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VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Concept Release on Harmonization of Securities Offering, Nos. 33-10649; 34-86129; IA-5256; IC-33512; File No. S7-08-19 (Jun. 18, 2019)

Dear Ms. Countryman:

We represent the Private Investor Coalition ("PIC") and are submitting this letter on their behalf in response to Release Nos. 33-10649; 34-86129; IA-5256; IC-33512 (the "Concept Release") in which the Securities and Exchange Commission (the "SEC") requested comments on possible ways to "simplify, harmonize, and improve the exempt offering framework to promote capital formation and expand investment opportunities while maintaining appropriate investor protections."

PIC is a nationwide organization consisting of single family offices ("SFOs") and individual private investors who share a common interest in public policy issues impacting the SFO community. PIC believes that it is the recognized authority on legislative and regulatory issues affecting SFOs, and serves as the primary resource for disseminating information on legislative, regulatory and compliance issues impacting SFOs.

PIC supports the goals of the Concept Release and applauds the SEC for seeking comments on these issues. PIC believes that these goals should include developing a common approach to the treatment of SFOs and their family clients under the federal securities laws, including the Securities Act of 1933 Act (the "1933 Act") and the Investment Company Act of 1940 (the "Investment Company Act"). This approach should be based on Rule 202(a)(11)(G)-1 ("Family Office Rule") under the Investment Advisers Act of 1940 (the "Advisers Act") and incorporate the concept of "Family Client" included in that Rule.

Background

Entities that rely on the Family Office Rule ("Family Offices") or their clients ("Family Clients") frequently acquire securities in exempt offerings under the 1933 Act, including interests in private equity funds and hedge funds that rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act. Different aspects of these offerings are addressed by different parts of the federal securities laws, in particular, the 1933 Act and the Investment Company Act. However, the concepts of a Family Office and Family Client do not have direct counterparts in the definitions of "Accredited Investor" under the 1933 Act and "Qualified Purchaser" under the Investment Company Act.

PIC believes that the SEC should harmonize these definitions in order to simplify the private offering process, both for Family Offices and issuers in offerings that rely on Regulation D and Section 3(c)(7). Because the Accredited Investor and Qualified Purchaser definitions may apply to some but not all Family Clients under current law, they sometimes prevent certain Family Clients from entering into investments even though such investments have otherwise been fully understood, vetted and negotiated by the Family Office. Applying the Family Office concept uniformly across the securities laws would facilitate investments by sophisticated Family Offices in exempt offerings and would also serve to facilitate capital formation.

Family Offices are excluded from the definition of investment adviser under the Advisers Act. The public policy supporting this exclusion is based on the notion that members of a family will protect each other and that the investor protections of the Advisers Act do not need to apply in this unique situation. As noted by the SEC:

> We viewed the typical single family office as not the sort of arrangement that Congress designed the Advisers Act to regulate. We also were concerned that application of the Advisers Act would intrude on the privacy of family members. ... The Act was not designed to regulate the interactions of family members in the management of their own wealth.[1]

Because a Family Office and its managers are controlled by or for the family they serve, are financially sophisticated and manage significant assets, the SEC acknowledged, even before the adoption of the Family Office Rule, that certain protections otherwise afforded to less sophisticated financial consumers by federal securities laws are not necessary to protect the Family Office or its clients.[2]

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1 *See Family Offices*, Investment Advisers Act Release No. 3098 (Oct. 12, 2010).

2 *Id.* Pre-Family Office Rule examples of this approach include In the Matter of Donner Estates, Inc., SEC Release No. IA-21 (Nov. 3, 1941) and Riverton Management, Inc., SEC Release No. IA-2459 (Dec. 9, 2005) and IA-2471 (Jan. 6, 2006)(order)(each declaring that an entity acting as investment adviser to members of a family and trusts and other entities

The Family Office Rule contains a detailed definition of Family Client that assures that Family Clients will consist solely of family members and related parties, including the Family Office's key employees, as well as trusts, charitable organizations or other vehicles that facilitate family investment activities.

PIC believes that the framework for exempt offerings would be streamlined if the SEC amends its rules in three respects:

1. Amend the definition of Accredited Investor in Regulation D under the 1933 Act to include any Family Client as an Accredited Investor, subject to certain conditions.

