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March 16, 2020

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Amending the Accredited Investor Definition; 17 CFR Parts 230 and 240; Release Nos. 33-10734 and 34-87784; File No. S7-25-19; RIN 3235-AM19

Dear Secretary Countryman:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "SEC" or "Commission") on December 18, 2019, entitled "Amending the Accredited Investor Definition" (the "Proposing Release").

We commend the Commission for its ongoing efforts to review existing regulations that impact capital formation in the United States. Companies of all sizes, especially early-stage businesses, require a mix of capital sources to meet both short-term and long-term growth needs. Both Congress and the Commission have acknowledged that an exemption from the registration requirements under the securities laws can be an appropriate mechanism for businesses looking to raise capital where there is no practical need for registration or the public benefits from registration are too remote.

CCMC recognizes the need for strong public and private capital markets and that the private offering market, particularly under Regulation D is an attractive vehicle for businesses to raise capital. Both Congress and the SEC have taken steps over the years, particularly since the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), to expand or create new exemptions from registration in order to promote capital formation and increased investment opportunities, while maintaining investor protections. While CCMC supported these efforts, we believe there are significant barriers preventing them from fulfilling their intended purpose.

For example, fewer companies are going public, and for the companies that do, it is much later in their lifecycle. When companies go public at a relatively mature age, many of the early stage returns generated by those businesses accrue for investors allowed to invest in private offerings. Qualifying as an accredited investor is significant because they may participate in private investment opportunities typically not available to non-accredited investors.

For this reason, CCMC supports expanding the definition of an accredited investor as contemplated in the Proposing Release. The expanded definition would provide more American households with greater opportunities to build wealth and grow the pool of capital available to private businesses. We note that many of the proposed amendments align with recommendations from the Commission's own Advocate for Small Business Capital Formation in her most recent report to Congress,[1] as well as a recurring annual recommendation from the SEC's Government-Business Forum on Small Business Capital Formation.[2]

Moreover, CCMC does not support increasing the existing monetary thresholds for accredited investors. Increasing the individual income and net worth thresholds would shrink the number of households that qualify as accredited investors, as well as the pool of capital available to private businesses. It would also stymy efforts to improve participation in the private markets by qualified women, minority and rural investors. These outcomes are counterproductive and inhibit the ability of Main Street investors to participate in early stage investing.

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[1] The most recent report, dated December 19, 2019, is available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf (hereinafter "OASB Annual Report").

[2] The Forum's most recent report, released December 5, 2019, is available at https://www.sec.gov/files/small-business-forum-report-2019.pdf.

To summarize our positions on the Proposing Release:

- We support creating additional categories of natural persons who qualify as accredited investors. We urge the Commission to be flexible in applying the proposed four-part test for certifying other individual categories of accreditation based on professional certifications, designations and credentials in order to stimulate investment and to encourage the private sector to compete to develop certifications that satisfy the SEC's criteria.

- We support expanding the universe of eligible entities that qualify as accredited investors and qualified institutional buyers. In this connection, we urge the Commission to permit greater participation by special purpose vehicles as accredited investors and qualified institutional buyers, which is currently hampered by the condition that an entity not be "formed for the specific purpose of acquiring the securities offered."

- We support expanding the categories of eligible spousal equivalents.

- We support various ministerial changes under the Proposing Release to Rule 215, Rule 163B and Rule 15g-1.

- We support conforming changes to Rule 144A's definition of Qualified Institutional Buyer.

- For purposes of verifying accredited investor status under other Commission rules, we urge flexibility and recommend that the SEC issue guidance in any final adopting release.

Discussion

A. Adding Categories of Natural Persons

The current accredited investor definition relies only on financial criteria like income and net worth, without taking into account an investor's education, experience and expertise. Specifically, the current definition allows only those with $1 million in net worth or $200,000 in annual income (or $300,000 in joint income with a spouse) to be deemed accredited. In other words, only relatively affluent people are afforded the opportunity to invest in private offerings.

These thresholds have the effect of being both under-inclusive and over-inclusive: They allow someone who inherited a fortune—but has no concept of financial markets—to invest in private offerings, but they do not allow someone with a Ph.D. in economics or finance to invest if their net worth and income are below the thresholds. This makes little sense and contributes to disparities in income and wealth across our country. Research shows that, in particular, women, minorities and rural investors are disproportionately impacted by the current standards.

To counteract these outcomes, the proposed rules would expand the definition of an "accredited investor" to include several new categories of natural persons. Natural persons would be able to qualify as accredited investors based on certain professional certifications, designations, or credentials from an accredited educational institution that the Commission designates as qualifying an individual for accredited investor status. Such designations would be issued by an SEC order and posted to the SEC website, as opposed to being codified in the new definition, which would allow the SEC to modify the list over time.

