September 24, 2019

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

Re: S7-08-19 - Concept Release on Harmonization of Securities Offering

Dear Ms. Countryman:

Crystal World Holdings, Inc. ("CWH") and the New Sports Economy Institute ("NSEI") (collectively "the Entities", or "we") welcome the opportunity to respond to the Securities and Exchange Commission's ("SEC" or "Commission") request for comment on the harmonization of securities offering. Concept Release on Harmonization of Securities Offering, File No. S7-08-19 ("Concept Release").

CWH is a Wyoming company with the mission to make sports an asset class. To that end, the Company develops socially beneficial sports trading instruments that it intends to offer to the investing public in regulated financial markets overseen by the SEC, and/or the Commodity Futures Trading Commission ("CFTC") in the U.S., the Ontario Securities Commission ("OSC") in Canada, and/or similar regulatory bodies in other jurisdictions.

NSEI is a 501(c)(3) non-profit, tax-exempt organization registered in California with the mission to transform society through sports and finance. To execute on this mission, NSEI, among other things, is advancing financial literacy by designing various educational programs to teach finance through sports.

With respect to the Concept Release, the Entities' perspective is thus twofold. First, as a start-up itself, CWH has an interest in the harmonization of securities offerings. Second, one of the products CWH has developed is a novel way to raise capital for the sports industry, and as a result, the Entities have a unique perspective on certain issues that are closely related to securities offerings.

The Entities commend the Commission on its consideration of this important policy issue and are pleased to share their views on the issues raised by the Concept Release. In addition to responding to specific questions further below, the Entities believe their unique experience resulted in the following key insights that the Commission might find useful.

1. Information disclosure and financial sophistication are closely related, and potential policy choices should address them in conjunction.

2. There is a natural opportunity for the Commission to consider its financial literacy efforts and measurement of financial sophistication holistically.

3. Establishing consensus on financial terminology is important, and the lack of such consensus will likely hurt the investing public.

4. Novel instruments to raise capital have the potential to be socially beneficial.

Below, we will discuss each of these insights in detail.

1. Information disclosure and financial sophistication are closely related, and potential policy choices should address them in conjunction.

The SEC has a three-part mission:

- Protect investors;
- Maintain fair, orderly, and efficient markets; and
- Facilitate capital formation.

The key challenge for the Commission to successfully execute on its mission is information asymmetry. As the Commission has noted, front and center on its webpage, "Companies offering securities for sale to the public must tell the truth about their business, the securities they are selling, and the risks involved in investing in those securities." The Role of the SEC, SEC website.[1] Similarly, the Commission has emphasized the significance of information asymmetry in recent guidance. "Absent the disclosures required by law about those efforts and the progress and prospects of the enterprise, significant informational asymmetries may exist between the management and promoters of the enterprise on the one hand, and investors and prospective investors on the other hand. *The reduction of these information asymmetries through required disclosures protects investors and is one of the primary purposes of the federal securities laws.*" Framework for "Investment Contract" Analysis of Digital Assets (emphasis added).[2]

SEC v. Ralston Purina, Co., 346 U.S. 119 (1953) is the seminal case that influenced the various frameworks for offerings that are exempt from registration. Indeed, the Commission noted in its Concept Release, that "*[the] focus on the characteristics of the investors* involved in a particular offering is articulated in the context of the Section 4(a)(2) exemption in the leading case interpreting that provision, *SEC v. Ralston Purina*. Concept Release p. 12 (emphasis added).

We feel there is an alternative reading of *Ralston Purina*, one which focuses on both sides of the equation, *both* the investor and the entity that is seeking capital. As described above, information asymmetry is the fundamental concern in these offerings, and information asymmetry, by definition, is a two-sided concept.

