DCALTA

July 20, 2020

Via E-mail

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

Re: File Number S7-25-19, *Amending the "Accredited Investor"* Definition

Dear Secretary Countryman:

The Commission should amend Rule 2e-4 and its "qualified purchaser" definition to better allow defined contribution retirement plan fiduciaries to make investment options containing private funds available to Main Street retirement savers. Recently, the Department of Labor provided guidance for plan fiduciaries related to prudently selecting private funds; it is time for the Commission to provide complimentary guidance that better permits private funds to accept investments from those plans.

DCALTA advocates on behalf of plan sponsors, plan fiduciaries, asset servicers, investment managers, and others within the retirement industry who believe that alternative investments are beneficial to retirement savers. DCALTA's mission is to raise awareness about the positive impact of expanding the investments available to defined contribution plans to include alternative investments. Through its education, outreach, research, and advocacy efforts, DCALTA is committed to securing optimal retirement outcomes for plan participants. The continually evolving regulatory environment coupled with innovations in investment products and methods have changed the operational landscape for plan fiduciaries and investors. Alternative investments, including hedge funds, real estate, and private equity, can be used in professionally managed multi-asset portfolios and other structures to minimize participant risk and maximize returns. DCALTA has a strong interest in the emergence of modernizing solutions that appropriately respond to market developments and broaden the opportunities of investments available to plan participants within the context of sound decision-making by investment fiduciaries

I. Providing Meaningful Access to Private Funds While Maintaining Strong Investor Protections

Under SEC guidance, private funds can generally accept investments from long-term investors like foundations and endowments as well as defined benefit pension plans without a requirement to register under the Investment Company Act (the "'40 Act"). However, private funds generally cannot accept investments from defined contribution pension plans. Since the passage of the '40 Act, Congress has implemented robust investor protections under the

Employee Retirement Income Security Act of 1974 ("ERISA"). Given these updated protections, the Commission should revise the rules that limit access. The primary other avenue for retirement savers to gain access to illiquid assets is through closed-end mutual funds. Even there, Commission rules limit the ability of long-term retirement savers to invest in target-date funds that would want to allocate more than 15% of their assets to illiquid assets.

Typically, private funds are exempt from registration under the '40 Act because they either (1) accept investments from 100 or fewer beneficial owners, or (2) exclusively allow "qualified purchasers" to invest. Under existing rules, defined benefit plans generally count as one beneficial owner while also qualifying as "qualified purchasers." In a series of no action letters–PanAgora Group Trust (1994), Standish Ayer and Wood (1995) and H.E.B. (2001)–SEC staff determined that a manager accepting an investment from a defined contribution plan generally must "look through" the plan to each investor. This "look through" requires a manager to count each participant as a separate beneficial owner and ask whether each participant is herself a "qualified purchaser.".

The SEC's Section 22e-4 mutual fund liquidity rules similarly restrict access to alternative investments. Section 22e-4 requires open-ended mutual funds to classify each of the investments in its portfolio based on liquidity level. These classifications must be routinely reviewed and used to establish a liquidity threshold (the "highly liquid investment minimum") from which the fund cannot deviate for any prolonged period. The rule also generally prevents funds from investing more than 15% of its assets in illiquid investments

ERISA provides the strongest investor protections under law. ERISA Section 404 mandates that before a fiduciary can invest defined benefit plan assets in an investment or make such investment available to defined contribution plan participants, the plan's fiduciaries must evaluate that investment "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims". This analysis must be performed "solely in the interest of the participants and beneficiaries."

The '40 Act was designed to protect unsophisticated investors. It generally does this by requiring funds that accept investments from retail investors to register as investment companies and by placing a number of restrictions on those investment companies. Similarly, Rule 22e-4 is designed to protect short-term retail investors by ensuring that mutual funds have sufficient liquidity to meet the irregular redemption pattern of most mutual funds. In light of ERISA's protections and the long-term nature of retirement savers, defined contribution retirement plan participants should not be considered unsophisticated. Instead, the Commission should provide retirement savers with access to the tools they need to secure a dignified retirement.

II. Research Shows Transformational Power of Alternative Asset Classes

DCALTA and the Institute for Private Capital have conducted extensive research on the private markets. Specifically, we wanted to learn what would have been achieved over the past 25 years in a diversified portfolio of U.S. stocks and bonds by adding allocations to Private Equity and Venture Capital using actual historical results of funds, cash flows and net asset

values, randomly selected, rather than relying on averages or blended data. The primary results from the DCALTA/IPC Research – 2019 are as follows:

1. Investment returns are consistently higher for portfolios that incorporate U.S. buyout funds and venture capital funds.
2. Risk is consistently lower for portfolios that include U.S. buyout funds; and
3. Sharpe Ratios (risk-adjusted returns) are consistently higher for portfolios with U.S. buyout funds and a combination of U.S. buyout and venture capital funds.

These findings show that defined contribution retirement plan participants should be given access to private funds. The need to give participants better access to risk-reducing investment options has been highlighted by the financial crisis surrounding the COVID-19 pandemic. Institutional savers who were better able to diversify avoided losses while investors who can only use limited tools were not as able to mitigate downside risk.

III. What the SEC Should Do

The Commission should place defined contribution retirement plan savers on a level playing field with other long-term savers. It should address the inequities caused by its current interpretations of the "qualified purchaser" rules and of Rule 22e-4.

Specifically, it should issue guidance that for purposes of complying with Sections 3(c)(1) and (3)(c)(7) of the '40 Act, a defined contribution retirement plan is itself the beneficial owner and the "qualified purchaser". Looking through to participants should not be required when retirement plan fiduciaries make the decision to include a private fund or an investment option containing a private fund in the plan's lineup.

Rule 22e-4 should be relaxed for target-date mutual funds to raise the upper limit for illiquid investments to 30%. In connection with this, the Commission should also amend Rule 22e-4 to allow managers more flexibility in terms of getting back below the illiquid concentration limit.

The Commission has done great work to protect investors. Now is the time to protect retirement savers from the risks of insufficient diversification and the corresponding risk of running out of money in retirement.

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The DCALTA appreciates the opportunity to provide these comments. If you have any questions or would like more information regarding this letter, please contact me at [redacted].

Thank you very much for your consideration.

Respectfully submitted,

DCALTA

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