

# COMMITTEE ON CAPITAL MARKETS REGULATION

January 31, 2020

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File Number S7-25-19: Amending the “Accredited Investor” Definition (the “**Proposal**”)

Dear Madam:

The Committee on Capital Markets Regulation (the “**Committee**”) appreciates the opportunity to comment on the Proposal by the Securities and Exchange Commission (the “**SEC**”).<sup>1</sup> The Committee commends the SEC for its effort to reexamine and recalibrate the “accredited investor” framework to preserve investor protection and promote capital formation.

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-five leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean emeritus, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Under the Securities Act of 1933, as amended, persons and entities that qualify as “accredited investors”<sup>2</sup> are eligible to invest in certain exempt securities offerings closed to other investors, including offerings by private companies and certain hedge funds, private equity funds, and venture capital funds.<sup>3</sup> The Proposal would amend the definition of “accredited investor” to, among other things: (i) add new categories for natural persons with certain professional certifications, designations or academic credentials from an accredited educational institution, and, with respect to investments in private funds, affiliations with the fund; and (ii) add new categories for certain entities with at least \$5 million in assets, including family offices and any entity owning

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<sup>1</sup> U.S. SEC. & EXCH. COMM’N, *Amending the “Accredited Investor” Definition* (Jan. 15, 2020), <https://www.federalregister.gov/documents/2020/01/15/2019-28304/amending-the-accredited-investor-definition> (the “**Proposal**”).

<sup>2</sup> 17 C.F.R. § 230.501(a).

<sup>3</sup> *Proposal*, *supra* note 1, at 2574-2575.

“investments” (as defined by Investment Company Act Rule 2a51-1(b))<sup>4</sup>.<sup>5</sup> The SEC released the Proposal in connection with its efforts to “simplify, harmonize, and improve the exempt offering framework under the Securities Act of 1933 to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.”<sup>6</sup>

In November 2018, the Committee released a report (the “**Committee report**”) recommending that the SEC permit non-accredited investors to invest in public closed-end funds that invest more than 15% of their assets in private equity funds (“**closed-end funds of private equity funds**”).<sup>7</sup> In the past, as part of the investment company registration process, the SEC has indicated that only accredited investors may invest in such closed-end funds of private equity funds, but it has offered no policy rationale for this restriction.<sup>8</sup> The Committee report sets forth the policy rationale for expanding investor access to closed-end funds of private equity funds.<sup>9</sup> We additionally note that, according to the Proposal itself, “recent research has shown that investments in funds of private equity funds can outperform public markets.”<sup>10</sup> However, the Proposal does not otherwise address the Committee’s recommendation.

Furthermore, in September 2019, the Committee submitted a comment letter<sup>11</sup> in response to the SEC’s Concept Release on Harmonization of Securities Offering Exemptions.<sup>12</sup> The Committee’s letter explains how the SEC staff could enhance investor protection for non-accredited investors that invest in closed-end funds of private equity funds. The SEC could do so by solely permitting such public closed-end funds to invest in private equity funds where the affiliated manager meets threshold “scale and experience” criteria and attracts substantial institutional capital.<sup>13</sup> The latter could be achieved by the SEC only allowing such public closed-end funds to invest in private equity funds that accept more than a certain percentage (e.g. 50%) of their capital commitments from institutional investors.<sup>14</sup> Sophisticated institutional investors, such as qualified institutional buyers, are unlikely to invest in private equity funds that lack a history of strong performance or seasoned management.<sup>15</sup> Retail investors would further benefit from the fact that the terms and provisions of the private equity funds available indirectly to retail

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<sup>4</sup> 17 C.F.R. 270.2a51-1(b).

<sup>5</sup> *Proposal*, *supra* note 1, at 2576.

<sup>6</sup> *Proposal*, *supra* note 1, at 2574.

<sup>7</sup> COMMITTEE ON CAPITAL MARKETS REGULATION, *Expanding Opportunities for Investors and Retirees: Private Equity*, 69 (Nov. 2018), <https://www.capmksreg.org/2018/10/30/expanding-opportunities-for-u-s-investors-and-retirees-private-equity/> (the “**Committee Report**”).

<sup>8</sup> *Committee Report*, *supra* note 7, at 38.

<sup>9</sup> *Committee Report*, *supra* note 7, at 24-42.

<sup>10</sup> *Proposal*, *supra* note 1, at 2605 (citing Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?*, 129 J. FIN. ECON. 287 (2018)).

<sup>11</sup> COMMITTEE ON CAPITAL MARKETS REGULATION, *Comment Letter to the Sec. & Exch. Comm’n re Concept Release on Harmonization of Securities Offering Exemptions* (Sept. 19, 2019), <https://www.capmksreg.org/2019/09/19/committee-submits-comment-letter-to-sec-regarding-the-concept-release-on-harmonization-of-securities-offering-exemptions/> [“**CCMR Comment Letter**”].

<sup>12</sup> U.S. SEC. & EXCH. COMM’N, *Concept Release on Harmonization of Securities Offering Exemptions*, 84 FED. REG. 30460 (June 26, 2019), <https://www.federalregister.gov/documents/2019/06/26/2019-13255/concept-release-on-harmonization-of-securities-offering-exemptions>.

<sup>13</sup> *CCMR Comment Letter*, *supra* note 12, at 3-4.

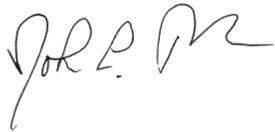
<sup>14</sup> *CCMR Comment Letter*, *supra* note 12, at 3-4.

<sup>15</sup> *CCMR Comment Letter*, *supra* note 12, at 3-4.

investors would be negotiated by sophisticated institutional investors, including appropriate disclosures.<sup>16</sup>

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Prof. Hal S. Scott ([hscott@law.harvard.edu](mailto:hscott@law.harvard.edu)), or Executive Director, John Gulliver ([jgulliver@capmksreg.org](mailto:jgulliver@capmksreg.org)), at your convenience.



John L. Thornton  
Co-CHAIR



Hal S. Scott  
PRESIDENT



R. Glenn Hubbard  
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<sup>16</sup> CCMR Comment Letter, *supra* note 12, at 3-4.