It is certainly true that, as also cited by the Commission in the Concept Release, *Ralston Purina* stressed the investor side of the coin. "[T]he availability of

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1 https://www.investor.gov/introduction-investing/basics/role-sec. Accessed September 22, 2019.
2 https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets. Accessed September 22, 2019.

the Section 4(a)(2) exemption 'should turn on whether the particular class of persons affected needs the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering''". Concept Release, p. 13. However, *Ralston Purina* similarly emphasized the critical role of *information*. "But, once it is seen that the exemption question turns on the *knowledge* of the offerees, the issuer's motives, laudable though they may be, fade into irrelevance. The focus of inquiry should be on the need of the offerees for the protections afforded by registration. The employees here were not shown to have access *to the kind of information which registration would disclose*. *SEC v. Ralston Purina Co.*, 346 U.S. 119 (1953) (emphasis added).

A conservative view could be that unless required by law, the average company will disclose minimum information to its current and/or potential investors. If it is assumed that the level information disclosure is fixed across all issuers, the investor becomes the natural focal point, and the securities offering exemptions can be structured with varying degrees of investor protection based on investor sophistication. As the Commission has noted in its Concept Release, "[e]xemptions tend to incorporate more investor protection measures where non-accredited or less sophisticated investors are permitted to participate in the offering. Concept Release, pp. 11-12. The premise underlying this framework is that information disclosure is fixed and minimal, therefore, the less sophisticated the investor is (whatever the optimal measurement policy may be), the more information protection is needed to close the potential information gap between the issuer and the investor.

This view naturally leads to various questions. Is the level of information disclosure truly the same across issuers? What if there are some companies that disclose more information than others? What if some companies go above and beyond what is required by law, and operate under full or substantially higher levels of transparency? We feel that these are very important questions that warrant the Commission's attention, because there may be significant differences in how companies conduct their business and the amount of information they choose to disclose, especially in an age when the investing public increasingly demands more transparency.

We believe if different levels of investor sophistication can be identified and different exemption rules could be mapped to each, the same can be accomplished on the issuer side. With the right incentives, some companies could choose to disclose all or a significant amount of material information. Companies would then self-select across different levels of information disclosures (above and beyond a minimum level that the Commission deems necessary), and it would be reasonable to reward issuers that choose to disclose more information. The rewards can be the ability to raise more capital, having access to a broader set of investors, etc. We feel that identifying and providing the right incentives to the issuers show significant promise in attacking the root cause of the information asymmetry challenge. After all, the need for investor protection goes away substantially, if the right incentives are designed and information asymmetry can be prevented in the first place.

2. **There is a natural opportunity for the Commission to consider its financial literacy efforts and measurement of financial sophistication holistically.**

We believe there should be multiple ways to prove investor sophistication, rather than just wealth. Details are provided in our response to Question 22 further below, but for the sake of discussion in this section, we would like to highlight the potential pathways that can be offered for investor accreditation purposes.

- Wealth;
- Education status/certification (graduate degrees in related disciplines such as economics or finance, CFA, CPA, etc.); and
- Financial sophistication verification through testing.

Wealth as well as education status/certification are generally independently achieved. Financial sophistication verification, on the other hand, may either be independently achieved or, alternatively, can be weaved into the Commission's existing efforts. In fact, the critical insight we'd like to offer here is that we believe the investing public would benefit from a holistic approach to investor education and measurement of financial sophistication in the context of exempt security offerings.

The Commission has done a commendable job with its financial literacy education. Ultimately, those efforts and harmonization of securities offerings serve the exact same purpose: to better protect investors. Thus, there are simply the two sides of the same coin. With investor protection being the ultimate goal, we think that these efforts naturally overlap with each other with significant economies of scale. More specifically, with some modifications, the financial literacy and investor education assets that are *already* developed by the SEC can be turned into financial sophistication verification tests that can be incorporated into the Commission's harmonization efforts around securities offerings.

In essence, financial literacy and investor education efforts by the Commission do not only equip investors with better tools in their participation in the financial markets, but they can also serve as a foundational tool around investor accreditation in exempt market offerings.

3. **Establishing consensus on financial terminology is important, and the lack of such consensus will likely hurt the investing public.**

The Concept Release is a significant step toward the harmonization of securities offerings. However, those efforts are inextricably linked to a broader challenge the Commission faces: establishing consensus on financial terminology. As a threshold matter, we feel it is difficult to have a holistic conversation around investor protection, if we cannot agree what investing means in the first place.