According to the Proposing Release, the Commission expects to accompany the final rule amending the accredited investor definition with an initial order that would include designations for (1) licensed general securities representatives (Series 7); (2) licensed investment adviser representatives (Series 65); and (3) licensed private securities offerings representatives (Series 82). Individuals holding such licenses in good standing would qualify as accredited investors even if they do not meet the income or net worth standards in the accredited investor definition.

In determining whether to qualify other types of professional certifications, designations, or credentials under the new category, the Commission would consider various factors including (1) whether it requires an examination administered by a self-regulatory organization, industry body, or accredited educational institution, (2) whether the examination is designed to demonstrate an individual's comprehension and sophistication in the areas of securities and investing, (3) whether persons obtaining such certification can reasonably be expected to have sufficient knowledge and experience to evaluate the merits and risks of a prospective investment, and (4) whether the relevant self-regulatory organization or other industry body has made information publicly available to indicate that an individual holds the certification.

Moreover, the proposed amendments would allow individuals who are "knowledgeable employees," as defined in Rule 3c-5 under the Investment Company Act of 1940 (the "Investment Company Act"), of an issuer to qualify as accredited investors of that issuer. These would be the same individuals that qualify as knowledgeable employees for purposes of Section 3(c)(1) and Section 3(c)(7) of the Investment Company Act. Consistent with an existing SEC staff interpretation, the proposed amendments would also add a note to Rule 501(a)(5) to clarify that the calculation of "joint net worth" for individuals may be the aggregate of their net worth with their spouses, and that the securities being purchased by an investor relying on the joint net worth test need not be purchased jointly.

CCMC supports expanding the definition of an accredited investor by allowing those with relevant education or work expertise to invest in private offerings, regardless of income or net worth. Accordingly, we support the addition of the new categories of natural persons who would qualify as accredited investors under the Proposing Release. But while we believe the proposed criteria in the Proposing Release are a good start, we believe the Commission should extend accredited status to other categories of individuals with certain professional credentials, education levels, and prior experience investing in exempt offerings.

By way of background, the SEC's Advocate for Small Business Capital Formation has noted the following:

> Throughout our conversations in FY2019 on raising earlier stage capital from individual investors, whether from angels or friends and family, both businesses and investors have acknowledged the benefit of guardrails for retail investors, while also highlighting the imbalance of a single test based solely on income, net worth, or total assets. Women, minorities, and rural communities have expressed disproportionate challenges with the standard, which often draws a line between the investors' network and qualification for the most attractive offering exemptions. The current standard arguably prioritizes an investor's ability to sustain the risk of loss without sufficient consideration of an investor's financial sophistication. Many have recommended creating avenues for sophisticated investors to participate in exempt offerings by adding alternative criteria for qualification.[3]

[3] OASB Annual Report at 42 (internal citations omitted).

Along these lines, a 2019 white report co-authored by Pitchbook and All Raise entitled "All In: Women in the VC Ecosystem"[4] noted the following information about women entrepreneurs and investors:

> The ratio of female-founded startups has improved substantially since 2010, when they made up only 11.8% of the market. By dollars invested, female-founded startups took in almost 18% of all capital invested last year, higher than the 12% to 14% range typically seen since 2013. More notable, though, are the combined dollar amounts in recent years. Last year, more than $46 billion was funneled into female-founded startups, more than doubling 2017's value. For perspective, only $3 billion went to female-founded startups in 2010, translating into a more than 15-fold increase over the past decade.
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> The gradual rise in female-founded startups can be traced to several factors, including market awareness of the gender imbalance, stronger mentorship networks for women and more women entering the venture side of entrepreneurship. The rise in female checkwriters at VC firms has also catalyzed this increase, as female checkwriters tend to invest in female- founded companies at a higher rate than their male counterparts. Several studies have illustrated that women investors are more likely to invest in female-founded startups. In fact, they are twice as likely to invest in companies with female founders and three times as likely in companies with female CEOs. Female entrepreneurs often seek out female investors to partner with and grow their companies. The increase in funds started by women has a measurable effect on funding of companies with women in the leadership team.[5]

In an effort to equally focus on business acumen and financial net worth, we believe the final rules should also include holders of the Series 79 (investment banking representative), Series 86-87 (research analyst) licenses cover a sufficient body of information to prepare a holder for investing in a private placement. Likewise, we believe holders of doctoral degrees in accounting, finance or economics should also

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[4] The full report is available at https://pitchbook.com/news/reports/2019-pitchbook-all-raise-all-in-women-in-the-vc-ecosystem.

