



July 15, 2020

By Electronic Submission

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

**Re: Request for Comment Regarding Amending the “Accredited Investor” Definition  
(SEC Release Nos. 33-10734; 34-87784; File No. S7-25-19)**

Dear Ms. Countryman:

Corbyn Investment Management, Inc. (“Corbyn Investment Management”) respectfully submits the following comments in response to the U.S. Securities and Exchange Commission’s (the “Commission”) proposed regulation entitled Amending the “Accredited Investor” Definition, published in the January 15, 2020 Federal Register.<sup>1</sup> We applaud the Commission’s decision to amend the definitions of “accredited investor” in Rule 501(a) of Regulation D under the Securities Act of 1933 (the “Securities Act”) and “qualified institutional buyer” (QIB) in Rule 144A under the Securities Act by adding new categories, and expanding current categories, of persons that are eligible to qualify under these definitions.

We thank the Commission for encouraging input on these important proposed Commission actions. We also thank the staff of the SEC’s Division of Investment Management and the Division of Corporate Finance for taking the time to meet with us via teleconference on May 14, 2020 to discuss these important proposals.<sup>2</sup> As discussed on the May 14 teleconference, we are respectfully submitting these comments to provide responses to questions posed by the Commission and to offer specific proposals for further enhancements.

## **I. Corbyn Investment Management**

Corbyn Investment Management is a registered investment adviser founded in 1973. We provide personalized investment advice and management services to individuals, corporate pension and profit-sharing plans, charitable organizations, foundations, individual retirement plans, trusts,

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<sup>1</sup> 85 Fed. Reg. 2574 (Jan. 15, 2020).

<sup>2</sup> Representatives of Corbyn Investment Management met with Larry Pace, Division of Investment Management, on May 14, 2020 via teleconference.

corporations and registered investment companies. We generally enter into direct contractual arrangements with clients whereby they provide us with full discretion over the investment of their assets. In these arrangements, our investment authority is limited only if a client provides us with specific instructions, such as restrictions or prohibitions on transactions in certain securities or industries.

Corbyn Investment Management also maintains sub-advisory relationships, and we serve as the investment adviser to Greenspring Fund, an investment company registered with the SEC under the Investment Company Act of 1940. Our assets under management for accounts total approximately \$789.5 million,<sup>3</sup> and net assets of the Greenspring Fund total approximately \$132.5 million.<sup>4</sup> We are a private, independent investment management firm that is 100% owned by our employees, a retired employee, and our employee stock ownership plan.

We look forward to working with the Commission as it moves forward with rulemaking and, in furtherance of these efforts, have offered the below comments.

## **II. “Qualified Institutional Buyer” Eligibility**

### **A. We agree with the proposed amendment to the “qualified institutional buyer” definition**

We agree with the Commission’s original approach that, in connection with defining a “qualified institutional buyer,” it is imperative to identify a class of investors that can be conclusively assumed to be sophisticated and in little need of the protection afforded by the registration provisions of the Securities Act. Given the vast changes that have occurred in the marketplace since then, we also agree with the Commission’s current proposal to expand the definition.

Specifically, alignment of the types of entities that are eligible for status as an accredited investor and qualified institutional buyer is helpful and warranted to avoid inconsistencies. In addition, we agree that entities that qualify, today or in the future, for accredited investor status should also be permitted to qualify for qualified institutional buyer status so long as those entities own and invest on a discretionary basis at least \$100 million in securities of unaffiliated issuers.

Corbyn Investment Management supports the proposed rule and believes that the expansion of the “qualified institutional buyer” definition would be an important step forward; however, we set forth our comments below with respect to one additional aspect of the proposed amendments.

### **B. While we agree with the expansion of the “qualified institutional buyer” definition, additional expansion to include discretionary separate account clients of SEC-registered investment advisers is appropriate**

Investors, including natural persons and entities that are not eligible for status as a qualified institutional buyer under the Securities Act, elect for a myriad of reasons to maintain separately managed accounts on a discretionary basis with SEC-registered investment advisers. Investors often prefer to own individual securities in their accounts rather than being lumped together with

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<sup>3</sup> As of 6/30/20.

