December 29, 2019

Via e-mail to rule-comments@sec.gov

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

Re: Amending the "Accredited Investor" Definition
Release Nos. 33-10734; 34-87784 File No. S7-25-19

Dear Ms. Countryman,

I appreciate this opportunity to comment on proposed amendments to Rule 144A, Rule 163B, Rule 215 and Rule 501 under the Securities Act of 1933 and Rule 15G-1 under the Securities Exchange Act of 1934 about which the Securities and Exchange Commission solicited comment[1].

Although the proposal solicits comments on many questions, my comments are confined to a few limited areas of interest.

My employer, Parkland Management Company L.L.C ("Parkland") is a family office operating under an exemption under the Investment Advisers Act of 1940. The proposed changes would minimally impact Parkland's investment operations. I comment as an individual person and my comments do not reflect the views of any other including my employer. However, my experiences inform many of my views on this issue. I hold a Chartered Financial Analyst ("CFA") charter, which is contemplated in the proposal. I also hold a designation not contemplated in the proposal: A Chartered Alternative Investment Analyst ("CAIA") Charter. While I lend perspective and beliefs on these designations, I also speak for neither of these organizations.

The proposed changes could widely impact the broad investment ecosystem. It is in the spirit of public advocacy that I comment on the proposed changes.

[1] Re: Amending the "Accredited Investor" Definition Release Nos. 33-10734; 34-87784 File No. S7-25-19 available at https://www.sec.gov/rules/proposed/2019/33-10734.pdf

Proposed Amendment Questions:

"1: Are professional certifications and designations or other credentials an appropriate standard for determining whether a natural person is an accredited investor? Do the types of certifications and designations that the Commission is considering indicate that an investor has the requisite level of financial sophistication and abilities to render the protections of the Securities Act unnecessary?"

"2: Are the professional certifications and designations we preliminarily expect to designate as qualifying credentials in an initial Commission order accompanying the final rule appropriate to recognize for this purpose? Should we include a credential from an accredited educational institution, such as an MBA, in such initial order?"

"3: Should we consider other certifications, designations, or credentials as a means for individuals to qualify as accredited investors? If so, which ones should we consider? For example, there are several FINRA Representative-level and Principal-level exams, as well as FINRA-administered NASAA exams, Municipal Securities Rulemaking Body exams, and National Futures Association exams, that cover a broad range of subjects relating to the markets, the securities industry and its regulatory structure. Should we consider any other FINRA-developed examinations or FINRA–administered examinations not discussed in this release? Should we consider designating any professional certifications or designations or credentials issued outside of the United States? Should we consider other certifications and designations administered by private organizations, such as the CFA Institute and the Certified Financial Planner Board of Standards? Does the fact that these private organizations are not subject to Commission oversight or regulation raise concerns with respect to the inclusion of certifications or designations such as the CFA Charter or the CFP Certification as a means of accredited investor qualification?"

Response:

A knowledge or credential based system would meaningfully improve the current income / wealth-based system. Many high earning individuals have professional competence in a certain area. That knowledge may or may not port to effectively evaluating private investment funds. While a wealth-based threshold may calibrate an individual's ability to bear losses, it makes a poor proxy for an individual's ability to underwrite the risks of certain private funds in the first place.

The Commission's goal of looking to existing professional certifications and designations is laudable, but problematic. The Commission should pursue its own accredited investor examination.

The fact that private designation conferring organizations are not subject to commission oversight should be a paramount concern. Conferring investor accreditation authority to private organizations is inherently dangerous. If the Commission anointed a private organization with the power to create Accredited Investors, the demand for that private organization's credential would skyrocket. Those organizations endowed with this new power would see large increases in enrollment, and increases in revenue from exam fees, materials, and other services. Those not fortunate enough would be left out of this revenue, and they would likely posture to be added to the Commissions "approved list". This could lead to a lobbyist driven frenzy.

