

**Comments for: Release Nos. 33-10734, 34-87784; File No. S7-25-19**

**1. Lower or eliminate the financial minimums to be considered an accredited investor for private investments.**

The concept of an accredited investor was derived in the 1930's, decades before cell phones and the internet. This definition and the theoretical protection intended therein has perpetuated inequality in geographic, racial, age, and socioeconomic factors. The best possible solution would be to eliminate the current system entirely. There have been a lot of suggestions about regional income qualifications and investor tests, but I believe fully democratizing access to investment opportunities is the correct way forward.

- **Self Determination and Capitalism:**

- All citizens should have the right and ability to invest in developments, redevelopments, or small businesses in their community. Determining what to invest in and how much of one's capital someone is capable of losing should be an individual and family decision. This is the foundation of capitalism and the freedom our country was built upon. There have been and will likely always be bad actors that will seek to create ill gotten gains for themselves at the peril of others. I still think that self determination is too important to throw by the wayside.

- **Programming:**

- **EB-5**

- A program like EB-5 gives preferential treatment to non-citizens, providing them investment opportunities in communities where local citizens are locked out due to current accredited investor rules. Although I think these areas and developments will benefit greatly from these outside investments, I don't think that local citizens should be barred from making the same investments.

- **Opportunity Zones**

- Opportunity Zone legislation was meant as a way to supply capital to areas of the country that are designated low-income census tracts. However, the low income nature of the communities means that many of the residents would not qualify to invest in those same projects or businesses that are in their own communities.

- **Economic Downturn:**

- A large concern is borne in unprecedented economic times like the ones we are currently in. Since income calculations are made over multiple years, if people are laid off from higher paying jobs or if their business income is significantly impaired for a year, they may no longer meet the definition. This temporary setback could have people not meeting the requirements for multiple years while they build their income back up to meet the existing threshold. This could further hamper redevelopment in distressed census tracts where these investments are needed the most.

- **Shifting Markets:**

- The market is continuing to move away from public offerings. A report from McKinsey & Company on private markets indicates that the private market has grown to 8,000 [entities] meanwhile the number of publicly traded firms continues to fall annually and is around 4,300<sup>1</sup>. This seems to indicate that the market has and continues moving toward private investments. This also means that the access to more and more of the market is moving away from the main stream market which most people have access to. Lifting the current restrictions will simply open up the entire marketplace to all persons of the country.
- **State Lottery:**
  - Many states sponsor lotteries. The rate of loss for state sponsored lottery is far higher than most investment types. The best odds for a lottery like the “Powerball” is 1 in 32.32 to double the initial capital<sup>2</sup>. The lottery is offering a 97.46% loss rate. A random scratch off from Illinois has winning odds of 1 in 12.50, which is a 92.59% loss rate<sup>3</sup>. Meanwhile Forbes estimated that the riskiest type of investing, which would be start up venture capital, has a loss rate of 80%<sup>4</sup>. Other forms of private equity are significantly less risky than these start up ventures. So, state sponsored lotteries offer less control and a greater certainty of loss. Still there are no income or net worth restrictions on these programs. Additionally, investing in small businesses and developments can have other positive benefits to the community including additional jobs and technological advancements.
- **Inclusion and Diversity:**
  - Early stage business investors are 77.9% male, 75% of which are above the age of 51<sup>5</sup>. More alarmingly only 1.3% were black<sup>5</sup>. The income, net worth, and existing marketing restrictions appear to have detrimental results not only in the diversity of investors, but also the placement of those investments. For example, an article stated that “...80 percent of all venture capital investments go to just three states: California, New York, and Massachusetts”<sup>6</sup>. These states also tend to have the highest number of accredited investors. Additionally, an article from February of 2019 indicated that just 1% of venture-backed founders were black and 9% were women owned<sup>7</sup>. Now these are not directly corollary, but I believe younger and more diverse investors would be more likely to produce varied results.

## **2. Increase the ability for issuers to utilize public means to market alternative investments.**

Just eliminating the accredited investor will not open up all investments. Regulation 506A and 506B have not historically allowed any public marketing of securities. Because of the historically private and high income/net worth nature of alternative investments, a vast majority of people were not aware of these or were not able to participate. It would make sense to allow issuers to market these investments on a broader scale in an effort to:

- I. Inform more people about what these investment are, and
- II. Let them know that they are all allowed to invest.

Issuing securities is an expensive and complex endeavor. Emerging fund managers, developers and start up companies are significantly limited by the current issuing rules. Crowdfunding under state laws is limited to very small dollar amounts before one would have to register and assume more significant costs associated with their offerings. The legal costs of putting together offerings for even small funds is considerable. Also, the size of developments in certain parts of the country are smaller

than on the coasts. This means that the costs associated with fund raising are born unequally by smaller developments in the rest of the country. Expanding the limits of crowdfunding would assist in getting more emerging companies, developers, and issuers into the system. Especially in a time when small business and development is being challenged by economic uncertainty, this would be a great way to kick start investments into these essential areas. The growth of Regulation A+ offerings and the amounts of raised capital demonstrate that the population is looking for these additional ways to get involved with “private” or “alternative” investment vehicles. “The SEC reports that Regulation A+ has enabled 183 issuers to raise about \$2.446 billion”<sup>8</sup>.

- **NMLS / Registration Database – Formalize, but simplify registration**

- In my opinion, utilizing an identifier like the NMLS registration system for issuers could be a great system for tracking the behavior of issuers (sellers). This way there would be a central, publicly available database to track issuers behavior. NMLS is meant as a way to keep “bad actors” out of the industry and give the public a way to assess a person/entity’s eligibility to issue financial products. This could be altered or enhanced to include what are classified now as private securities or alternative investments. Per American Financing, when describing the role of NMLS for the mortgage business: “Consumers now have the ability to compare background, credentials, and other relevant information regardless of where their mortgage officer conducts business.”

## References:

- <sup>1</sup> <https://www.mckinsey.com/~media/McKinsey/Industries/Private%20Equity%20and%20Principa%20Investors/Our%20Insights/Private%20markets%20come%20of%20age/Private-markets-come-of-age-McKinsey-Global-Private-Markets-Review-2019-vF.ashx>
- <sup>2</sup> <https://www.cnbc.com/2019/05/31/these-are-the-odds-youll-win-the-350-million-powerball-jackpot.html>
- <sup>3</sup> <https://www.illinoislottery.com/games-hub/instant-tickets/loose-change-multiplier-2020>
- <sup>4</sup> <https://www.forbes.com/sites/dileeprao/2016/11/17/why-risk-capital-hates-risk-and-how-you-can-take-advantage/#6f5f4f815316>
- <sup>5</sup> <https://www.angelcapitalassociation.org/data/Documents/TAAReport11-30-17.pdf?rev=DB68>
- <sup>6</sup> <https://www.vox.com/2018/3/20/17136652/comeback-cities-tour-bus-midwest-investment-incubation-local-youngstown-detroit-flint-ryan-khanna>
- <sup>7</sup> <https://news.crunchbase.com/news/untapped-opportunity-minority-founders-still-being-overlooked/>
- <sup>8</sup> <https://www.crowdfunder.com/2020/03/158325-sec-publishes-report-on-reg-a-2-216-billion-in-tier-2-offerings-mostly-real-estate/>
- <sup>9</sup> <https://www.americanfinancing.net/mortgage-basics/nmls-number-for-mortgage-lenders>