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other investors in co-mingled funds such as mutual funds. The personalized management services provided by investment advisers often include reviews of each client’s personal investment objectives at the onset of the relationship and periodically thereafter, so that securities holdings are tailored to individual needs and mandates. In addition, separately managed accounts can be superior to co-mingled funds in avoiding many liquidity issues and volatility of cash flows caused by cash flow needs of other, unrelated investors in co-mingled funds.

With respect to the bond market, under the current definition of “qualified institutional buyer,” investment advisers of separately managed accounts that are advised on a discretionary basis may not purchase bonds issued through Rule 144A offerings unless the underlying separately managed account owners qualify for qualified institutional buyer status in their own right. However, the same investment advisers may purchase those same bonds on behalf of any mutual funds they advise, even though the underlying investors in the mutual funds do not qualify for qualified institutional buyer status. This seemingly incongruent result occurs even if the investment advisers are employing the same investment strategy on behalf of the separately managed accounts and mutual funds.

We submit that the definition of qualified institutional buyer would be further enhanced and provide fair and equitable access to the bond markets if it were further amended to specify “SEC-registered investment advisers and their discretionary accounts”, and thus permit an SEC-registered investment adviser to purchase bonds issued through a Rule 144A offering for separately managed accounts advised on a discretionary basis, as long as the adviser owns and invests on a discretionary basis at least \$100 million in securities of unaffiliated issuers. Investment advisers owe a fiduciary responsibility to their clients, which requires that the investment adviser act in the best interest of the client in accordance with their individual financial situation and investment objectives. As such, the current formulation of the definition of qualified institutional buyer discounts the sophisticated investment advice that the separate account clients have contracted for and unduly restricts them from being able to invest in Rule 144A offerings that may be in their best interest. The relevant analysis should focus on whether the investment in the bonds by the investment adviser on behalf of the separate account client is in the best interest of each client as opposed to the status of each client as a qualified institutional buyer.

### **III. Recent Changes in Bond Markets Warrant Required, or Incentivized, Registrations**

Changes in the corporate bond market, specifically a shift in Issuers’ behavior away from registration rights agreements, have been highlighted by the Investment Adviser Association, in its letter to the SEC on March 18, 2020.<sup>5</sup> Specifically, we concur with the points made in Section II.B. of the letter, which highlight the need to reconsider who should be able to access these markets. We propose that the Commission expand the list of “qualified institutional buyer” eligible entities to include discretionary accounts of “qualified institutional buyer” eligible SEC-registered investment advisers.

In addition to the proposal above in Section II.B. of this letter, bond issuers, particularly those with publicly traded equity, should be required, or be provided with incentives, to register their

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<sup>5</sup> See IAA comment letter, dated March 18, 2020 “Re: Proposing Release, Amending the “Accredited Investor” Definition, SEC Rel. No. 33-10734; File No. S7-25-19”  
<https://www.sec.gov/comments/s7-25-19/s72519-6967327-214027.pdf>

securities. More registrations would provide another route to the much-needed greater accessibility to bond markets for investors that do not qualify for qualified institutional buyer status. Furthermore, the reasons for corporations to avoid registration are all at the benefit of the corporation, not the investor. These reasons include avoiding regulation, disclosure, liability, and cost.

#### **IV. Conclusion**

Corbyn Investment Management supports the expansion and modernization of the definitions of “accredited investor” and “qualified institutional buyer” as proposed by the Commission. In addition, we believe that our above recommendations will further enhance the rule proposal in light of current practices in the marketplace. We appreciate the opportunity to provide our views.

We welcome the opportunity to work with the Commission and provide any additional information that may be required. Please do not hesitate to contact us should you have any questions.

Respectfully,



Charles vK. Carlson  
President and Chief Investment Officer



Michael J Fusting, CFA  
Co-Chief Investment Officer



Michael J. Pulcinella  
Trader & Investment Analyst