The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

September 24, 2019

By Email to: rule-comments@sec.gov

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: File Number S7-08-19: Concept Release on Harmonization of Securities Offering Exemptions

Dear Ms. Countryman:

I write in my capacity as the chief securities regulator for Massachusetts. The Office of the Secretary of the Commonwealth administers and enforces the Massachusetts Uniform Securities Act, M.G.L. c.110A (the "Act"), through the Massachusetts Securities Division. My Office also administers the Massachusetts corporation laws and other business chartering laws. We welcome this opportunity to comment on the Securities and Exchange Commission's (the "SEC" or the "Commission") Concept Release on Harmonization of Securities Offering Exemptions (the "Concept Release").

We commend the Commission for addressing the proliferation of exemptions, particularly since the enactment of the JOBS Act of 2012. It would be desirable to make the framework of the exemptions more consistent, more understandable, and easier to use.

The Concept Release states that it continues to be a priority of the Commission to encourage registered offerings and to facilitate investor access to such investment opportunities. We support this statement and urge the Commission give high priority to upholding the disclosure system for public companies as established under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). Securities registration and public company reporting promote market transparency, put market participants on a more equal footing, and address the informational advantages that sellers of securities often enjoy with respect to purchasers of securities.

Securities are complex intangible property that are offered and sold based on representations about the instrument and the issuer. Because purchasers of securities need sufficient and reliable information to make investment decisions, the federal and state securities laws appropriately place affirmative disclosure obligations on issuers and sellers of securities. We urge the Commission to uphold these longstanding fundamental principles in any upcoming rulemaking relating to the securities exemptions.

Fraud in Unregistered and Exempt Offerings

Private placements and other unregistered offerings have been a consistent source of fraud complaints to, and enforcement actions by, the states. Exhibit 1 to this letter describes recent cases filed by the Massachusetts Securities Division in connection with unregistered offerings.

Preserve the Powers of the States to Protect Investors in Unregistered Offerings

In any harmonization of the exemptions, the capacity of the states to protect their investors in exempt transactions should be preserved and upheld. Many offerings sold under the exemptions have a local character and they may focus on a particular area or community, so it is important for local regulators to have authority over such offerings.

The Concept Release suggests at several points that the Commission could use its ability to preempt state authority to regulate exempt transactions via the SEC's power to define transactions as involving "qualified purchasers" (e.g., at page 13 of the Concept Release). We urge the Commission to preserve the roles of the states as the local cops in these markets to help protect investors, particularly retail investors, from abusive practices and high-risk offerings in an unregulated market.

Deregulation of Offers

The Concept Release raises the idea of deregulating offers of securities and limiting regulation under the securities laws to actual sales (page 25 of the Concept Release). This approach will be particularly dangerous for retail investors and we urge the Commission not to take this step.

Section 5(c) of the Securities Act of 1933 requires that a security be 'in registration' before it can be offered, unless an exemption applies. This fundamental principle of the securities laws allows federal and state regulators to take action against abusive and fraudulent offerings before sales take place, and before these offerings involve victims.

Deregulation of offers would remove a powerful enforcement tool that has demonstrably worked to protect investors. We note that the Commission regularly addresses abusive and fraudulent offerings based on violation of Section 5(c), among other counts.

Recent enforcement actions by the Massachusetts Securities Division demonstrate the importance of the Division's ability to act against unregistered offerings before they were sold. On March 27, 2018, the Division entered five Consent Orders (the "ICO Orders") with respect to initial coin offerings ("ICOs"). All of the Consent Orders were entered with respect to Section 301 of the Act, which prohibits the offer or sale of a security unless the security is (1) registered, (2) exempt from registration under section 402, or (3) is a federally covered security. These actions against ICO issuers are in Exhibit 2 to this letter.

Accredited Investor Definition for Individuals

In any revision of the exemptions under Regulation D, we urge the Commission to adjust for inflation the outdated net worth and income standards for individuals to be considered accredited. Those standards were established in 1982 and have been severely eroded by inflation.

Currently, an individual is an accredited investor if the individual is a natural person who either (1) has an income that exceeds $200,000 (or $300,000 in joint income with a person's spouse) in each of the two most recent years and reasonably expects to reach the same income level in the current year, or (2) has a net worth greater than $1 million (individually or jointly with a spouse), excluding the value of their primary residence. In addition, directors, executive officers and general partners of the issuer selling the securities are considered accredited investors with respect to that issuer.

A key purpose of the accredited investor definition is to delineate a category of individuals or organizations whose financial sophistication and capacity to sustain the risk of loss, or ability to fend for themselves, would make the protections provided by Securities Act registration unnecessary. Under Rule 506 of Regulation D, transactions with accredited investors are lightly regulated. Accredited investors can participate in a range of investments, such as hedge funds, that are not available to non-accredited investors. Moreover, there is no mandated form of disclosure that must be provided to accredited investors.