What is investing? According to Benjamin Graham, a legendary figure in finance circles, "an investment operation is one which, upon thorough analysis, promises safety of principal and a satisfactory return." Benjamin Graham, *The Intelligent Investor: The Definitive Book of Value Investing* (2005 edition). He adds, right after this definition, that "operations not meeting these requirements are speculative". *Id.*

Another great economic mind, John Maynard Keynes, defined speculation as "the activity of forecasting the psychology of the market" and distinguished it from "the activity of forecasting the prospective yield of assets over their whole life."[3] *The General Theory of Employment, Interest, and Money.*

In more recent times, Aswath Damodaran, Professor of Finance at the Stern School of Business at New York University has been a vocal proponent of the need to distinguish value and price.[4] In his view, an asset has to be valued based on ability to generate cash flows. "For an asset to have value, the expected cash flows have to be positive some time over the life of the asset" Valuation: Lecture Note Packet 1 Intrinsic Valuation, September 2016.[5]

There are two commonalities that bridge all of these points of view. One is the concept of margin of safety. The other is the ability to determine value (as opposed to price). Investing, then, requires *both* of these elements.

There exist essentially two broad frameworks available to us to define an asset. If we adopt a broader definition, an asset does not need to generate cash flows, but in those cases, the asset can arguably only be priced, not valued. The corollary is that one can only speculate on, but not invest in, these assets. In fact, under this broader definitional framework, an honest conversation around intrinsic value needs to be at the forefront so the investing public can distinguish between investing into assets that have an intrinsic value and speculating on those that do not. If a narrower definition is preferred, anything that does not generate cash flow cannot be considered an asset.

There are two instances of financial products where the lack of consensus may be especially dangerous: cryptocurrencies and sports gambling. In our view, neither of these products can be labeled as investments under any circumstances (though for different reasons), and we feel that the common practice of doing so runs contrary to the Commission's mission of protecting investors.

Cryptocurrencies

There is a large disagreement whether cryptocurrencies are assets or currencies, and being one of the most popular cryptocurrencies, the conversation has naturally focused on Bitcoin.

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[3] Keynes used the term enterprise in this definition, but from the overall context, it is clear that the theme he is addressing is speculation vs. investment.

[4] See, e.g., http://aswathdamodaran.blogspot.com/2019/02/january-2019-data-update-9-pricing-game.html. Accessed September 9, 2019.

[5] Available at http://people.stern.nyu.edu/adamodar/pdfiles/eqnotes/basics.pdf. Damodaran also refers to this statement as "Duh" proposition, implying its obviousness.

Aswath Damodaran has been very vocal about Bitcoin as well and stated that Bitcoin is a currency, not an asset, and that it cannot be valued.[6] The Commission, on the other hand has categorized Bitcoin as a digital asset. This reflects the choice between adopting a broader or narrower definitional framework and either can work as long as the overall framework is internally consistent. We are concerned, however, that an unintended consequence of adopting the broader definitional framework might, in the eyes of investing public that may not appreciate the subtle difference between investment and speculation, equalize cryptocurrencies with traditional equity instruments.

Are cryptocurrencies investment contracts under the Howey test developed by the Supreme Court in *SEC v. Howey Co.*, 328 U.S. 293 (1946)? The Commission has clearly given a lot of thought to this issue. We agree that the decentralized nature of Bitcoin raises some interesting questions whether or not cryptocurrencies can be classified as investment contracts under *Howey*, but in our opinion, this simply indicates that the real focus should be on the labelling of the opportunity as an investment as well as the expectation of profits, rather than promotion efforts. Protecting investors is the main goal, and if a financial product masquerades as investment, then we believe the matter would fall under SEC's jurisdiction. "Congress' purpose in enacting the securities laws was to regulate *investments*, in whatever form they are made and by whatever name they are called." *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990) (emphasis original). "To that end, it enacted a broad definition of 'security,' sufficient 'to encompass virtually any instrument that might be sold as an investment.'" *SEC v. Edwards*, 540 U.S. 389, 393 (2004) (citing *Reves*, 494 U.S. at 61 (1990)). "An investment contract thus came to mean a contract or scheme for "the placing of capital or laying out of money in a way intended to secure income or profit from its employment."' *SEC v. Howey Co.*, 328 U.S. 293, 298 (1946) (internal citations omitted). The undeniable commonality is that anytime an opportunity is labelled as an investment, a line is crossed, and the Commission has the right to act. For those responses to be consistent, and more broadly to maintain fair, orderly, and efficient markets, there needs to be a consensus on definitions. We feel that there is a clear need to separate contenders from the pretenders, i.e. the true investment opportunities from speculative choices.