2. Adopt a new rule under the Investment Company Act to include a new category of Qualified Purchaser for purposes of Section 3(c)(7) that would parallel the new category of Accredited Investor.

3. Adopt a new rule under the Investment Company Act that would include a new exemption from Investment Company Act regulation for Family Offices and Family Clients.

These new rules and amendments would result in unified treatment for Family Offices under the federal securities laws. This would, in turn, make private placements more efficient and facilitate investor choice as well as capital formation.

Existing Definitions and Disparate Treatment

Rule 501(a) under Regulation D under the 1933 Act, which defines the term Accredited Investor, includes, among other categories:

- a natural person whose individual net worth, or joint net worth with a spouse, exceeds $1,000,000 (without taking into account his residence and related indebtedness);

- a natural person who had an individual income in excess of $200,000 in each of the two most recent years (or joint income with a spouse in excess of $300,000) and has a reasonable expectation of reaching the same income level in the current year;

- any trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities being offered, and whose decision is being made by a sophisticated investor; or

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wholly owned by the family was not an investment adviser within the meaning of the Advisers Act).

- an entity in which all of the equity owners are Accredited Investors.

While certain Family Clients fit within these categories, others do not, even though they are managed by a Family Office that manages sufficient assets such that it would clearly be an Accredited Investor. In other words, there is no explicit recognition of a Family Office (or a Family Client) as a distinct category of investor that shares many of the characteristics of a typical Accredited Investor.

Similarly, the term Qualified Purchaser (as defined by Section 2(a)(51)(A) of the Investment Company Act) includes the following categories of investors:

- a natural person who owns not less than $5,000,000 of investments;
- a company that owns not less than $5,000,000 in investments and that is owned by two or more natural persons who are related as siblings or spouse (including former spouses) or direct lineal descendants by birth or adoption, spouses and estates of such persons, or charitable organizations or trusts established by or for the benefit of such persons (the "Family Company Category");
- a trust (other than a trust that falls within the Family Company Category), not formed for the purpose of making the investment, and as to which each person authorized to make decisions and each settlor or contributor of assets is himself a Qualified Purchaser (the "Trust Category"); and
- any other investor who, in the aggregate, owns and invests on a discretionary basis not less than $25,000,000 (the "Entity Category").

This definition was enacted in 1996 — before the adoption of the Family Office Rule. The Family Company Category, while useful, does not reflect the manner in which many Family Offices currently provide investment opportunities to Family Clients. The Trust and Entity Categories are simply too narrow to reflect the manner in which a Family Office might organize its investment activities.

The different approaches to family investors in these provisions can be a trap for the unwary. For example, a trust for the benefit of a child or a charitable foundation that is formed and managed by a sophisticated investor may be a Qualified Purchaser but not an Accredited Investor if the trust or foundation does not have sufficient assets. PIC does not believe that this inconsistency can be justified based on a policy reason.

A Unified Approach

PIC urges the SEC to add a new category of investor to the Accredited Investor and Qualified Purchaser definitions: any Family Office or Family Client of a Family Office, as defined in under the Family Office Rule. The new category would only apply to (i) a Family Office with assets under management in excess of $5,000,000 and (ii) a Family Office or a Family Client (a) that is not formed for the specific purpose of acquiring the securities offered and (b) whose purchase is directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of a potential investment.

The new category (and the related conditions) is the same as that included in H.R. 3972, The Family Office Technical Corrections Act, which was passed by the United States House of Representatives on October 24, 2017 by voice vote after having been passed out of the House Financial Services Committee by unanimous recorded vote. H.R. 3972 would have required the SEC to amend the definition of Accredited Investor along the lines described above. In adopting this legislation, the House Financial Services Committee found that "[t]he public policy to support this exclusion is based on the notion that members of a family will protect each other and that the investor protections of the Advisers Act do not need to apply in this unique situation. This policy rationale should also extend to treat family offices as accredited investors under [Rule 506]."[3] PIC believes that the policy rationale underlying H.R. 3972 applies with equal force to a rule that would establish a new category of Qualified Purchaser based on the Family Office concept.

