U.S. Securities and Exchange Commission
Small Business Capital Formation Advisory Committee

May 1, 2024

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1070

Dear Chair Gensler:

On behalf of the SEC Small Business Capital Formation Advisory Committee, we are pleased to submit the below recommendations approved at the Advisory Committee's February 27, 2024 meeting, where the Committee discussed the "accredited investor" definition.

Recognizing that the Commission may be considering changes to Regulation D and the definition of "accredited investor," as set forth in Securities Act Rule 501(a) of Regulation D, over the course of the November 29, 2023 and February 27, 2024 meetings, the Committee explored ways the definition might be amended to work better for small businesses and investors across the country.

The Committee's discussion covered a number of important concepts, including the importance of facilitating greater access to capital for founders, particularly underrepresented founders; the tension in regulatory policy between accessibility and government paternalism; and changes in the private market landscape since the definition was adopted in the 1980s. The Committee also emphasized the importance of investor risk awareness and discussed the role of education and the merits of the current financial thresholds for individual investors to qualify as accredited.[1] Our recommendations below seek to promote a balanced approach to the "accredited investor" definition, and the Committee urges the Commission to consider them in any future rulemaking.

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[1] Pursuant to Rule 501(a) of Regulation D under the Securities Act of 1933, individuals may qualify as accredited investors by meeting certain professional criteria or the following financial criteria: net worth over $1 million (excluding primary residence), or annual income over $200,000 (individually) or $300,000 (with spouse or partner). *See* "What is the role of accredited investors?" at https://www.sec.gov/education/capitalraising/building-blocks/accredited-investor.

1. With respect to the definition of "accredited investor," the Committee recommends that the Commission leave the current financial thresholds in place, and not adjust such financial thresholds for inflation (either retroactively or going forward).

2. Given the imperfect proxy that financial thresholds provide for measuring investors' sophistication, the Committee recommends that, for individuals who do not meet the wealth and income thresholds, there be a way to qualify as accredited by satisfactorily completing an educational program, which would then allow such person to invest up to 5% in total of the greater of their income or net worth over a 12-month rolling period. While the Committee defers to the Commission to further develop and implement these criteria, the Commission is encouraged to consider the analogous framework used in Regulation Crowdfunding.

3. Having discussed the importance of investors being aware of the risks of investing in private securities, the Committee further recommends that the Commission look at ways to ensure that certain information be made available which identifies key investment risks of this asset class in a clear and concise manner. In particular, the Committee identified the following key investment risks: risk of total investment loss; limited liquidity; and that loss of investment (absent fraud) does not give an investor a legal claim against the company.

Respectfully submitted on behalf of the Advisory Committee,

Susan B. Washer

Erica Duignan
Committee Chair

Sue Washer
Committee Vice Chair

Jasmin Sethi
Committee Secretary

Davyeon Ross
Committee Assistant Secretary

CC: Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizárraga