

U.S. Securities and Exchange Commission
SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE

March 12, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1070

Dear Chair Gensler:

On behalf of the SEC Small Business Capital Formation Advisory Committee, we are pleased to submit the below recommendations approved at the Committee's February 10, 2022 meeting.

According to the Commission's [rulemaking agenda](#), the Division of Corporation Finance is considering recommending that the Commission seek public comment on updates to the financial thresholds in the definition of "accredited investor" as set forth in Securities Act Rule 501(a) of Regulation D. The definition was most recently amended in 2020, and in connection with that rulemaking the Committee made several [recommendations in 2019](#).

The Committee recognizes the complexity of crafting a workable definition of accredited investor that balances protecting investors with facilitating capital formation and investment opportunities. As the Commission considers updating the definition's financial thresholds for individual investors' net worth and annual income, we urge the Commission to avoid unintended consequences. It is also important for the Commission to recognize that a business's failure to succeed is not the same thing as fraud. And further, fraud occurs at the hands of bad actors regardless of regulatory thresholds. The SEC should continue its robust enforcement program to root out fraud across markets of all sizes, while supporting investor education on the importance of portfolio diversification to mitigate risk of one investment's failure.

Accredited investors are a critical source of early-stage capital for small businesses in communities across the country, and changes that would shrink the pool of currently accredited investors would have a detrimental effect on small business capital formation. The ripple effects of limiting access to early-stage capital would negatively impact access to future rounds of financing from funds and other later-stage investors, rippling further into the companies that will one day go public.

We also are concerned that raising the thresholds could have disproportionate impacts on various demographic groups, making the definition less inclusive and widening the nation's already wide racial wealth gap. We discussed the wealth gap among different racial and ethnic groups, as well across different geographic communities. The Commission should be mindful of the disparate impacts that increases to the financial thresholds could have on the pool of accredited investors. A more homogeneous pool of accredited investors would negatively impact the diversity of entrepreneurs who raise capital, decreasing inclusion in capital formation.

Further, we discussed the additional ripple effects that raised financial thresholds would have on companies whose shareholders may no longer qualify as accredited investors, inadvertently triggering the registration thresholds of Section 12(g).

Kesha Cash
Founder and General Partner
Impact America Fund
Oakland, CA

Robert Fox
National Managing Partner, Professional
Standards Group
Grant Thornton LLP
Chicago, IL

Carla Garrett
Corporate Partner
Potomac Law Group PLLC
Washington, DC

Stephen Graham
Corporate & Securities Partner
Fenwick & West LLP
Seattle, WA

Sara Hanks
CEO and Co-Founder
CrowdCheck, Inc.
Alexandria, VA

Youngro Lee
CEO and Co-Founder
NextSeed
Houston, TX

Brian Levey
Chief Business Affairs and Legal Officer
Upwork Inc.
San Francisco, CA

Sapna Mehta
General Counsel & Chief Compliance Officer,
Rise of the Rest Seed Fund; Associate General
Counsel, Revolution
Washington, DC

Catherine Mott
Founder & CEO of BlueTree Capital Group,
BlueTree Allied Angels, BlueTree Venture Fund
Pittsburgh, PA

Jason Seats
Chief Investment Officer
Techstars
Austin, TX

Jeffrey M. Solomon
Chief Executive Officer
Cowen, Inc.
New York, NY

Hank Torbert
President
AltaMax, LLC
New Orleans, LA

Sue Washer
President & CEO
Applied Genetic Technology Corporation
Gainesville, FL

Gregory Yadley
Partner
Shumaker, Loop & Kendrick, LLP
Tampa, FL

Greg Dean*
Senior Vice President
Office of Government Affairs, FINRA
Washington, DC

Andrea Seidt*
Ohio Securities Commissioner of the Ohio
Securities Department of Commerce;
Columbus, OH

Martha Miller*
Advocate for Small Business Capital Formation
U.S. Securities and Exchange Commission
Washington, DC

Bailey DeVries*
Associate Administrator for the Office of
Investment & Innovation; U.S. Small Business
Administration; Washington, DC

Marc Sharma*
Chief Counsel, Office of the Investor Advocate
U.S. Securities and Exchange Commission
Washington, DC

*Non-voting members

In light of the foregoing and consistent with our 2019 recommendations, we present the following new recommendations to the Commission for consideration in connection with potential future rulemaking on the definition of accredited investor:

1. Do not increase the current financial thresholds for individual investors to qualify as accredited.
2. Going forward, consider indexing the financial thresholds for inflation on a periodic basis.
3. Given the imperfect proxy that financial thresholds provide for measuring investor sophistication, provide alternative methods for investors to qualify as sophisticated, which could include investment experience, knowledge gained through work experience or membership in associations, education credentials, additional professional certifications, or tests to demonstrate sophistication.

Lastly, given the impact of early-stage investors who tend to invest within their local communities, as well as regional differences in income and wealth, the Committee recommends that the Commission consider creating a new exemption for local and/or micro-investments that would not be limited to accredited investors.¹

Respectfully submitted on behalf of the Advisory Committee,



Carla Garrett
Committee Chair



Jeffrey Solomon
Committee Vice Chair

CC: Commissioner Hester M. Peirce
Commissioner Allison Herren Lee
Commissioner Caroline A. Crenshaw

¹ Following the meeting, the Committee's non-voting NASAA representative, who was unable to attend the meeting, specifically requested a note that she does not support the recommendations.