Because the current accredited investor definition does not describe a category of investors who can fend for themselves in the financial markets or sustain the loss of their invested funds, the definition poses great risks to retail investors and savers. The greatest risks are to the elderly and to those saving for retirement. Data from the Federal Reserve show that 75% of the wealth of all households is held in households age 55 and higher.[1] These investors often have particular financial vulnerabilities: they may not be in a position to replace lost savings and they may need liquidity in the near-term for medical and related expenses. These investors may be subject to dementia and other disabilities. As these households age, women make up an increasing portion of this group; in many cases, they may have limited financial experience or sophistication.

[1] Board of Governors of the Federal Reserve System, Federal Reserve Bulletin, *Changes in U.S. Family Finances from 2013-2016: Evidence from the Survey of Consumer Finances* (Sept. 2017) ("Federal Reserve Bulletin") at p. 13. https://www.federalreserve.gov/publications/files/scf17.pdf

Accreditation Based on Expertise and Credentials

The Concept Release describes several potentially broad changes in the definition of accredited investor, which could include allowing investors to be considered to be accredited based on credentials or expertise. We urge that any changes to the definition should delineate a group of investors with the knowledge and skill to protect themselves in the financial markets. The Commission's first goal should not be to enlarge the pool of investors eligible to participate in private placements; rather, it should be to assure that the individuals covered by the accredited investor definition will be able evaluate these offerings and to protect themselves in the private markets.

Consistent with these goals, we also urge the Commission to not to pursue initiatives such as allowing investors to self-certify their accredited status, or allowing investors to opt into accredited status after receiving information about investment risks. These approaches would be contrary to meaningful accreditation.

Reforming the Form D Filing Requirements

We urge the Commission to make the filing of Form D a condition of the Regulation D exemptions. This notice provides valuable information about exempt offerings to regulators and the marketplace, so it is reasonable to require issuers to file it.

The Form D should be filed at the inception of an offering. Currently the notice is often filed after an offering holds its first closing and investor funds are released from escrow. This can result in regulators receiving notice about problematic offerings after investors' funds have been disbursed to sponsors and issuers. Also, a final Form D should be required when an offering ends. Again, this would help regulators to know which offerings may still be ongoing and which ones have been terminated.

Micro-Offering Exemption and Exemption Based on a 10% Investor Purchase Limit

We urge the Commission not to adopt a micro-offering exemption. This exemption, especially if it has few formal requirements, could create a haven for unscrupulous issuers and promoters. The state and federal registration requirements provide a powerful tool for regulators to quickly shut down fraudulent and abusive offerings. It is reasonable to expect that the promoters of small investment frauds to defend against enforcement actions by asserting that they are carrying out exempt micro-offerings and claiming that exemption. It is foreseeable that this will result in more small investors being harmed by frauds that regulators cannot shut down quickly.

An exemption based on a purchase limit (for example, no more than 10% of an investor's net worth) would be an invitation for the sponsors of fraudulent and high-risk offerings to peddle their securities to unsophisticated purchasers up to that purchase limit. Also, for purchasers who have limited savings, this kind of purchase limit would provide dubious protection, because a 10% loss would be a serious financial setback for most households.

Exclusions from Public Company Reporting

We urge the Commission to uphold the requirements for large companies and companies with large numbers of shareholders to register as public reporting companies under the Exchange Act. Requiring these companies to issue ongoing reports brings the daylight of public disclosure to these issuers and greater transparency to the markets where their securities trade. Accordingly, we recommend that the Commission incentivize these larger companies to register as reporting companies rather than staying outside the reporting system.

Crowdfunding – Special Purpose Vehicles

We urge the Commission not to permit equity investors in crowdfunding offering to be bundled into special purpose vehicles ("SPVs") that would appear as a single investor on an issuer's capitalization table (instead of a large number of small investors). The SPV approach would make it difficult or impossible for crowdfunding investors to exercise their basic rights under state corporation laws. Such rights may include: voting for company directors, voting on material transactions, rights of access to corporate records, and appraisal rights. We are also concerned that it would not be practicable for a competent manager to run a crowdfunding SPV on behalf of the crowdfunding investors. The dollar value of typical crowdfunding transactions is small, so there would not be enough money available to pay an SPV manager, or the fees paid would need to come immediately from the principal investment.

