). We commend the SEC for undertaking a thorough review of potential methods to update and enhance this standard. The definition of “accredited investor” is an important standard for investors in private offerings, including private offerings that invest in cryptocurrencies and securities token offerings (“STOs”).

The HLWG¹ is a forum of individuals from over 110 organizations who are committed to advancing good governance, transparency and integrity in the cryptocurrency and digital assets sector. Building upon a groundswell of interest and support for the development of a self-regulatory organization (“SRO”) for the cryptocurrency and digital assets industry, our efforts have focused on operating in an inclusive manner that is both responsive to investor and corporate needs, and engaged with global community practitioners, regulators and broader stakeholder groups. We are striving to balance the desire for innovation in the industry with the need to protect investors. Central to our efforts is a focus on ensuring diversity of participation through the following: (1) providing a voice to a wide variety of stakeholder categories (i.e., retail investors, trading firms and market makers, exchanges, asset managers, banks, custodians, lenders, and other service providers); (2) furthering involvement by larger more established firms as well as by micro, small,

¹ As the HLWG seeks to evolve into a Self-Regulatory Organization (“SRO”), its initial focus will be on the crypto spot-market, where regulation and enforcement is most needed. In the future, when the regulations become clearer and better enforced, we will seek to include participants from the securities and derivatives side of the business, working in conjunction with regulators in those spaces. One of our key areas of focus will be the capture and analysis of trading data from the markets to provide real-time reporting to our members and the regulators regarding suspicious trading activity, including wash-trades, spoofing, and front-running. We also intend to help enforce newly developed guidelines in this space by developing an arbitration process to resolve disputes. By highlighting the bad actors in the system, and assisting in the identification of good actors, we seek to remove fraud from the market and facilitate its growth to its natural size, propelled by liquid and legitimate trading, coupled with a channel for dispute resolution. The SRO seeks to become a center of excellence and a reference point for its members, as well as others in the digital asset ecosystem.

This cannot be done without education, and we anticipate working with both technical and financial players in the ecosystem to raise the standard of understanding of blockchain, cryptocurrency, and digital assets. We further intend to define the tools, procedures, and policies best suited for trading in these unique assets, while ensuring that investors are protected from the various types of risks inherent in this new marketplace.

and medium-sized enterprises (“MSMEs”); and (3) fostering strong geographic representation. Listening to the needs and desires of all of our many participants allows us to better position and orient our efforts, and provide policy perspectives.

Set out below are our views on the Proposed Rule and responses to specific questions for staff consideration.

Fallacy of Financial Thresholds as a Proxy for Assessing Investor Sophistication

We firmly support modifying the “accredited investor” definition to recognize an individual’s attainment of investment skills, experience, and financial acumen, even where wealth or income requirements have not yet been attained. Currently, the definition of “accredited investor” applicable to Rule 506 is set forth in Rule 501(a) of Regulation D [17 CFR 230.501(a)]. This definition includes any person who comes within one of the definition’s enumerated categories of persons, or whom the issuer “reasonably believes” comes within any of the enumerated categories, at the time of the sale of the securities to that person. The categories include: (A) any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000, excluding the person’s primary residence and any indebtedness secured thereby (up to the value of such residence); and (B) any natural person who has an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

The present definition of accredited investor uses income and wealth as a proxy for investor sophistication and risk resilience. However, this proxy does not adequately measure knowledge or capacity for making informed investment decisions. Nor does it take into consideration the ability of the individual to navigate during times of market losses. It seems incongruous that a wealthy surgeon or professional baseball player, because of their wealth accumulation, can be considered a sophisticated investor that can take advantage of private offerings, but a truly sophisticated investor like a financial analyst or other professional in the securities or finance industry may be excluded from consideration as an accredited investor solely because of their lack of accumulated wealth. Furthermore, it exacerbates the current lack of diversity of participation in investments and may result in an unequal burden borne by sophisticated investors who are African American, Hispanic and/or female. Finally, a broadened definition which expands participation based on attainment of financial knowledge, skills, and experience may provide greater protection to investors, stability in the markets, and furtherance of the public interest.

Online Education, Certification Programs and Direct Measurement of Investor Sophistication

In today’s increasingly digital world, the current “accredited investor” definition (which was last significantly modified in 1988) does not take into consideration the access to and opportunities for directly measuring education, certification, and investor sophistication available today. As high-quality investor education and certification programs proliferate, there is a lower cost and difficulty associated with acquiring, demonstrating and validating investor learning outcomes. We encourage the Commission to continue its exploration of how to leverage the opportunities

provided by these new avenues for developing investor knowledge and skill to broaden access to investment opportunities.

Income Thresholds May Impose Unequal Barriers to Entry for Diverse Investors

Additionally, from the perspective of industry inclusivity, it is important to note the unequal barrier to entry that the current “accredited investor” definition may impose upon sophisticated African American, Hispanic and female participants. The Economic Policy Institute noted that in 2018, the median African American household earned just 59 cents for every dollar of income the median white household earned (unchanged from 2017), while the median Hispanic household earned just 73 cents (down from 74 cents in 2017).² An “accredited investor” definition that utilizes strict individual and household income levels as a proxy for permitting access to private investment opportunities may unintentionally be limiting investment and wealth accumulation opportunities for African American and Hispanic investment professionals by restricting their ability to participate in private offerings.