This new category is consistent with certain of the existing categories of Qualified Purchaser. In particular, the Family Company category recognized that certain family investment vehicles that had $5 million of investments would likely be sufficiently sophisticated to invest in Section 3(c)(7) funds. The new category recognizes this threshold but is also based on the investment advice being provided by a sophisticated, professionally managed Family Office.[4] The new category would also incorporate the "not formed for the purpose" limitation reflected in the Trust Category and Rule 2a51-3 under the Investment Company Act.

Investment Company Act Exemption

When the Investment Company Act was enacted, Congress and the SEC recognized that there was no public interest in regulating family investment vehicles.[5] Section

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3 U.S. House of Representatives, 115th Congress, 1st Sess., H.R. Rep No. 115-362, at 2 (2017).

4 We believe that the SEC has ample authority under Section 6(c) of the Investment Company Act to adopt such a rule. In addition, Section 2(a)(51)(B) of the Investment Company Act specifies that the SEC "may adopt such rules and regulations applicable [to Qualified Purchasers identified by Section 2(a)(51)] as it determines are necessary and appropriate in the public interest for the protections of investors."

5 *See* Protecting Investors: A Half Century of Investment Company Act Regulation (1992) 106 ("A family may have a substantial estate and has invested its money in marketable securities. In essence that is a private investment company, is it not? We do not want any part of it . . . .") (quoting testimony of David Schenker, Chief Counsel to the SEC's Investment Trust Study, before a subcommittee of the Senate Committee on Banking and Currency in 1940). *See also* In re Maritime Corp., 9 S.E.C. 906 (1941) ("The limitation of 100 stockholders in Section 3(c)(1) obviously is an arbitrary figure."). In that matter, the SEC exempted from

3(c)(1) of the Investment Company Act reflects this recognition but is only available if securities issued by the investment vehicle (other than short-term paper) are held by no more than 100 persons.

The SEC has long recognized that family investment vehicles are not the types of companies that are intended to be subject to Investment Company Act regulation and has issued orders to various family investment vehicles that could no longer satisfy the limitations imposed by Section 3(c)(1) (or Section 3(c)(7)).[6] The control of a Family Office by the family members serves to mitigate any actual or perceived conflict between management and investors. However, Family Offices or the investment vehicles they establish for Family Clients often face the prospect of being regulated under the Investment Company Act (because they might fail to satisfy the conditions of Section 3(c)(1) or 3(c)(7)) or arbitrarily excluding certain family members from being able to participate in the Family Office investment.

Requiring a Family Office to obtain an order (because, for example, of the natural growth in the number of family members) imposes a burden on Family Offices and unnecessary administrative burdens on the SEC. A specific Family Office/Family Client exemption under the Investment Company Act would achieve the intended policy aims while codifying prior exemptions and eliminating burdensome administrative proceedings for both the SEC and Family Offices.

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PIC believes that implementing these recommendations would support the SEC's goals of harmonization and simplification of the exempt offering framework and promoting capital formation and expanding investment opportunities, while not compromising investor protection.

Investment Company Act regulation a company that had 126 stockholders of one class of stock; the other class of stock was held by a voting trust that had 119 beneficiaries.

6 *See, e.g.*, Jeffrey LLC; Release Nos. IC-32526 (Mar. 7, 2017) (notice) and IC-32590 (Apr. 4, 2017)(order); Leaning Pine II, L.L.C., Release Nos. IC-31959 (Jan. 15, 2016) (notice) and IC-31992 (Feb. 10, 2016) (order); Bessemer Securities LLC, Release Nos. IC-22377 (Dec. 6, 1996) (notice) and IC-22420 (Dec. 30, 1996) (order); THC Partners, Release Nos. IC-21980 (May 23, 1996) (notice) and IC-22023 (June 18, 1996) (order); Heber J. Grant & Co., Release Nos. IC-20040 (Jan. 27, 1994) (notice) and IC-20091 (Feb. 23, 1994) (order).

PIC appreciates the opportunity to comment on the Proposal and would be pleased to answer any questions that the SEC or its staff might have concerning its comments.

Respectfully submitted,

Kenneth J. Berman

cc. Chairman Jay Clayton
Commissioner Robert J. Jackson
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison Herron Lee
William Hinman, Director, Division of Corporation Finance
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