Pooled Vehicles

We urge the Commission not to move toward turning private funds, like hedge and private equity funds, into retail options. Section 2 of the Securities Exchange Act of 1934 and Section 1 of the Investment Company Act of 1940 specifically reference the kinds of investor abuses and national emergencies that can arise when poorly regulated investment vehicles operate in non-transparent markets. We urge the Commission to heed the warning that Congress drafted into those statutes and to remember the harm caused in the recent financial crisis by lightly regulated instruments, funds, and markets. Promoting wider participation by unsophisticated individuals in unregulated markets would create risks that could be disastrous for investors and the financial system.

Concern in Congress

We have been notified about a draft bill in the House Committee on Financial Services "To require the Securities and Exchange Commission to submit a report to Congress about private securities offerings, and for other purposes." The bill targets the range of issues raised in the Concept Release. Among other elements, the bill would require the SEC to conduct a study and report to Congress on the impact on public securities markets and investors at varying levels of sophistication before the Commission could enact the kinds of changes described in the Concept Release. The Concept Release addresses a wide range of issues that relate directly to the protection of investors and many ideas in it would change how the securities laws have been applied for many decades. We urge the Commission to actively engage with Congress to ensure

that any changes will be consistent with the spirit of the securities laws and will promote the protection of investors

Request for Extension for the Investor Advisory Committee

The Commission's Investor Advisory Committee submitted a letter requesting an extension of time to submit their comments on the Concept Release. Among other reasons for their request, the Committee noted the large scale of the Concept Release and cited the large number of questions included in the Release. Many of the questions have far-reaching implications for retail investors. Consistent with the purposes of the Investor Advisory Committee, we urge the Commission to accept and consider its comments.

Investor Protection and Fair Markets Must Be the Commission's First Priorities

We urge the Commission to make the protection of investors and the promotion of fair and transparent markets its highest priorities in any reform of the securities exemptions. The Concept Release emphasizes deregulatory measures to enlarge the pool of investors who may participate in the private markets and provide capital for start-up enterprises. However, the harm that less sophisticated investors have suffered in the unregistered markets demonstrates the need for greater investor protection instead of the sweeping deregulation suggested in the Concept Release.

We appreciate the opportunity to comment on the Concept Release and your consideration of these comments. If you have questions about this letter, please contact me or Diane Young-Spitzer, Acting Director of the Massachusetts Securities Division, at ([redacted].

Sincerely,

William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

EXHIBIT 1

Filed Matters

Docket No.	Name	Summary
R-2017-0019	In the matter of Moser Capital Management, LLC and Nicklaus J. Moser	Filed on 10.19.2017 Ch. 110A, Sections 101, 201, 204 Among other things, a registered investment adviser made fraudulent misstatements and omissions in connection with the offer and sale of two unregistered venture capital funds. One fund had 41 investors and raised 4.475M and the other fund had 40 investors and raised $1.85M.
E-2017-0040	In the matter of Raymond K. Montoya, Research Magnate Advisors, LLC, Resource Managed Assets, LLC, and RMA Strategic Opportunity Fund LLC	Filed on 06.08.2017 Ch. 110A, Sections 101, 102, 301, 404 Montoya operated a fraudulent hedge fund which raised over $30M from numerous investors. Montoya made fraudulent misstatements and omissions at the time the securities were offered and misappropriated investor funds for the benefit of himself and his family.
E-2017-0120	In the matter of Caviar and Kirill Bensonoff	Filed on 01.07.2018 Ch. 110A, Sections 201, 301 Caviar and Bensonoff offered and sold unregistered ICO tokens representing an interest in a dual purpose investment fund based on the blockchain. Proceeds from the ICO were to fund a cryptocurrency portfolio and a portfolio of short-term flips of residential real estate. The offering sought to raise $25M in capital.

E-2017-0066	In the matter of Kiacell LLC and Ricardo Bernard	Filed on 12.12.2017 Ch. 110A, Sections 101, 301 Purported real estate developer fraudulently offered and sold unregistered securities to 2 investors in the amount of $40,000 evidenced by promissory notes with interest rates of 15% and 10%. This scheme took place within a larger affinity fraud on the Haitian community whereby Bernard would induce close to foreclosure mortgage holders to sell him their properties for $1 in return for his promise to fix and sell the properties for a greater return at a later date. Bernard would then install tenants and take the rental earnings and eventually allow the properties to be foreclosed on.
E-2017-0105	In the matter of Thomas T. Riquier and United Planners' Financial Services of America A Limited Partner	Filed on 02.14.2018 Ch. 110A, Sections 101, 102, 204, 301 Registered investment adviser raised $730,000 from 30 client investors for investment in private placement offering. The PPM and other offering documents contained fraudulent and material misstatements and omissions.
E-2017-0108	In the matter of ARO Equity, LLC, Thomas David Renison and Timothy James Alcott	Filed on 04.19.2019 Ch. 110A, Sections 101, 201, 301 Ex-investment adviser created a private equity fund and raised over $5.8M in investor funds evidenced by unregistered promissory notes offering 8-12% returns over 3-5 year terms. Fraudulent misrepresentations were made to investors at the time of sale and approximately $710,000 was taken by Renison in the form of undisclosed commission and executive compensation. Approximately $700,000 was paid to existing investors using new investor money which indicated a Ponzi scheme.