[5] *Id.* at 4-5 (internal citations omitted).

be deemed to be accredited investors. Moreover, individuals who have held high-level accounting, financial, operational and legal positions within early-stage companies may have also developed sufficient acumen to deploy capital as accredited investors. Overall, we urge the Commission to be flexible in applying the four-part test for certifying other individual categories of accreditation.

We do not believe the Commission should set investment limits for those who qualify as accredited investors under the new standards but who still do not meet the existing income or net worth tests. CCMC generally views such limits as paternalistic and they are inevitably based on arbitrary criteria. Further, such limits are likely to continue to propagate the disparate impact that the current standards have on women, minority and rural investors.

B. Adding Categories of Entities

The proposed rules would also expand the definition of "accredited investor" to include several new categories of legal entities. The proposed amendments would add SEC- and state-registered investment advisers, as well as rural business investment companies, to the list of entities that qualify as accredited investors based on their status alone. Additionally, the proposed amendments would codify the longstanding SEC staff position that limited liability companies are eligible to qualify as accredited investors if they satisfy the other requirements of Rule 501(a)(3).

Under the proposed amendments, "any" entity would be able to qualify as an accredited investor if it (1) owns more than $5 million in "investments," as defined in Rule 2a51-(b) under the Investment Company Act, and (2) was not formed for the specific purpose of acquiring the securities offered. According to the Proposing Release, this catch-all category is intended to capture all existing entity forms not already included in the current definition, such as Native American tribes and governmental bodies, as well as those entity types that may be created in the future.

The proposed amendments would also add a note to Rule 501(a)(8) to make it permissible to look through various forms of equity ownership to natural persons when determining the accredited investor status of entities. This proposed note is consistent with an existing staff interpretation, which permits multiple layers of look-throughs to qualify as an accredited investor.

Furthermore, the proposed amendments would create a new category of accredited investors for certain "family offices" and their "family clients," each as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940. A family office would qualify as an accredited investor if (1) it has more than $5 million in assets under management, (2) it was not formed for the specific purpose of acquiring the securities offered, and (3) its prospective investment is directed by a person with knowledge and experience in financial and business matters that the family office is capable of evaluating the merits and risks of the prospective investment. Family clients of a family office that meets these requirements would also be accredited investors.

Again, we support expanding the definition of "accredited investor" to include the foregoing categories of legal entities. Both registered investment advisers and family offices inherently have the investment acumen to make sophisticated allocations of capital, including into the private placement market. Rural business investment companies would further mitigate the dearth of investment opportunities for residents of rural areas of the country. And limited liability companies have become a common and ubiquitous form of entity for conducting business in the United States; there should be no debate that LLCs should join other types of common business entities in the panoply of eligible accredited investors.

We also agree that persons forming the equivalent of the duties of an executive officer of an LLC should be afforded accredited investor status to align them with the treatment of corporate executive officers. In our members' experiences, LLCs are intended under state law to afford a certain measure of flexibility when it comes to corporate governance. Thus, some LLCs provide that the company will have officers akin to those of a business corporation, while others reserve this status for those that qualify as managers or managing members for state law purposes. We do not believe the SEC's rules should be focused on form over substance, and instead recommend that final rules provide that any person providing services on behalf of an LLC that would satisfy the definition of executive officer, irrespective of the idiosyncratic title at a particular LLC, should be considered an executive officer.

We would also like to note that among entities, the requirement under current Rules 501(a)(3) and (a)(7)—as well as proposed Rule 501(a)(9)—that an investment vehicle is "not formed for the specific purpose of acquiring the securities offered" is inconsistent with the contemporary practice of organizing a special purpose investment vehicle to accommodate tax, governance, financial or other commercial objectives of co-investors. We note that current Rule 144A does not include a similar limitation in the definition of Qualified Institutional Buyer. Accordingly, we urge the

Commission to reconsider this limitation to permit explicitly the formation of special purpose investment vehicles without jeopardizing accredited investor status. Such vehicles should otherwise continue to comply with the requirements of Rules 501(a)(3), (a)(7) and (a)(9).

In this connection, and to mitigate the risks associated with blind pools, the Commission could allow the formation of a special purpose vehicle to invest in a single identifiable target company, material details of which are disclosed to its own investors before the vehicle invests into the target. Disclosure about the target satisfying the elements of Rule 502(b), together with material information about the terms and conditions of the pooled investment, would be appropriate for this purpose. To further protect investors, in connection with the formation of a special purpose vehicle we do not advocate for any special exemptions from the Investment Advisers Act or Investment Company Act, and the formation of a special purpose vehicle would be required to comply with the requirements of (or existing exemptions from) such Acts.