<u>Sports Gambling</u>

One can only speculate on, not invest in Bitcoin, because it cannot be valued. Sports gambling does not constitute investing, for a different reason: it affords no margin of safety (one can lose his entire principal within a matter of hours, even minutes).

That said, sports gambling is commonly *presented* as an investment opportunity. Mark Cuban, entrepreneur and owner of Dallas Mavericks, floated the

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[6] http://aswathdamodaran.blogspot.com/2017/10/the-bitcoin-boom-asset-currency.html. Accessed September 24, 2019. See also http://aswathdamodaran.blogspot.com/2017/10/bitcoin-backlash-back-to-drawing-board.html. Accessed September 24, 2019.

idea of a "gambling hedging fund" that "only places bets", including sports bets. *Blog Maverick, My New Hedge Fund*, http://blogmaverick.com/2004/11/27/my-new-hedge-fund/. His vision became real; UK-based Galileo Fund (folded), UK-based Stratagem (acquired) and Australia-based Priomha Capital are all variations of the same idea.

Tellingly, FanDuel, a daily fantasy sports ("DFS") operator, also likened DFS to investing: "Like investors who make selections for their portfolios, or commodity or energy traders who have to anticipate weather impact on crops and demand for power, FanDuel contestants base their player selections on historical performance, statistics, research, matchups, and trends." *FanDuel Inc., and Head2Head Sports LLC vs. Lisa Madigan,* Complaint for Declaratory Judgment at 10, December 24, 2015.

One of SEC's main missions is to protect investors. As described above, per *Reves*, *Edward*, and *Howey*, whether or not the opportunity presented to a potential investor is a true investment, or a highly speculative opportunity masquerading as an investment is not controlling. Sports gambling contracts could reasonably be characterized as investment contracts under *Howey*, but even if they are not, the consistent labelling of them as investments is an invitation to SEC jurisdiction.[7]

The concern NSEI has previously raised in a Supreme Court Amicus brief is indicative. NSEI Amicus Brief in *Murphy v. National Collegiate Athletic Association*, No. 16-476, 584 U.S. ___ (2018). In it, NSEI has stated its concerns around the positioning of sports betting as an investment opportunity. "In 2015, Senate Bill 443 was passed in Nevada, which legalizes sports betting investment funds, similar to traditional mutual funds, that are registered and managed in Nevada but which could include participants from outside the state. *Nevada Legalizes Sports Betting Investment Funds*, www.espn.com/chalk, June 3, 2015. One company, incredulously, even positioned sports gambling as a *superior* investment, and has effectively acknowledged that sports betting is a market: "Traditional investment options (bonds, stock market, real estate) are typically long-term and offer inadequate returns. Athletics Investments is a registered entity that operates like a traditional mutual fund, pooling investor's funds into a common hedge fund and investing them in the sports betting *marketplace*." https://www.athleticsinvestments.com/ (emphasis added)." *Id.*

We are pleased to see that the Commission has recently taken action against one such party. SEC Charges Sports Betting Investment Scheme Operators with

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[7] While likely outside the immediate scope of the Concept Release, for completeness, we'd like to state our view that sports gambling contracts can also be characterized as (unapproved) commodity contracts. At a vary basic level, it seems inconsistent that one cannot speculate on the outcome of the elections (unless in a limited fashion), per the *Order Prohibiting the Listing or Trading of Political Event Contracts, CFTC, April 2, 2012*, but one can speculate, at least in a state where sports gambling is legal, on the outcome of a sporting event.