E-2017-0113	In the matter of Frederick V. McDonald, Jr., Commonwealth Pain management Connection, LLC, Kettle Black of MA, LLC, and US Advisory Group	Filed on 04.17.2019 Ch. 110A, Sections 101, 102, 204 Registered investment adviser offered and sold client investor private placement securities without disclosing material conflicts of interest and without authorization and incurred losses of approximately $3M.
E-2018-0002	In the matter of Advent Medical Products, Inc. and Randall W. Fincke	Filed on 07.12.2018 Ch. 110A, Sections 101, 201, 301 Advent and Fincke issued more than $2.9M in unregistered securities. Fraudulent misrepresentations were made to investors at the time of sale and approximately $1M was misappropriated by Fincke and his family.
E-2018-0043	In the matter of Kenneth A. Mousette, David Lindahl, Pool Fund Associates, Investors Fund Trust, and Danielle Realty Trust	Filed on 08.01.2018 Ch. 110A, Sections 101, 102 The Pool Fund was a fraudulent entity, purporting to be a real estate investment fund, which collected approximately $1.4M from at least 34 Massachusetts investors. The operators of the Pools Fund mismanaged the fund and transferred assets of the fund to themselves.
E-2018-0094	In the matter of Positronic Farms, Inc. and David A. Caputo	Filed on 06.19.2019 Ch. 110A, Sections 101, 201, 301 Purported cultivator of cannabis raised $1.3M from 40 investors in a unregistered private placement offering. The company and its founder made material misstatements in the offer and sale of the unregistered and non-exempt securities.

Exhibit 2

Consent Orders (ICO Orders)

Docket No.	Name	Summary
E-2018-0010	In the matter of 18Moons, Inc.	03.27.2018 Consent Order In 2017, 18Moons, Inc., a creator of children's programming, planned an ICO for Planet Kids Coins to raise up to $10M in US dollars or cryptocurrencies. 18Moons, Inc. promoted the offering on Reddit, Telegram, Twitter, and YouTube. The offering ceased prior to any investment.
E-2018-0011	In the matter of Mattervest	03.27.2018 Consent Order Mattervest created and ran a website that planned to pool investor funds to invest in various ICOs and achieve bonuses. Solicitations for the investment were conducted through Twitter. The offering ceased prior to any investment.
E-2018-0016	In the matter of Across Platforms, Inc, d/b/a ClickableTV	03.27.2018 Consent Order In January 2018, Across Platforms, Inc., d/b/a ClickableTV sought to raise up to $27.5M through an initial coin offering of Clickable TV tokens backed by an advertising platform built on the Ethereum Blockchain. Investors in the ICO who purchased during the pre-sale period would receive a 25% bonus. The offering ceased prior to any investment.
E-2018-0017	In the matter of Sparkco, Inc. d/b/a Librium	03.27.2018 Consent Order Sparkco operated a freelance platform business and in 2017 sought to raise $18 M through an initial coin offering of Librium token benchmarked to Ethereum. Bonuses between 10-20% were offered to early buyers. The offering ceased prior to any investment.

E-2018-0029	In the matter of Pink Ribbon ICO	03.27.2018 Consent Order Pink Ribbon operated a Facebook page seeking to raise approximately $13M through an initial coin offering. Pink Ribbon claimed to be a public company on the Blockchain that would donate a majority of the money to women and families facing financial burdens from cancer. The offering ceased prior to any investment.
E-2018-0018	In the matter of Blue Vase Mining	05.21.2018 Consent Order Blue Vase Mining planned to mine cryptocurrences and distribute them to potential investors. Blue Vase offered a subscription which promised cryptocurrencies in exchange for annual maintenance fees. The offering ceased in February of 2018 and Blue Vase Mining returned $5,260 to investors.
E-2017-0118	In the matter of CarrierEQ, Inc. d/b/a AirFox	11.16.2018 Consent Order CarrierEQ, Inc. d/b/a AirFox planned an initial coin offering of AirTokens which were to be used to purchase airtime data on the company's platform. The company raised more than $15M from investors. Pursuant to the Consent Order, the company agreed to register the offering, make offers of rescission to investors and pay an administrative fine.