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*Via Electronic Submission to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

Ms. Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**Re: S7-08-19**

## CONCEPT RELEASE ON HARMONIZATION OF SECURITIES OFFERING EXEMPTIONS

Dear Ms. Countryman:

The Alternative & Direct Investment Securities Association (“ADISA”), wishes to provide comments in response to the Securities and Exchange Commission’s request for comments concerning its Concept Release on Harmonization of Securities Offerings Exemption. We wish to respond to one topic in particular, ADISA supports an expanded “accredited investor” definition (See, Title IV – Fair Investment Opportunities For Professional Exerts; Section 401, Definition of Accredited Investor) mentioned in the Concept Release.

ADISA is the largest association of the retail direct investment industry in the United States. Founded in 2003, ADISA has approximately 4,500 members who employ over 220,000 investment professionals, together serving the interests of more than 2 million investors throughout the country. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios. They are essential elements in the capital formation process, and help drive growth in the United States economy. ADISA’s mission is to ensure that investors, financial professionals and program sponsors are informed and educated about investing and the role that alternative and direct investment programs can play in portfolio construction and investment management.

### **ADISA Supports an Expanded Definition of ‘Accredited Investor’**

Current law defines accredited investors purely on the basis of wealth and their supposed ability to shoulder risk of financial loss. While we appreciate the aspect of wealth and its importance in weathering financial risk, focusing solely on wealth may fail to adequately protect investors because it ignores an investor’s actual financial sophistication and knowledge. In fact, the current definition of accredited investor seems arbitrary (no such limits exist in the public markets, and there is little-to-no basis for the thresholds put in place in 1982) and too narrow--wealth may be earned or inherited; it is not necessarily a direct indicator of financial understanding. Also, the current definition makes no cost-of-living distinctions, which clearly can dramatically impact risk: for instance, a single person with a \$250,000

income is likely better able to manage financial risk than a married person living in New York City earning the same amount and supporting a family of four.

Language expanding the definition of accredited investor to include those individuals who can demonstrate sufficient financial knowledge and experience with investments should be adopted. This would strike a reasonable balance between expanding the current definition substantively while minimizing new or additional regulations that otherwise might impede continued growth of our economy.

### **Add Investor Sophistication to the Accredited Investor Definition**

To this end, ADISA supports expanding the accredited investor definition to include individuals who are “licensed or registered as a broker or investment advisor” regardless of whether they meet the specific financial thresholds in the current definition. Individuals who are legally qualified to advise others on the risks and benefits of investing in private offerings can reasonably be considered qualified to decide whether such investments are appropriate for themselves.

Likewise, ADISA supports expanding the definition of an accredited investor to include an individual deemed by the SEC “to have demonstrable education or job experience.” More companies today are involved in high-tech sectors that require sophisticated understanding of markets and products in addition to a financial statement. Consider, for example, a small company developing a medical device. A physician or nurse could easily have an incredibly sophisticated understanding of the device and its potential market impact. The wealth, or lack thereof, of either of these professionals would be immaterial to this understanding.

Incorporating financial knowledge and sophistication into the definition of an accredited investor appears to be widely supported in one facet or another by multiple organizations and entities. Indeed, the SEC’s Investor Advisory Committee has recommended that the SEC “revise the definition to enable individuals to qualify as accredited investors based on their financial sophistication.” Recognizing an individual’s education and/or professional credentials, rather than merely an income or net-worth test, better manages investment risks. The current definition, as IAC stated, “oversimplifies the factors that determine whether an individual truly has the wealth and liquidity to shoulder the potential risks of private offerings.” Furthermore, the SEC’s Advisory Committee on Small and Emerging Companies has previously approved a recommendation to include those who have passed certain FINRA securities license exams, among similar credentials.

### **Indexing All Financial Thresholds for Inflation On A Going-Forward Basis**

Financial thresholds, whether or not indexed for inflation, do not provide adequate protection for investors whose net worth, for instance, is based on an inheritance, illiquid assets, or a retirement ‘nest egg.’ The IAC has noted that revising the definition to include financial sophistication addresses core issues *without* raising the thresholds.

However, ADISA supports indexing on a *going-forward* basis. Any retroactive treatment would dramatically increase wealth requirements to such a high level that many Americans would be prevented from investing, negatively impacting our economy by choking off capital flows to small businesses – the continuing engine of our economic growth. Small and emerging businesses have been responsible for the majority of the nation’s net new jobs over the past two decades. The ability of these businesses to raise capital is crucial to the nation’s economic well-being.

It follows that any increases in financial thresholds because of indexing, might change an investor's accredited status regarding new investments. We believe it wiser, however, that investors should continue to qualify as accredited investors for reinvestment in the same securities currently owned by the investor. As part of this recommendation, such a grandfathering provision would apply to future investments in a particular issuer, and not to future investments in affiliates of the issuer. Such a grandfathering provision would protect from investment dilution any person who would no longer be an accredited investor because of changes to the definition.

In addition, any indexing should be on a going-forward basis because the threshold was already raised, in effect, in 2012 by the Dodd-Frank Act, which mandated an exclusion of the value of an investor's primary residence from the calculation of a household's wealth. This had the effect of raising the wealth threshold by an amount of \$250,000 on average, according to the U.S. Census Bureau (Wealth, Asset Ownership & Debt of Households Detailed Tables: 2013, revised 2017). Thus, in effect, there was a huge reckoning of the threshold amount just a few years ago. Furthermore, treating the increase in the accredited investor definition's threshold amount on a going-forward basis rather than some broad stroke retrospective analysis now would be considerably simpler on multiple administrative fronts.

In summary, ADISA feels that while the criterion of a wealth threshold is well-meaning, as a sole measure it appears as too narrow. We suggest an investor's financial sophistication should also be a manner of qualification. Also, we recommend an indexing of the net worth threshold on a going-forward basis given the large adjustment already made by reconfiguring the threshold to omit primary residence.

ADISA stands ready to assist in any analysis or to help in any way as your office continues the good work it does on behalf of your constituents and the American people. Thank you for the consideration of ADISA's comments and we appreciate the opportunity to provide suggestions to the Commission as it carries out its work.

Respectfully submitted,



Greg Mausz  
President

cc: Drafting Committee—Catherine Bowman, John Grady, John Harrison