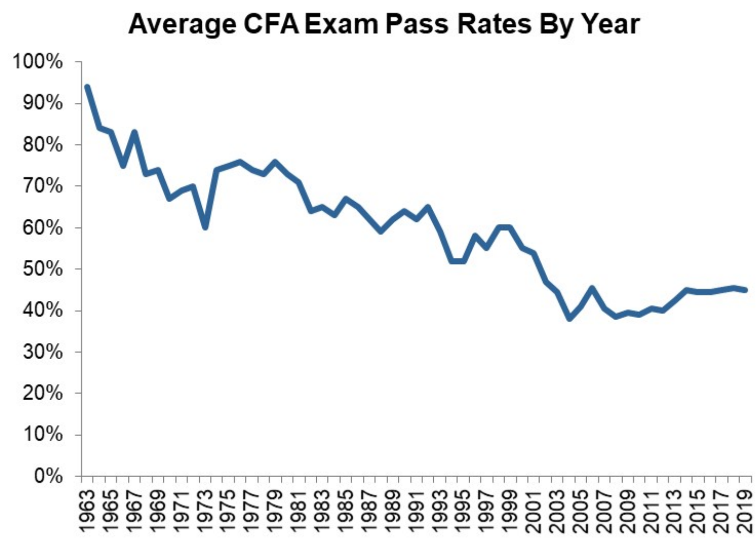
Credentialing and designation granting is a business. While the business pressures of not-for-profit organizations may be smaller, they still exist.

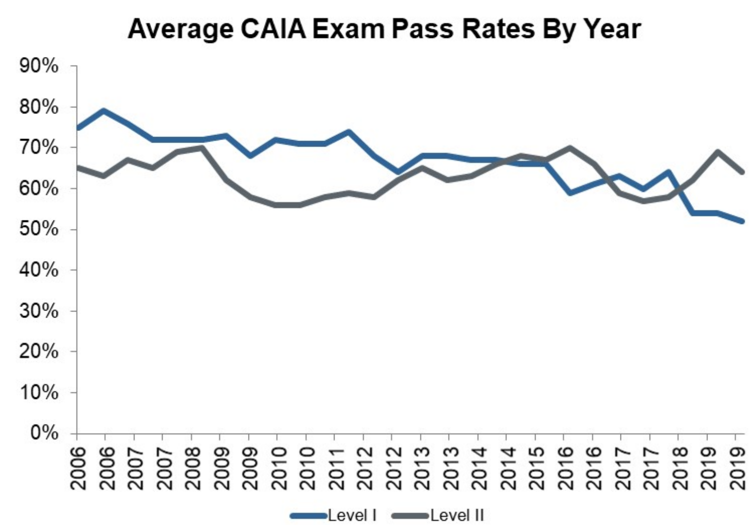
Some designations are offered on a for-profit basis:

> An example is the Accredited Investment Fiduciary ("AIF") designation offered by FI360. FI360 was once owned by several individuals. It was bought by a private equity firm, and now is a subsidiary of Broadridge Financial Solutions (NYSE:BR). Alongside the AIF designation, affiliated entities sell software, training, and other services.
>
> Another example is the Certified Behavioral Finance Analyst ("CBFA") designation created by an affiliate of Allianz Global Investors. Allianz sells a wide array of financial services.
>
> The profitability function of professional designation businesses is driven by increased membership, exam fees, and ancillary products and services. Membership is maximized by making designations easy to obtain. Motivations for creating and conferring designations may be unclear due to complicated affiliate structures.

Some designations are offered by not-for-profit organizations.

> Even among not-for-profit managed designations, relevance is maximized with large numbers of designation holders. In early years of organization histories, designations seem easier to obtain. It's hard to get a designation going or make your organization relevant by flunking all exam takers. On average, CFA exam takers in prior decades passed more frequently than today. We see higher CAIA level 1 pass rates in the early years of the designation as well.





