seedinvest

September 24, 2019

Submitted Electronically

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

RE: Concept Release on Harmonization of Securities Offering Exemptions
File No. S7-08-19

Dear Ms. Countryman,

We commend the SEC for taking a proactive approach with its recent Concept Release and appreciate the opportunity to comment on the questions it poses regarding current U.S. securities regulations. We plan to submit multiple comment letters on the Concept Release and are focusing this first letter on our recommended changes to the "accredited investor" definition under Rule 501 of Regulation D.

SeedInvest operates a leading equity crowdfunding platform which serves more than 275,000 investors and entrepreneurs across the country. SeedInvest issuers utilize 506(b), 506(c), Regulation CF, and Regulation A+ to conduct capital raises through our online platform and our broker-dealer, SI Securities, LLC. We were involved in the signing of the 2012 JOBS Act and, between 2012 and 2016, worked closely with the SEC and FINRA on the implementation of the JOBS Act. On June 8, 2014 we submitted a comment letter to the SEC with recommendations regarding the accredited investor definition and this letter primarily serves to reinforce those recommendations we made five years ago.

Executive Summary

Updating the accredited investor definition is critical for two key reasons. First, although there is currently no shortage of capital available to so-called unicorns (late-stage, billion-dollar companies), the same is not true for early-stage startups. In fact, seed stage venture financings have declined each year since 2014 and in 2018 were down a whopping 37% from 2014[1]. These seed stage financings fund the very same companies that go on to create thousands of revolutionary and life-changing technologies each year, so it's critical that we make capital easier to access for early-stage companies.

1 Source: Pitchbook NVCA Venture Monitor Q2'19.

Second, thanks to the JOBS Act, Main Street investors now have access to startup investments, but they are still able to invest in just a small fraction of all investment opportunities[2], and not necessarily the best ones. The key is not only getting Main Street investors access, but also getting them access to the same opportunities as "professional investors." Although the JOBS Act was a major step towards democratizing the private capital markets, it was far from perfect. The JOBS Act took a public company regulation framework and forced it on early-stage startups and small businesses. This in turn added too much friction and cost into novel regulatory exemptions such as Regulation Crowdfunding, which has forced many of the best companies to stick with Regulation D, which ultimately circumvents Main Street investors.

Ironically, by including too many disclosure requirements, certain components of the JOBS Act actually did not increase Main Street investor protections, but instead reduced them. That is because the best investor protection for Main Street investors is access to the best investments. The U.S. can either solve this by revisiting the current regulatory requirements for Regulation Crowdfunding, Regulation A+, pooled investment vehicles, and secondary trading (to be covered in a subsequent comment letter) or, we can fix the broken accredited investor definition to provide sophisticated Main Street investors access investment to the best opportunities through Regulation D.

Updating the Accredited Investor Rule

As we pointed out back in 2014, the current accredited investor definition is severely misguided and needs to change. There are three fundamental reasons that the accredited investor definition must change:

1) The current definition assumes that only wealthy people are intelligent enough to understand private investments and protect themselves.

Research suggests that this is quite simply not the case. According to a study which tracked a large group of baby boomers born between 1957 and 1964, there was no statistically significant correlation between wealth and IQ scores[3]. So, we cannot simply assume that more wealth equates to greater sophistication.

In addition, there are many examples of people who are potentially not accredited according to the current rule that clearly should be. Consider the following examples:

- U.S. Congress Member (annual salary $174,000)
- Employee at the SEC (average annual salary of $186,000)
- Securities Attorney (average annual salary of $104,000)
- Harvard Professor (average annual salary of $198,000)

[2] Division of Economic and Risk Analysis U.S. Securities and Exchange Commission: Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017 (August 2018).
[3] Zagorsky, Jay L., 2007, Do you have to be smart to be rich? The impact of IQ on wealth, income and financial distress, *Intelligence* 35, 489-501.

seedinvest

- Venture Capital Associate (average annual salary $153,000)[4]

Some of these people are charged with protecting other members of the public, yet they are not deemed to be able to protect themselves. Others specialize in private company investments for a living but are not deemed sophisticated enough to do so personally. These restrictions clearly do not make much sense. As we mentioned five years ago, a person's experience, knowledge and credentials should be factored into whether they need protection from the government, not just how much money they have or make.

2) <u>The current definition does not treat people across the country equally.</u>

The current rule ignores the fact that significant cost of living (and respective income/wealth) discrepancies exist across the country. $200,000 in New York is quite different than $200,000 in Houston. The standard disproportionately excludes people in lower cost of living areas. People in Houston in the same financial condition should have the same opportunities to invest in startups as people in New York. By excluding Americans who do not happen to live in places such as New York and San Francisco from some of the highest-yielding investments historically[5], we are effectively helping to accelerate the regional wealth disparity in our country.

3) <u>The current definition ignores the massive technological changes that have occurred over the last 37 years.</u>

The current accredited investor definition was established in 1982, the same year that the compact disk (CD) was invented. At the time, very little information was publicly available or easily accessible to individuals considering investments in private companies. As a result, we determined that retail investors needed the SEC's protection in part because it was fairly easy for someone to defraud them through mail or over the phone. A lot has changed since then.