Fraud. Litigation Release No. 24585 / September 4, 2019.[8] In their response, the defendants have, unbelievably but not surprisingly, argued that the SEC lacks jurisdiction over sports betting. Opposition to Motion for Preliminary Injunction, CASE #: 2:19-cv-01515-APG-VCF. They have even referenced *Ralston Purina* in their response as support, the very case that is central to the Concept Release.

The underlying issue is quite simple. The offerors of financial products that are not investments are quick to ride on the positive connotation of the word investing and the reputation of Wall Street, without subjecting themselves to the costs and risks of accepting jurisdiction of a financial regulator, which could take the form of not only heightened disclosure requirements, but also a potential ban on products that do not serve a valid, economic purpose. Apparently, as the defendants have argued their response in the abovementioned case, "the language of a first half over/under simply does not jibe with that of a pink sheet's EBITDA," only when there is a threat of a financial regulator.

Summary

Benjamin Graham was certainly onto something when he said "Speculative operations are all concerned with changes in price. In some cases the emphasis is on price changes alone, and in other cases the emphasis is on changes in value which are expected to give rise to changes in price. I think that is a rather important classification of speculative operations."[9] In the case of traditional equity markets, speculation and investment co-exist on a spectrum, with more margin of safety indicating that the behavior is closer the investment end of the spectrum. When investing is not in the picture in the first place (either because there is no asset in the narrower sense/no intrinsic value in the broader sense, or because there is no margin of safety at all), what we have is simply a pricing action.

To be clear, speculation is not inherently bad, and experts from different disciplines and different times agree (including Benjamin Graham and Aswath Damodaran). It generally helps with liquidity and price discovery, and as long as it is not excessive and it is married to a marketplace where there is valid, economic purpose, speculation can be socially beneficial. It is rather the lack of distinction between speculation and investment that is concerning.

Our concern around a unified terminology, especially the lack of consensus on investment vs. speculation may seem like a tangential issue to the Concept Release. Our view, however, is that any harmonization effort around securities offering should be done in a more holistic context for at least a couple different reasons.

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[8] Available at https://www.sec.gov/litigation/litreleases/2019/lr24585.htm. Accessed September 24, 2019.

[9] Available at https://www.wiley.com/legacy/products/subject/finance/bgraham/benlec10.html. Accessed September 22, 2019.

First, as the old saying goes, one cannot have its cake and eat it too. Labeling a purely speculative opportunity as an investment, without bearing the associated risks and costs is extremely unfair to the portion of the industry that is offering legitimate investment opportunities. Ultimately, all of these opportunities are competing for investor proceeds. Fair, orderly and efficient markets is hard to achieve when shadow markets such as cryptocurrency and sports gambling are allowed to grab the attention of, and can lead to diversion of funds from individuals who may not appreciate the subtle, but crucial difference between investment and speculation. *Ralston Purina* cannot be a driving force behind harmonization of securities offerings *and* an argument against SEC jurisdiction at the same time when protection of investors, that are active in *all* markets, is the ultimate goal.

Second, our concern is not just academic one, nor can it be reduced to a matter of semantics. On the contrary, lack of consensus on the terminology has substantial economic consequences. In the Concept Release, the Commission has estimated that approximately $2.9 trillion was raised in exempt offerings in 2018. Concept Release, p. 18. On an annualized basis, the cryptocurrency market volume is estimated to be $1.96 trillion.[10] Only a small portion of this is estimated to be real volume, but even then, it is estimated to be more than half a trillion dollars on an annual basis. Id. Illegal sports gambling estimates, at the high end, are also as high as over half a trillion (adjusted for inflation).[11] Thus, even excluding any other financial products that are not true investments but masquerade as such, the relevant market segment could be well in excess of a trillion annually. Simply put, we are concerned that a harmonization effort, while certainly beneficial for both issuers and investors, might leave a large portion of the investor population at risk unless the Commission is adopting a holistic approach.

