



March 14, 2020

Vanessa Countryman
Secretary
U.S. Securities & Exchange Commission
100 F Street NE
Washington, D.C. 20549-0609

Re: Comments on Amending the “Accredited Investor” Definition, SEC Release No. 33-10734;34-87784, File No. S7-25-19

Dear Ms. Countryman:

This letter is submitted on behalf of the Institutional Limited Partners Association (“ILPA”)¹ in response to the request of the U.S. Securities and Exchange Commission (the “Commission”) for comments on SEC Releases No.33-10734 and 34-87784 (the “Proposal” or “Release”),² in which the Commission proposes to amend the “Accredited Investor” definition under Regulation D of the Securities Act of 1933 (“33 Act”).

ILPA is supportive of positive changes included in the Proposal that provide additional flexibility for family offices and Native American tribes when investing in private funds. We also are supportive in permitting knowledgeable fund employees to invest in private funds. We encourage the Commission to adopt these changes in the final rule.

¹ILPA is the voice of the institutional investors invested in private equity, colloquially known as Limited Partners or LPs. Our 550+ member institutions represent over \$2 trillion in private equity assets under management globally and include public and private pension funds, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all of which invest in the U.S. alternative investment market. LPs provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation, across America and around the world.

In addition to providing this critical capital for economic growth, LPs are the trusted financial stewards investing the assets of millions of Americans. Limited partner beneficiaries include teachers, first responders, students receiving university scholarships, charity recipients, and insurance policyholders, among others. ILPA is headquartered in Washington, D.C. with additional offices in Toronto, Ontario. For more information on ILPA’s members, please visit: <http://www.ilpa.org/members>.

² Amending the “Accredited Investor” Definition, SEC Releases No.33-10734 and 34-87784 (December 18, 2019); File No. S7-25-19, *available at* <https://www.sec.gov/rules/proposed/2019/33-10734.pdf>.

I. ILPA Supports the Changes in the Release that Provide Additional Flexibility for Single Family Offices

ILPA welcomes that the Commission has adopted suggestions that we made in our September 2019 comment letter on the Concept Release of the Harmonization of Securities Offering Exemptions to extend accredited investor protections to family clients of single family offices.³ The Proposal's approach at limiting the exemption to those family offices with at least \$5 million in assets under management and its "family clients" as defined in the family office rule is the right one.⁴ Further, the restriction that the family office be not formed merely for acquiring the securities offered and that the investment be directed by a knowledgeable and experienced family office staff member will ensure family clients are adequately protected and the exemption is not used for unintended purposes.⁵ We encourage the Commission to adopt these changes in the final rule.

II. ILPA Supports the Changes in the Release that Provide Additional Flexibility for Native American Tribes

Several wealthier Native American tribes in the United States, including some that are ILPA members, have significant assets to invest in the private markets⁶ and would benefit by the proposed expansion of the accredited investor to explicitly include Native American tribes. The Release proposes to expand in proposed Section 230.501(a)(9) to include "Any entity, of a type not listed in paragraphs (a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000." We believe this language will likely be sufficient to permit Native tribes and associated organizations to access private capital markets. However, we would encourage the Commission to more explicitly highlight that Native American tribes and affiliated corporations are accredited investors in the final rule. Our tribal members have indicated that despite having sufficient assets to invest, there is a significant lack of understanding as to whether tribes are U.S. persons, or whether a tribe is eligible to invest. More specifically stating that tribes are eligible investors will therefore alleviate barriers to investment in tribal areas. We would suggest the SEC

³ Concept Release on Harmonization of Securities Offering Exemptions, Release No. 33-10649 (June 18, 2019) [84 FR 30460 (June 26, 2019)] ("Concept Release").

⁴ 17 C.F.R. § 230.501(a)(12) and (13).

⁵ *Id.*

⁶ Gary Clarkson, *Accredited Indians: Increasing the Flow of Private Equity Into Indian Country as a Domestic Emerging Market*, P. 318, UNIVERSITY OF COLORADO LAW REVIEW Vol. 80, No. 285, (2009).

adopt the language suggested by the Native American Finance Officers Association (NAFOA) in their September 2019 comment letter.⁷

Additionally, we support the financial thresholds in the Proposed Rule. The proposed \$5,000,000 threshold ensures that only those tribes who have the resources to invest in complex, sophisticated investments will be able to access the market.⁸ Moreover, this policy is a positive because of the benefits that private equity investment would deliver to Native American tribal areas, which suffer from lack of outside investment. Native investors are critical as first mover investors to pave the way for non-native investors to provide capital in tribal areas.⁹ We encourage the SEC to adopt this provision in the final rule.

III. ILPA is Supportive of Provisions in the Release that Permit Knowledgeable Employees of Private Fund Sponsors to Invest in the Funds the Sponsor Manages

The Proposed Rule provides for the ability of knowledgeable employees of private fund sponsors to invest in the funds the sponsor advises as long as they have participated in the investment functions as part of their job duties for the prior 12 months.¹⁰ ILPA supports this targeted change to the current requirements of the accredited investor rule because of the inherent sophistication of these individuals despite the income thresholds, as well as the belief that incentivizing private fund sponsor staff appropriately will lead to improved investment outcomes for LPs. Incentivizing knowledgeable employees at private fund sponsors through the use of carried interest (i.e. investing in the fund), rather than merely paying them a salary paid out of the management fee of the fund, drives performance and therefore improved “alignment” between the private fund sponsor and their investors. It also encourages talented team members at the sponsor, that drive the performance of the fund, to remain with the sponsor, driving improved performance. We believe the adoption of the definition under Rule 3c-5 of the Investment Company Act also appears appropriate, given that it excludes employees performing “solely clerical, secretarial or administrative functions” who would not have

⁷ See *Comment Letter to the U.S. Securities & Exchange Commission by Dante Desiderio of the Native American Finance Officers Association (NAFOA) Re: Accredited Investor*, September 12, 2019, available at: <https://www.sec.gov/comments/s7-08-19/s70819-6132113-192235.pdf>

⁸ Proposed Rule, Section 230.501(a)(9).

⁹ Gary Clarkson, *Accredited Indians: Increasing the Flow of Private Equity Into Indian Country as a Domestic Emerging Market*, at 291.

¹⁰ Proposed Rule, Section 230.501(a)(10).



the requisite sophistication to invest in a private fund.¹¹ ILPA also encourages this provision to be adopted in the final rule.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Nelson". The signature is stylized and cursive.

Steve Nelson
Chief Executive Officer
Institutional Limited Partners Association (ILPA)

cc. Honorable Jay Clayton, Chairman
Honorable Hester M. Peirce, Commissioner
Honorable Elad L. Roisman, Commissioner
Honorable Allison Herren Lee, Commissioner

¹¹ 17 CFR § 270.3c-5(a)4).