Race to the bottom dynamic in designations

Some private organizations such as CFA Institute have created rigorous investment designations. However, in the aggregate, I believe investment designations face a "race to the bottom" dynamic. The lure of examination fees, and ongoing membership fees has led to a proliferation of private organizations offering designations. A quick google search will find dozens of investment related certifications. Some individual companies will sell multiple designations for a few hundred dollars with little to no study or testing.[2] Some of these companies are politically well connected. Opening

[2] Jason Zweig and Mary Pilon highlighted examples of this issue in the Wall Street Journal in October 2010 "Is Your Adviser Pumping Up His Credentials?" Available at https://jasonzweig.com/is-your-adviser-pumping-up-his-credentials/

investor accreditation power to private organizations with the power to lobby risks opening a pandora's box.

Proposed Amendment Question:

"11: Should we consider developing an accredited investor examination as another means for determining investor sophistication? What are the advantages and disadvantages of such an approach? What should be considered in developing and designing such an examination?"

Response:

I believe the best way the Commission can ensure a robust certification of investor sophistication is by developing and administering its own examination.

The need for an examination independent of firm affiliation or sponsorship

The usage of FINRA examinations associated with the Series 7, 65 and 82 is problematic. Most of those examinations require sponsorship by a firm. Whatever examination the Commission pursues should be open to individuals regardless of firm sponsorship.

The need for a different and more rigorous examination:

I question the exam choices in the proposal. They are not comparable to other examinations widely considered more rigorous. The below table highlights a few selected designations which have a reputation for rigor and compares them to the FINRA series. A distinct lack of comparability exists between the FINRA exams and certain other designations.

Examination	Commonly Recommended Study Time	Total Recommended Study Time
Chartered Financial Analyst (CFA)	200-300 hours per level	600-900 hours across 3 examinations
Financial Risk Manager (FRM)	200-300 hours per level	400-600 hours across 2 examinations
Chartered Alternative Investment Analyst (CAIA)	50-200 hours per level	100 to 400 hours across 2 examinations
Certified Public Accountant (CPA)	80-100 hours per level	320-400 hours across 4 sections
Series 7	80-100 hours	80-100 hours
Series 65	20-60 hours	20-60 hours
Series 82	60-80 hours	60-80 hours

None of the FINRA exams seem to require more than 100 hours of study time. The Series 65 stands out for the short study time. I believe it is impossible to take a person with no prior background or training, and properly equip that person in a maximum of 60 hours. The scope and type of alternative investments is simply too broad and the issues too numerous. Anecdotes within the investment industry align with the data. Series 7, 65, and 82 licenses are not viewed as having the same content as other designations.

While the right answer may not be a full 300-600 hours as is common for some designations, I don't believe the answer is in the FINRA exam series contemplated.

The Commission could look to and leverage the existing curriculums and resources of certain private organizations, such as the CFA Institute or the CAIA association. The CFA Institute's programs require a multi-year process and hundreds of hours of study. The CAIA Association's process is shorter and requires less study. However, it is more focused on the issues specific to private investment funds.

The Commission might be able to leverage existing material to develop an examination. But I think the actual certification and ownership of the process should remain with the Commission.

Proposed Amendment Question:

"15. Should knowledgeable employees of private funds be added to the definition of accredited investor as proposed?"

Response:

Yes

Proposed Amendment Question:

"17. Under the proposed definition of "accredited investor," should a knowledgeable employee's accredited investor status be attributed to his or her spouse and/or dependents when making joint investments in private funds? Is the answer to this question the same for a family corporation or similar estate planning vehicle for which the knowledgeable employee is responsible for investment decisions and the source of the funds invested?"

Response:

Yes. I believe for most families that assets function as "one pot of money." This idea seems to have precedents in existing law. Example: Spouses can effectively gift assets back and forth without limit.