Nowadays, through the advent of the Internet, investors have a significant amount of information at their fingertips that they did not have back in 1982. Investors can easily learn a lot about the team behind a business by simply Googling them, reviewing their LinkedIn bios, and running online background checks. Along the same lines, investors can learn a great deal about those founders' respective companies through online reviews, message board posts, and news articles. They can also research a company's market dynamics and competitive landscape seamlessly online for free.

Investors can also now leverage the Internet to work together through the wisdom of crowds. Back in 1982, jumping in a stranger's car or renting their house would have sounded ludicrous. But this is exactly what the advent of online ratings and reviews has enabled. On SeedInvest for instance, investors are able to perform due diligence collectively, through online message boards.

[4] Gannon, John. 2019 Venture Capital Salary Survey.
[5] Data from Cambridge Associates LLC March 31, 2019 U.S. Venture Capital Index® and Selected Benchmark Statistics Report. These indices do not reflect projected returns and past performance is no guarantee of future returns. In addition, venture capital investing has a higher rate of failure, volatility, and less liquidity.

In one recent fundraise, over 500 messages were exchanged between "the crowd" and the startup team.

None of this was available or even fathomable back in 1982. Technology has leveled the playing field significantly over the past 37 years and this fact needs to be taken into account when revisiting the accredited investor rule.

Including Additional Measures of Sophistication

As we pointed out back in 2014, the accredited investor rule needs to change in order to take into account knowledge and experience, not just income and wealth. The rule should be amended to take into account the following groups of people who can also "fend for themselves":

- **Passing an Exam** – People are allowed to drive a car once they pass an exam, so why not enable people to pass a test to prove that they understand the mechanics and risks of investing in private companies?
- **Advance Degreed -** Individuals holding an advanced degree in business/law related fields (i.e. MBA, J.D., Masters or PhD in Finance, Economics, Business, etc.)
- **Professional Designations** - Individuals with Professional Designations (i.e. J.D., CPA, CFA, etc.)
- **Securities Licenses** - Individuals who hold Securities Licenses (Series 7, Series 63, Series 24, Series 79, Series 82, SIE, etc.)

Each of these measures are far more likely to indicate financial sophistication versus a blanket financial threshold. Individuals may have simply acquired wealth through inheritance or by winning the lottery. Those individuals are no more likely to be sophisticated than, for example, a person who holds an MBA degree but has an income below $200,000. Also, to clarify, we do not recommend eliminating the current income/wealth test but supplementing it with these additional tests of sophistication. The last thing our country should do is accidentally reduce the number of accredited investors and threaten job creation and economic growth.

Administering a Sophistication Exam

A likely follow-up question to the proposal above is "how would the SEC actually implement a sophistication exam?" After all, the SEC is not setup to administer and police exams and someone will need to ensure that an accredited investor exam is properly managed.

We recommend leveraging the current securities infrastructure in order to roll-out and offer the accredited investor exam. We can enable regulated broker-dealers and registered investment advisors to offer an online exam and certify accredited investor status to those who pass. This way the SEC and FINRA can ensure that the exam is administered properly by regulated entities and can oversee the process as an addition to existing, regulatory reviews.

In terms of content, the exam should not test someone's intelligence, but rather their understanding of the risks of investing in private companies and how to evaluate such investments. The exam should serve as an opportunity to educate Main Street about the inherent risk of investing in private companies (the potential loss of capital, the need for diversification and the lack of liquidity) and ensure that they properly grasp these risks before investing. The exam should also ensure that investors sufficiently understand common facets of private company investments (preferred equity, convertible notes, pre-money valuations, liquidation preferences, dilution, etc.)

Conclusion

The U.S. is currently undergoing a growing economic epidemic. The gap between the wealthiest 10% and the rest of the country has never been more pronounced. In 2018, the richest 10% held 70% of total household wealth, up from 60% in 1989[6]. One of the causes of this continued widening of the wealth gap is due to the fact that only the wealthy can invest in the highest yielding investment historically.

Over the past 25 years, venture capital has returned an average of 31.66% per year, compared to just 9.80% for stocks and 5.36% for bonds[7]. As long as Main Street investors remain shut out from investing in asset classes such as venture capital and private equity, they will never catch up to the wealthy. It may sound cliché, but it's quite true—until we level the playing field by changing dated regulations such as the accredited investor definition, the wealthy will just keep getting wealthier.

Once again, we appreciate the opportunity to provide our recommendations on this critical topic for millions of entrepreneurs and investors. We welcome the opportunity to provide additional details or market d1ata to the Commission and its staff.

Sincerely,

Ryan M. Feit
CEO & Co-Founder
SeedInvest
123 William St, 26th Floor | New York, NY 10038
www.seedinvest.com

[6] Batty, Michael, Jesse Bricker, Joseph Briggs, Elizabeth Holmquist, Susan McIntosh, Kevin Moore, Eric Nielsen, Sarah Reber, Molly Shatto, Kamila Sommer, Tom Sweeney, and Alice Henriques Volz (2019). "Introducing the Distributional Financial Accounts of the United States," Finance and Economics Discussion Series 2019-017. Washington: Board of Governors of the Federal Reserve System, https://doi.org/10.17016/FEDS.2019.017.
[7] Data from Cambridge Associates LLC March 31, 2019 U.S. Venture Capital Index® and Selected Benchmark Statistics Report. These indices do not reflect projected returns and past performance is no guarantee of future returns. In addition, venture capital investing has a higher rate of failure, volatility, and less liquidity.