4. Novel instruments to raise capital have the potential to be socially beneficial.

Successful capital formation is a challenge for any company, and even more so for a start-up sports league. For the most part, the traditional going public route is not desirable for sports franchises, and debt markets are not much more effective. Part of the problem is that starting up a successful sports league is extremely difficult. Beyond the Big Four (NFL, NHL, MLB and NBA), there are more failures than successes: more than 90% of the sports leagues that tried in the last 40 years have failed, largely due to lack of financial resources. In a world of many options for entertainment, fans are hard to attract, and even harder to maintain. Start-up sports leagues must look at all available funding options, both traditional and novel.

CWH has developed the AllSportsMarket ("ASM") platform, which is a novel and innovative capital formation tool that offers sports leagues an opportunity to raise capital via 'stock-like' instruments ("SportShares"). In essence, through the

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10 https://www.theblockcrypto.com/genesis/24878/up-to-86-of-total-reported-cryptocurrency-trading-volume-is-likely-fake-according-to-analysis-of-exchange-website-visits. Accessed September 24, 2019.

11 Expert Report of Professor Robert D. Willig, November 21, 2012, NCAA et. al. v. Christopher J. Christie et. al.

development of SportShares and the ASM platform, CWH has created the sports investing concept.

While SportShares do not represent an equity interest in any of the sports franchises, it is nevertheless an asset which derives its value from claims to perpetual dividend flows that a particular SportShare generates on the ASM platform. Thus, the three fundamental purposes of capital markets are captured – SportShares are: i) a capital formation tool for the industry; ii) a price discovery mechanism for all stakeholders; and iii) an investment and portfolio diversification opportunity for the investors. In any event, we believe that, in the publicly-traded segment of the capital markets at least, the true cost of raising capital to the issuer is not so much the one-time parting with equity, but the constant information disclosure requirement benefitting investors trading on the secondary market. As such, there is a "cost" of going public in sports markets in our proposed framework, as it should be.

Besides being a viable capital formation opportunity for the sports industry, sports investing is also a promising concept for engaging fans while preserving integrity.

The Entities believe that SportShares are likely to be characterized as securities contracts. To that end, it is our intent to fully engage, and receive appropriate guidance from the Commission toward establishing regulatory clarity with respect to this novel instrument, including its potential fit into the exempt offering framework and the responsibilities of potential issuers. More broadly, we encourage the Commission to continue to support financial innovation of any kind as long as it is consistent with its mission.

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With these general comments in mind, the Entities are pleased to address the specific questions raised by the Commission. As appropriate, the Entities have grouped together various questions for response.

Question #1

Does the existing exempt offering framework provide appropriate options for different types of issuers to raise capital at key stages of their business cycle? For example, are there capital-raising needs specific to any of the following that are not being met by the current exemptions: small issuers; start-up issuers; issuers in a particular industry, such as technology, biotechnology, manufacturing, or consumer products; issuers in different geographic regions, including those in rural areas or those affected by natural disasters; or issuers led by minorities, women, or veterans? What types of changes should we consider to address any such gaps in the exempt offering framework? Would legislative changes be necessary or beneficial to address any such gaps?

As described above, we believe there are specific capital raising needs for the sports industry, which necessitate novel approaches. Legislative changes may not be necessary in this area, if the Commission instead chooses to consider offering some regulatory clarity, especially given the sensitivity around any sports-related financial products being potentially characterized as gambling without regard to their actual merits.

Question #3

Is the existing exempt offering framework too complex? Should we reduce or simplify the number of exemptions available? If so, should we focus on having a limited number of exemptions based on the amount of capital sought (for example, a micro exemption, an exemption for offerings up to $75 million, and an unlimited offering exemption)? Or should we focus our exemptions on the type of investor allowed to participate? Would legislative changes be necessary or beneficial if we were to replace the current exempt offering framework with a simpler offering framework?

Question #4

Are the exemptions themselves too complex? Can issuers understand their options and effectively choose the one best suited to their needs? Do any exemptions present pitfalls for small businesses, especially for issuers that may be unfamiliar with the general concepts underlying the federal securities laws?