Proposed Amendment Question:

"24. Should we add a new category to the accredited investor definition for any entity with investments in excess of $5 million that is not formed for the specific purpose of acquiring the securities being offered, while maintaining the current $5 million assets test for entities currently listed in Rules 501(a)(3) and (a)(7), as proposed? Are the entities that would be eligible under proposed Rule 501(a)(9) sufficiently different in nature from the enumerated entities in Rules 501(a)(3) and (a)(7) such that an investment test should be applied to demonstrate financial sophistication? If not, should Rule 501(a)(3) be expanded to include any entity that has more than $5 million in assets?"

Response:

Yes. 501(a)(3) et.al. could be expanded as contemplated and would be a constructive simplification of the eligible entity types.

Proposed Amendment Question:

"30. Should we use the definition of investments from Rule 2a51-1(b) under the Investment Company Act? If not, what definition should we use? Are market participants familiar with the definition such that implementation would not be unduly difficult?"

Response:

Yes. An important feature of Rule 2a51-1(b) is its inclusion of binding capital commitments. This inclusion is an important facilitator for funds structured as draw down vehicles.

Proposed Amendment Question:

"37. Would it be appropriate to impose a financial threshold for a family office to qualify as an accredited investor as proposed? Should we also impose a financial threshold for a family client to qualify? In either case, what is the appropriate threshold? For instance, should there be a minimum investment amount or minimum assets under management?"

Response:

Yes. A similar threshold used for other legal entities may make sense as the threshold for a family office. However, asset thresholds are problematic for individual family members. For example, some family members may be young and not have assets in their names. They may be contingent beneficiaries of trusts and may not be considered beneficial owners. Even in these cases, it’s likely those family members would enjoy protections provided by the umbrella family office structure.

Proposed Amendment Question:

“40. Should we allow spousal equivalents to pool finances for the purpose of qualifying as accredited investors? If so, is our proposed definition of “spousal equivalent” appropriate? If not, what definition should we use?”

Response:

Yes. If the Commission can modernize and harmonize the rules around investor accreditation, it should. If at the same time, it can also modernize legacy terminology to acknowledge the dignity and equivalent financial standing of same sex marriages, it should do that too.

Proposed Amendment Question:

“20. Should SEC- and state-registered investment advisers be added to the list of entities specified in Rule 501(a)(1) and qualify as accredited investors, as proposed? Alternatively, should only SEC-registered investment advisers qualify as accredited investors? If so, why? Should we allow exempt reporting advisers to qualify as accredited investors? If so, should exempt reporting advisers be subject to additional conditions?”

Response:

Yes. registered investment advisers (“RIAs”) are subject to many control and compliance requirements. People and organizations don’t register on a recreational basis. Ostensibly they are in the business of professional investing. RIAs should be expected to have the knowledge to discern among private investments. They should also have the capacity to bear losses. If they don’t, I believe free market mechanisms are the best means to sort them out. As for exempt reporting advisers, generally those are either venture capital fund managers, or professionals managing small investment funds as a business. In either case, I believe the same market mechanism could apply.

To be clear, I interpret this question as “should RIAs be considered accredited investors as it pertains to investing either the corporate assets of the company or the personal assets of the principals themselves?" That's a different question than "should clients of RIAs be automatically considered accredited?" I interpret questions 60 and 61 in the below section as asking that specific question.

Proposed Amendment Questions:

"In addition to feedback on possible adjustments to the financial thresholds in the definition, we are requesting further comment on whether we should permit an investor, whether a natural person or an entity, that is advised by a registered investment adviser or broker-dealer to be considered an accredited investor."

"60. If we were to permit an investor advised by a registered investment adviser or broker-dealer to be deemed an accredited investor, under what circumstances would that registered financial professional be likely to recommend investing in a Regulation D offering? What types of investors would be likely to receive a recommendation from that registered financial professional to invest in a Regulation D offering?"

"61. If an investor is to be considered an accredited investor by virtue of being advised by a registered investment adviser or broker-dealer, should we consider additional investor protections? For example, should such financial professionals have to eliminate any conflicts of interest related to such advice for its advice to render an investor an accredited investor or should such a financial professional have to mitigate such conflicts of interest in a particular way? Should such financial professionals have to conduct any different due diligence before advising the investor on such investments? Should there be limits on the types or amounts of investments that such an investor could make under these circumstances?"

