



ANGEL CAPITAL ASSOCIATION

March 9, 2020

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

Re: File Number S7-25-19: Comments on proposed rule from the Securities and Exchange Commission on 17 CFR PARTS 230 and 240, Release Nos. 33-10734; 34-87784; RIN 3235-AM19, Amending the “Accredited Investor” Definition (the “Release”)

Dear Ms. Countryman:

Thank you for the opportunity to provide comments to the Commission on its proposed amendments to the “Accredited Investor” definition. In reading the Release, we very much applaud the Commission’s express recognition that leaving the financial thresholds of the accredited investor definition alone has, over the years, resulted in a measured, incremental expansion of the accredited investor pool. This has historically proven to have a positive impact on capital formation and has not diminished investor protections and the overall integrity of the Reg D exemption.

The Angel Capital Association (ACA) is the leading professional association supporting the success of accredited angel investors in high-growth and early-stage ventures. Our 14,000 members are among the angel investors that invest an estimated \$25 billion in 70,000¹ early-stage investments every year, with companies located in every state in the country. Our comments today are in support of both angel investors and the nation’s startup entrepreneurs, those who create nearly all net new jobs in the country² and many of the innovations that improve the quality of life throughout the world. It is vital that promising startups continue to attract angel capital, for their own growth and for the American economy.

As noted above, we share the view that the measured, incremental expansion of the accredited investor pool is positive, and support other proposals to expand startup access to angel capital, as long as all such reforms are balanced with a due regard for investor protection. In that regard, we note that the Release goes further than simply protecting the existing financial thresholds, but also proposes new, additional paths to satisfying the accredited investor standard, new means that do not reference income, net worth or financial standards. We applaud this effort as well.

In particular, we support the concept found in the Release that a person might satisfy the accredited investor standard based on appropriate educational certification. There can be no better indicia of suitability as an angel investor, than her qualification for, and membership and active participation in, an established angel group that endorses, trains and meets industry standards set by the ACA.

¹ Center for Venture Research, University of New Hampshire, <https://paulcollege.unh.edu/center-venture-research/research>

² John Haltiwanger, Ron Jarmin, and Javier Miranda, [Jobs Created from Business Startups in the United States](#), 2008

Unfortunately, the language found in the release to support this concept, expressed at proposed clause (10) of Section 501(a) (found on pp. 150-151 of the Release), misses the opportunity to directly leverage the ACA, and other suitable trade organizations, which assiduously promulgate and disseminate, through member organizations throughout the country, the educational function that we feel should be a the heart of this aspect of the Release’s proposals.

Here is our candid assessment of the concept as proposed to be implemented in Clause 10, and how we would request the Commission improve it:

- o Clause 10 contemplates that an individual could receive a professional certification or designation or credential from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status.
- o Clause 10 goes on to say that In determining whether to designate a professional certification or designation or credential from an accredited educational institution, the Commission will consider, among others, the following attributes: (i) the certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution.
- o Thus, it would appear that other industry bodies or SROs can administer the exams, but that the accredited educational institution would issue the credential.
- o It is unclear exactly what the Commission means exactly by the terms accredited educational institution and other industry body.
- o The ACA has an established ACA University that offers both fundamental and advanced courses in angel investing. A list of our courses and approved instructors can be found at our website www.angelcapitalassociation.org. We would like to ensure that our university qualifies within the definition of an “accredited educational institution” for the purpose of certifying accredited investors, and would appreciate the opportunity to work with SEC staff to accomplish this.
- o We do not believe that the Commission should require that an accredited educational institution issue the credential or certification. We believe these credentials ought to be issuable by self-regulatory organizations or other industry bodies which the Commission designates as qualifying an individual for accredited investor status. This may be what the Commission means by “accredited educational institution,” but the language is unclear.
- o The ACA is a recognized body that has the potential to administer certification/credentialing of individuals as accredited investors.
- o We believe it is in the best interest of the community for the SEC to provide flexibility in designating certifying/credentialing organizations within the meaning of Clause 10. Potential organizations should be given the opportunity to apply for consideration with the SEC offering a response within 60 days to any proposal by a bona fide industry body that its own designation or certification of investment sophistication would count as part of the “Accredited Investor” definition. Thorough documentation should be provided relative to how clause (10) organizations are validated.

On a separate topic, we believe that revisiting the accredited investor definition provides the right opportunity to redress a current problem in angel investing and startup capital formation, which is the unintended consequence of the standard being applied to eliminate the spouse or spousal equivalent of an accredited investor, who may accede to the investment in a given company on death or divorce, from participating in follow on investment rounds. We believe a grandfathering expansion of the definition, such that a spouse or spousal equivalent, who does not himself or herself meet the definition, will nevertheless qualify to participate in follow on rounds in which he or she, or her or his spouse or spousal equivalent, or their marital or spousal community, previously participated as accredited .

We urge the Securities and Exchange Commission to review the specifics of our concerns and make every effort to address them so that the vital job creating work we do can continue.

Again, ACA greatly appreciates the opportunity to provide these comments and recommendations to the SEC as it undertakes its review of the Accredited Investor Definition.

Respectfully,



Patrick Gouhin, CEO



Linda Smith, Chair Emeritus and Public Policy Chair