Further, although women receive more college and graduate degrees than men, on average women earn considerably less. As noted by the Institute for Women’s Policy and Research, the current gender income gap ranges between 18-49%.³ Over the course of a career, this translates to hundreds of thousands of dollars in lost wages. When access to private offerings is strongly tied to income and wealth accumulation levels, the result may be that female investors with equivalent knowledge and experience as men are afforded less lucrative investment opportunities, in addition to being paid less. As such, the income and wealth thresholds for accessing private offerings embodied by the current “accredited investor” definition may unknowingly deny sophisticated female investors equal access to private offerings and reinforce the current systemic gender inequalities found with regards to income and wealth generation.

Some may be concerned that the revised definition may serve only to increase the number of white males and males in general and thus result in poorer investment opportunities for new minorities and women entering this market. Yet, in our collective experience, the number of available private offering opportunities so far exceeds the universe of potential qualifying investors that we believe this potential issue does not outweigh the potential benefits of our proposed definition.

Enhanced Protection of Investors and the Public Interest

Finally, amending the “accredited investor” definition to more broadly permit professionally qualified or industry certified individuals to participate may also better protect investors and the public interest. When investors are well-informed and capable of making sound investment decisions, they are better able to allocate their resources in the market, ensure sound investment decision-making, and contribute to financial sector and economic growth. As such, the benefits of better educated and qualified individuals participating in investment activities may not only provide additional protection to the investors themselves, but may benefit the overall stability of the financial system as well as the broader economy.

² <https://www.epi.org/blog/racial-and-ethnic-income-gaps-persist-amid-uneven-growth-in-household-incomes/>

³ <https://iwpr.org/issue/employment-education-economic-change/pay-equity-discrimination/>

Responses to Select Questions Detailed in the Proposed Rule

The HLWG has reviewed the questions presented in the SEC’s Proposed Rule and has identified and responded to those questions where we believe that we are best positioned to respond. Please find these select questions and their related responses below:

Question #1: Are professional certifications and designations or other credentials an appropriate standard for determining whether a natural person is an accredited investor? Do the types of certifications and designations that the Commission is considering indicate that an investor has the requisite level of financial sophistication and abilities to render the protections of the Securities Act unnecessary?

The HLWG believes that certain professional certifications, designations, and other credentials are an appropriate standard for determining whether a natural person is an accredited investor. In this regard, we believe that the current types of certifications and designations the SEC is considering (namely the Licensed General Securities Representative – Series 7, Licensed Investment Adviser Representative – Series 65, and Licensed Private Securities Offerings Representative – Series 82) are sufficiently rigorous, effectively assess the degree of knowledge and understanding of key investment subjects and concepts, and result in the development of competent and capable investment professionals. Thus, they render the protections of the Securities Act unnecessary.

The HLWG encourages the SEC to also consider other exam types as well, particularly those that do not require employment by an industry member in order to take the exam. Such other options include association certifications administered by the Investments and Wealth Institute CIMA, Chartered Financial Analyst Institute CFA, National Association of State Boards of Accountancy CPA, Chartered Alternative Investment Analyst Association, and Certified Financial Planner Board of Standards. For instance, passage by an investor of the Chartered Alternative Investment Analyst (“CAIA”) exam would demonstrate sufficient financial acumen required to make investments in private fund vehicles. The HLWG also encourages the SEC to consider the creation of a new exam developed to qualify “accredited investor” status. Such an exam would be particularly tailored to confirm investor understanding of private fund investments and the related risks.

Question #2: Are the professional certifications and designations we preliminarily expect to designate as qualifying credentials in an initial Commission order accompanying the final rule appropriate to recognize for this purpose?

The HLWG believes that the professional certifications and designations that the SEC preliminarily expects to designate as qualifying credentials in its initial order accompanying the final rule are appropriate. These initial designations embody a uniform professional education component, as well as up-to-date curriculum that is evaluated and amended on an on-going basis. They also provide for a secure and thorough testing process that seeks to examine the degree to which an individual has achieved learning outcomes for technical and ethical practice. Such designations also provide a system for monitoring continuing professional development and requirements that mandate that the individuals bearing the designation or certification maintain updated knowledge and skills in accordance with professional organization obligations. The

HLWG also encourages the SEC to consider other professional certifications and designations, such as those detailed in the prior response.

Question #3: Should we consider other certifications, designations, or credentials as a means for individuals to qualify as accredited investors? If so, which ones should we consider? Should we consider other certifications and designations administered by private organizations such as the CFA Institute and the Certified Financial Planner Board of Standards?