CWH's experience as a small start-up company is the exempt offering framework, as well as the exemptions themselves are quite complex to navigate, and a simplification of the number of exemptions would be helpful. Similarly, as a small issuer, CWH found it difficult to develop a holistic understanding of all options, and to properly identify various pros and cons.

Question #5

In light of the fact that some exemptions impose limited or no restrictions at the time of the offer, should we revise our exemptions across the board to focus consistently on investor protections at the time of sale rather than at the time of offer? If our exemptions focused on investor protections at the time of sale rather than at the time of offer, should offers be deregulated altogether? How would that affect capital formation in the exempt market and what investor protections would be necessary or beneficial in such a framework? Would legislative changes be necessary or beneficial if we were to focus on the sale of a security, rather than the offer and sale?

In CWH's experience, it was often difficult to determine whether a certain act could be considered an offer. We would like the Commission to consider the impact of complete deregulation of offers, or, alternatively, clarify what exactly constitutes an offer. We'd like to note that even a complete deregulation may not necessarily lead to suboptimal outcomes, provided investor education continues to be a focus for the Commission.

Question #22

As recommended by the Advisory Committee on Small and Emerging Companies in 2016, the 2016, 2017, and 2018 Small Business Forums, and the 2017 Treasury, should we revise the accredited investor definition to allow individuals to qualify as accredited investors based on other measures of sophistication? If so, should we consider any of the following approaches to identify individuals who could qualify as accredited investors based on criteria other than income and net worth:

- *Permit individuals with a minimum amount of investments to qualify as accredited investors;*
- *Permit Report individuals with certain professional credentials to qualify as accredited investors;*
- *Permit individuals with experience investing in exempt offerings to qualify as accredited investors;*
- *Permit knowledgeable employees of private funds to qualify as accredited investors for investments in their employer's funds;*
- *Permit individuals who pass an accredited investor examination to qualify as accredited investors; and*
- *Permit individuals, after receiving disclosure about the risks, to opt into being accredited investors.*

As described before, we believe there should be multiple pathways to become an accredited investor. Wealth, ultimately, is a proxy for financial sophistication, but it seems unfair that it should be the only one. We believe there is a case to be made about the person who did not have the luxury of a well-paying job, or access to funds (e.g. inheritance), but still wishes to have an opportunity to participate in exempt offerings.

A draft framework for accreditation of investors could be as follows:

- Wealth;
- Education status/certification (graduate degrees in related disciplines such as economics or finance, CFA, CPA, etc.); and
- Financial sophistication verification through testing.

Professional qualifications should matter. An economics professor at a reputable university may not make enough money to be an accredited investor, but is likely to possess the requisite knowledge and expertise to evaluate investment opportunities. More broadly, if an individual has invested enough time into learning the discipline of economics and finance, and his/her accomplishments and progress are verified via an external entity (a university, a certificate granting institution, etc.), it seems reasonable to allow those individuals to participate in exempt offerings. The level at which they can participate may potentially vary depending on the strength of their qualifications. Finally, the examples noted parenthetically above are just that, and the Commission should certainly consider a broad universe of all possible qualifications.

Finally, an individual, who is not wealthy, and has not chosen to follow a path in a related discipline should still have to opportunity to gather the requisite knowledge, get measured on it, and participate in exempt offerings. True learning is life-long, and we believe providing the right incentives to life-long learners would increase the well-being of the entire financial community, and more broadly the society, The Commission may choose to develop such investor sophistication tests internally and/or through third parties. That said, as also described above, we believe there is a natural opportunity for the Commission to "kill two birds with one stone", and take a holistic view of its investor education/financial literacy assets and investor sophistication in the context of exempt security offerings.

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The Entities commend the Commission for its vision in seeking to address the issues raised in the Concept Release and look forward to helping the Commission to execute on it mission in any way possible.

Respectfully submitted,

Chris Rabalais
Chief Executive Officer, CWH
Managing Director, NSEI
[redacted]

cc: Chairman Clayton
Commissioner Jackson
Commissioner Lee
Commissioner Peirce
Commissioner Roisman
Brett Redfearn, Director, Division of Trading and Markets