C. Expanding Spousal Equivalents

The proposed amendments would allow individuals to include spousal equivalents when calculating joint income or determining joint net worth. "Spousal equivalent" would be defined to mean any cohabitant occupying a relationship generally equivalent to that of a spouse. The CCMC supports these amendments.

D. Proposed Amendments to Rule 215

The proposed amendments to Rule 215 would harmonize the accredited investor definitions in Rules 215 and 501(a). That the two are not already identical has always struck us as incongruous, so we support the proposed amendments that would resolve this disparity.

E. Proposed Amendments to Rule 163B

The proposed amendments to Rule 163B would expand the types of entities to whom an issuer may engage in test-the-waters communications by including the new categories of accredited investors contemplated in proposed Rules 501(a)(9) (i.e., certain entities not formed for the specific purpose of acquiring the securities offered owning investments in excess of $5 million) and 501(a)(12) (i.e., certain family offices and family clients). We also support these amendments.

F. Proposed Amendments to Exchange Act Rule 15g-1

We support the proposed amendments that would expand the universe of broker-dealer customers that are not required to be provided with certain issuer disclosures under the Commission's penny stock rules to include the entities designated under proposed rules 501(a)(9) and 501(a)(12).

G. Amendments to Qualified Institutional Buyer Definition

To avoid inconsistencies with the proposed amendments to the accredited investor definition, the Proposing Release would also update the definition of Qualified Institutional Buyer (QIB) in Rule 144A to include (1) limited liability companies and rural business investment companies that satisfy the $100 million threshold and (2) the "catch all" category of other entities not otherwise included in the QIB definition that also meet the $100 million threshold. We support these changes.

We note that Proposed Rule 144A(a)(1)(i)(J) would import the "not formed for the specific purpose of acquiring the securities offered" modifier to several categories of institutional accredited investors that would qualify as QIBs, a condition that does not appear at all in the current definition. Repeating our comment about the value of special purpose investment vehicles in the marketplace, we urge the Commission to permit such vehicles to qualify as QIBs so long as there is a single company targeted for investment and material disclosure about that target company is made to participants.

H. Implications for Other Contexts

The Proposing Release identifies several additional contexts under the Commission's rules that could be impacted by expanding the definition of accredited investor. In particular, the Proposing release focuses on challenges to identifying accredited investors for purposes of measuring compliance with Section 12(g) of the Exchange Act and for purposes of taking reasonable steps to verify accredited investor status under Rule 506(c). We concur that additional accommodations for issuers may be required in both scenarios.

In counting investors under Section 12(g), the Commission has not endorsed a single approach to confirming a shareholder's status as an accredited investor, but issuers employ a number of different approaches, including general knowledge of a given investor's circumstances; annual affirmations from an investor in response to due diligence questionnaires; reliance on recently provided representations and warranties from an investor in connection with a private placement completed near the end of the fiscal year; and confirmation from a reliable intermediary, such as a registered broker-dealer, registered investment adviser, accounting firm or law firm. We believe each of these approaches would be suitable and appropriate if the Commission enacts the proposed rules to expand the universe of accredited investors, and recommend that the SEC provide guidance in its adopting release to that effect.

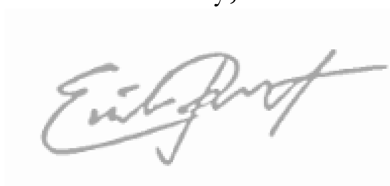
The reasonable verification procedures under Rule 506(c) present a greater challenge because they seem to depend more on obtaining assurances from third parties. In the case of an investor who qualifies as accredited under a professional education, certification or designation, a certificate of good standing or similar verification from the college, university or other issuer of the certification should suffice for Rule 506(c) purposes. For registered investment advisers, an issuer should be permitted to rely on the results of a query of the Investment Adviser Public Disclosure website. For family offices and family clients, verification from a trusted adviser (such as a bank, accounting firm or law firm) should be sufficient. Other new categories of accredited investor may require a larger degree of self-certification. Again, we urge flexibility and recommend that the SEC include guidance on these issues in any final adopting release.

Conclusion

CCMC applauds the Commission for its ongoing commitment to modernize regulations that impact capital formation in the United States, and in particular the Proposing Release's sensible modifications to the definition of accredited investor. Not only would the proposed amendments expand investment opportunities for all Main Street investors (with the corresponding stimulation to capital formation), they would also serve to expand investment opportunities for women, minorities, and rural communities in particular who may not meet the current dollar thresholds for accredited investor status. We urge the Commission to continue to explore other new ways to facilitate capital formation.

We appreciate your consideration of these comments, and we stand ready to discuss them further with the Commissioners or Staff at your convenience.

Sincerely,



Erik Rust

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee