



February 26, 2024

Ms. Erica Duignan
Chair
SEC Small Business
Capital Formation Advisory Committee
100 F Street NE
Washington, DC 20549

Re: February 27th Meeting of the Small Business Capital Formation Advisory Committee

Dear Ms. Duignan:

The Small Business Investor Alliance (“SBIA”) submits these comments for the scheduled February 27th meeting of the Securities and Exchange Commission (SEC) Small Business Capital Formation Advisory Committee. SBIA appreciates that the Committee will use this meeting to continue its discussion and development of recommendations related to the SEC’s definition of an “accredited investor.”

SBIA is a national association that develops, supports, and advocates on behalf of policies that benefit investment funds that finance small and mid-size businesses in the lower middle market, as well as the investors that provide capital to these funds. Our membership consists of the advisers of traditional 3(c)(1) and 3(c)(7) private funds, small business investment companies (“SBICs”), rural business investment companies (“RBICs”), funds registered as business development companies (“BDCs”) under the Investment Company Act of 1940, and the investors that invest in these funds including banks, family offices, and fund of funds.

SBIA strongly supports the adoption of additional methods to determine whether an investor can be deemed “accredited” or sophisticated enough to understand the risks and rewards associated with alternative and nontraditional investment products, including small private funds. For nearly 40 years, the only way most investors could achieve accredited status was through earning a minimum level of annual income or having a minimum net worth. In practice, these thresholds allowed only wealthier individuals to invest in private offerings or other vehicles, regardless of an investor’s financial sophistication, level of education or professional certification, or their ability to understand complex products.

In 2020, the SEC adopted incremental changes to the accredited investor definition to include additional, non-financial metrics.¹ These reforms expanded the definition to include individuals

¹ Accredited Investor Definition (August 26, 2020)

that hold certain professional certifications (e.g. holders of Series 7, 65, or 82 licenses), investment advisers registered under Section 203 of the Investment Advisers Act, “knowledgeable employees” of private funds, as well as rural business investment companies (RBICs) which are investment funds licensed by the U.S. Department of Agriculture.

SBIA strongly supported these reforms, however we believe the accredited investor definition should be expanded further to include individuals that are able to demonstrate a certain level of financial expertise or who hold other certifications or licenses that are common amongst practitioners within the financial services industry but which currently fall outside the definition. SBIA also supports the ability of investors to self-certify their accredited status which would make the capital raising process for private issuers more efficient and protect the sensitive tax and financial records of potential investors.

The recent annual report from the SEC Office of the Advocate for Small Business Capital formation contained recommendations for how to expand the accredited investor definition so that more individuals have a chance to invest in private businesses or private funds.² The same report also noted the discriminatory impact that the current definition can have, given that a higher percentage of racially and ethnically diverse individuals are excluded from being accredited investors.³ In other words, this current SEC regulation can exacerbate wealth inequalities across racial and geographic lines.

Unfortunately, the SEC is currently considering further *restrictions* to the pool of accredited investors by merely raising the income and net worth thresholds for individuals.⁴ This would be ill-advised because, as Commissioner Uyeda recently pointed out, doing so would assume that the income and net worth thresholds adopted over 40 years ago were appropriate and not arbitrary.⁵ Additionally, raising the thresholds would continue the errant approach of correlating wealth with sophistication. SBIA hopes that the Committee will caution the SEC against such a rulemaking and continue to support a more inclusive definition of accredited investors – one that maintains important investor protections but also helps small businesses raise capital and increases investment opportunities for more American households.

As the Committee also considers further areas and particular issues it should prioritize in the future, SBIA recommends that the Committee look at regulatory issues unique to private investment funds. Specifically, the Committee could consider the effect that regulations have on small investment funds and their investors, including funds registered with other federal agencies such as small business investment companies (SBICs) and rural business investment companies (RBICs). The SEC has unfortunately demonstrated a benign neglect towards the costs and

² <https://www.sec.gov/files/2023-oasb-annual-report.pdf>

³ “For example, the accredited investor definition largely determines whether an individual is eligible to invest in many early-stage companies.³¹⁶ However, African American/Black and Hispanic/Latino investors are excluded from the accredited investor definition at higher rates than White and Asian American/Pacific Islander investors due in large part to historic wealth inequality.”

⁴ Fall 2023 Regulatory Agenda <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=3235-AN04>

⁵ Remarks at the 51st Annual Securities Regulation Institute- Commissioner Mark Uyeda (Jan 22, 2024) [SEC.gov | Remarks at the 51st Annual Securities Regulation Institute](#)

complications that SEC rules can pose for these funds, which are critical to the entrepreneurial ecosystem.

SBIA looks forward to continuing to work with the SEC and members of this Committee on these critical issues.

Sincerely,

A handwritten signature in blue ink that reads "Brett Palmer". The signature is written in a cursive style with a small "es" at the end.

Brett Palmer
President
Small Business Investor Alliance