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September 24, 2019

VIA FEDEX AND EMAIL

Ms. Vanessa Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Concept Release on Harmonization of Securities Offering Exemptions (File No. S7-08-19)

Dear Ms. Countryman:

We commend the Securities and Exchange Commission (the "Commission") for initiating a comprehensive review of the framework for private securities offerings and thank the Commission for this opportunity to comment on the proposal.

Our law firm represents several hundred investment advisers and investment fund managers. Members of our firm co-authored *U.S. Regulation of Hedge Funds* (first published by the American Bar Association in 2005 with a second edition published in 2013). We primarily represent investment advisers to private investment funds that are exempt from registration pursuant to sections 3(c)(1), 3(c)(5) or 3(c)(7) of the Investment Company Act of 1940 (the "ICA"). Our comments below are limited to a few of the most common "pain points" that our clients experience. We generally agree, however, with the spirit of the proposals to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.

Change to Accredited Investor Definition

We believe that the definition of "accredited investor" should be revised to include "qualified purchasers". In our experience, private investment funds that rely on ICA section 3(c)(7) include questionnaires regarding both a subscriber's accredited investor status and qualified purchaser status, even though there are only a few theoretical cases in which a qualified purchaser is not an accredited investor. Further, the conditions for being a qualified purchaser are overall significantly more stringent than those required to be an accredited investor. Thus, for no additional investor protection benefit, this duplication complicates and increases the cost of the subscription process, as it creates an additional layer of questions to which subscribers must respond and fund managers and their outside service providers must review.

Rule 144A

1. QIB Definition. The definition of "qualified institutional buyer" (or "QIB") was intended to capture sophisticated institutional investors. Therefore, we believe the term should be expanded to include any entity whose account is managed by an investment adviser that manages in excess of $100 million in securities of issuers that are not affiliated with that client or adviser. Currently, the $100 million calculation applies to each client rather than to the adviser's aggregate client assets, which can create strange results. For example, an investment adviser to a private investment fund with $1 billion in securities and a second fund with $80 million in securities cannot invest in 144A securities on behalf of that second fund. This can be especially problematic if the adviser has committed to manage those two funds on a *pari passu* basis. The QIB definition already permits aggregation for registered investment companies that are part of a family of investment companies which own in the aggregate at least $100 million in securities.[1]

We also believe the benefit of such aggregation should be granted to clients managed by all investment advisers (whether or not registered with the Commission or excluded from the definition of "investment adviser"). For example, exempt reporting advisers may have up to $150 million in assets under management and family offices and venture capital advisers may have unlimited assets under management. None of these advisers is required to register with the Commission. However, if they manage over $100 million in securities on an aggregate basis it is difficult to see why they are presumed not sufficiently sophisticated and institutional to qualify as QIBs.

Accordingly, we would suggest a new category of QIB under Rule 144A(a)(1):

> (vii) Any entity, if (A) such entity is advised by an investment adviser (whether registered, excluded from the definition of "investment adviser" or exempt from registration under the Investment Advisers Act) that in the aggregate advises on a discretionary basis client accounts with at least $100 million in securities of issuers that are not affiliated with the entity or the adviser, and (B) the investment adviser referred to in clause (A) purchases on the entity's behalf the security being offered or sold pursuant to the exemption under this section pursuant to discretionary authority granted by the entity.

2. Calculation of Value of Securities. We also believe that the calculation method for determining the aggregate value of securities in Rule 144A(a)(3), which defaults to a "cost" method, is counterintuitive and creates the need to perform an alternate calculation solely for this purpose. We would suggest the following amendment:

> (3) The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the ~~cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published~~ fair market value of such securities. The fair market

[1] Rule 144A(a)(1)(iv) under the Securities Act of 1933, as amended.

> value of any particular security for purposes of this section shall be as most recently determined based on public exchange data or by an independent third party, or if not applicable, then as last valued by that entity if it is subject to audit (as defined in rule 1-02(d) of Regulation S-X (17 CFR 210.1-02(d)) by an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each year end by, the Public Company Accounting Oversight Board in accordance with its rules. If none of the foregoing valuation methods apply to a particular security then it shall be~~. In the latter event, the securities may be~~ valued at ~~market~~ cost for purposes of this section.

It seems unnecessary to require entities to use cost basis solely for purposes of determining QIB status if those entities track their assets daily on a fair market value basis or perform fair valuation analysis in connection with their annual financial audit procedures. This alternate calculation has created confusion for our clients in the past.

Thank you for considering our comments. If you have any questions or need additional information, please contact John Broadhurst, Geoff Haynes, Carolyn Reiser, Neil Koren, James Frolik, Christina Hamilton, David Suozzi, Anthony Caldwell, Joan Grant or Ellyn Roberts at (415) 421-6500.

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