It is the recommendation of the HLWG that the SEC proceed as outlined with the initial set of qualifications, designations, and credentials set forth in the creation of criteria upon which forthcoming certifications, designations, and other credentials could be evaluated for consideration in qualifying individuals as “Accredited Investors.” The criteria noted by the Proposed Rule include: (1) the certification, designation, or credential arises out of an exam or series of exams administered by a self-regulatory organization or other industry body; (2) the exam or series of exams is designed to reliably and validly demonstrate an individual’s comprehension and sophistication in the areas of securities and investing; (3) persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and (4) an indication that an individual holds the certification or designation is made publicly available by the relevant self-regulatory organization or other industry body. As noted by the Proposed Rule, any certification, designation, or credential would be evaluated by the SEC on an ongoing basis, in light of the best practice of continuous review and updating of curriculum.

In connection with such criteria, and as noted above, several reputable academic, professional, and industry association certifications are worth considering in this regard, such as those administered by the Investments and Wealth Institute CIMA, Chartered Financial Analyst Institute CFA, National Association of State Boards of Accountancy CPA, Chartered Alternative Investment Analyst Association, and Certified Financial Planner Board of Standards. For instance, the CAIA exam could be a certification considered in connection with evidencing appropriate financial acumen to qualify as an “Accredited Investor.”

Question #4: Should we consider the SIE examination as a means for individuals to qualify as accredited investors? Should we consider the SIE examination, in addition to the completion of an investing-related course at an accredited college or university, as a means for individuals to qualify as accredited investors?

The SEC should consider the SIE exam as a means for individuals to qualify as “Accredited Investors.” However, since this exam is not particularly rigorous or tailored to private fund investments, additional training and education may be required, such as investment-related courses from an accredited institution. Or alternately, a new exam, specifically created to confirm “accredited investor” status should be developed. Ideally, this newly created exam would confirm sophistication with regard to private fund investments.

Further, the HLWG is exploring the possibility of developing a ‘higher-level’ exam that would evaluate a candidate’s readiness for investments in cryptocurrencies and digital assets. In this

regard, the SRO would work with its industry partners to develop a customized training program for those markets.

This additional exam would also allow regulators and the market to better identify and distinguish individuals holding relevant knowledge and skills in the digital economy. We would be open to working with the SEC and/or FINRA in connection with the development of such an exam.

An exam such as this is becoming increasingly important as more and more legitimate digital asset platforms are coming to maturity in major financial centers around the world. These platforms ease the process around capital issuance, investment, and secondary trading through the distribution of security tokens in equity, debt, real-estate, and other tokenizable assets, complemented by a high standard of investor disclosure, AML/KYC, custody, and cybersecurity. These are the new, *digital IPOs*, that MSMEs and others are now using to reach a broader investing public. We hope to support their efforts to bring a diverse range of investors and liquidity to the market.

Question #9: Should the individuals who obtain the designated professional credentials be required to maintain these certifications or designations in good standing in order to qualify as accredited investors, as proposed? Should they also be required to practice in the fields related to the certifications or designations, or to have practiced for a minimum number of years?

The HLWG believes that individuals who obtain designated professional credentials in order to be classified as an “accredited investor” must maintain these certifications or designations in good standing in order to maintain their status as “accredited investors.” This would ensure harmonization of the requirements to maintain “accredited investor” status with those of the certifying/designating authority (e.g., FINRA) and would provide additional incentive for certified/designated individuals to comply with ongoing obligations (e.g., continuous education). Other groups, that qualify for ‘accredited investor’ designation through other means (e.g., surpassing set income thresholds) would continue to be accredited under those criteria.

The HLWG believes that continuing practical experience requirements are not necessary to maintain “accredited investor” status. This is because the investor has already become sufficiently competent and capable of undertaking investments and bearing risk in private offerings.

Question #10: Under the proposed approach, individuals with certain certifications, designations, or credentials would qualify as accredited investors regardless of their net worth or income. While having such a certification, designation, or credential may be a measure of financial sophistication, which should encompass the investor’s capacity to allocate their investments in a way to mitigate or avoid risks of unsustainable loss, the impact of an investment loss on an investor that does not meet the current net worth or income thresholds may be significant. Should we consider additional conditions, such as investment limits, for individuals with these certifications, designations, or credentials who do not meet the income test or net worth test, in order to qualify as accredited investors? If so, what types of investment limits or other conditions should we consider?

The HLWG disagrees with the creation and application of additional threshold requirements for individuals that have attained certain certifications, designations, or credentials qualifying them as

“Accredited Investors.” As attainment of certain certifications, designations, or credentials provides both investor education as well as an understanding of the associated risks and methods for risk management, we believe the application of additional income thresholds to this class of investors would represent an unnecessary burden to this class’ participation in private offerings.

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The HLWG appreciates the opportunity to provide comments to the Commission regarding the Proposed Rule and the definition of “Accredited Investor.” If you have any questions about these comments, or if we can provide further information or assistance, please contact our counsel, Nicole Kalajian, directly at (312) 964-3507.

Respectfully submitted,

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By: The High Level Working Group
on Cryptocurrencies and Digital
Assets Self-Regulation