Response:

The circumstances described here are different. While a registered investment adviser should be free to invest its corporate assets and the assets of its principals, circumstances differ in the adviser-client relationship. Principal-agent misalignments can exist in the client-adviser relationship. The competences of an adviser do not seamlessly pass through to the end client.

An investor advised by a registered investment adviser or broker-dealer should NOT be deemed an accredited investor.

Financial professionals are more likely to recommend Regulation D offerings because they're more likely to be paid more[3]. Fee schedules often tier by

[3] The Commissions own experience in policing how certain investment advisers choose share classes for their clients amid complicated and non-obvious revenue sharing arrangements is informative. The Commission has been clear about disclosure and has been conducting enforcement actions for over a decade. Despite this, it's still an issue today. https://www.sec.gov/enforce/educationhelpguidesfaqs/share-class-selection-disclosure-initiative-faqs

complexity of assets. Low risk cash or money market instruments may have one fee schedule. More complex hedge funds or private equity investments may have a higher fee schedule. Even if fee schedules don't tier, the fundamental business model of investment advisory work still encourages complexity over simplicity. Investment advisers make themselves more difficult to fire if they can make clients less self-sufficient and more dependent on the adviser. Complexity begets client retention. Also, what happens to a client if the client fires the investment adviser? Is the client no longer an accredited investor? Does this itself create dependence on the adviser?

Yes, advisers should provide high quality services and make clients' lives easier. They should make the administrative burden for clients as light as they can. And alternative investments such as those which fall under Regulation D have merits for certain sophisticated and generally larger investors. While all these facts are true, the business incentive remains. In general, investment advisers have a strong business interest in having their clients pursue more complicated investments.

There are two types of investors more likely to receive these recommendations:

The first group is investors who are wealthier or larger. They are already likely accredited investors. For this group, the question is largely moot as they can already invest in many private offerings.

The second group that's likely to receive these recommendations is a more vulnerable population: those who are likely not accredited already. This is the group that would be impacted by the ideas contemplated in questions 60 and 61. This is the group that needs protections.

Our regulatory construct as it exists today does not sufficiently require fiduciary alignment between advisers and clients. In 2016, the Department of Labor ("DOL") attempted to improve alignment of interests for retirement plans in their regulatory scope with their fiduciary rule proposal. While it was imperfect and left several loopholes in place[4], it would have been a constructive step forward. The industry response was still fierce. Eventually the proposal died under the pressure of legal challenges. The DOL has been attempting to improve alignment for years.

A broker-dealer ("BD") that makes a market in securities on a principal basis by construction is in an adversarial relationship with its clients. A BD that receives finders fees, commissions, or other compensation from private funds it markets is also in an adversarial position relative to its clients. The BD structure is inherently conflicted. While BD's perform valuable and necessary services in the financial

[4] I wrote a short summary of the proposal in early 2016, which highlighted some of the limitations of the DOL proposal. The proposal was a good step forward. But even so, clients could not be guaranteed unbiased advice for several reasons: https://www.benefitspro.com/2016/09/14/how-the-dol-fiduciary-rule-affects-plan-sponsors/

services ecosystem, they are not fiduciaries. Anointing the clients of a broker dealer as accredited investors because of the advice provided is a dangerous concept. The Commission’s idea of imposing regulation or requirements to mitigate or remove the conflict is admirable. However, I worry that such attempts will face the same torrent of industry resistance and litigation that have stymied similar attempts by other regulators. And any imperfections in the requirements can be exploited by creative industry participants.

I appreciate the efforts of the Commission and its staff to better protect investors and improve the regulatory construct around private funds. I hope my comments are helpful and would be pleased to discuss any aspect of this letter in greater detail.

Sincerely,

Al Hemmingsen, CFA, CAIA
Chief Investment Officer
Parkland Management Company, L.L.C.