



Via Electronic Mail:
rule-comments@sec.gov

January 20, 2020

Vanessa A. Countryman
Secretary, 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 File Number S7-25-19

Dear Ms. Countryman,

The Marketplace Lending Association (the "MLA")¹ appreciates the opportunity to comment on the Commission's proposed rule to amend the definition of "accredited investor". The MLA supports amending the definition because we believe there are more accurate and inclusive ways of effectively identifying institutional and individual investors that have the knowledge and expertise to participate in the private capital markets and therefore do not need the additional protections of registration under the Securities Act of 1933, as amended (the "Securities Act"). Additionally, the MLA agrees with and appreciates the Commission recognizing that "given the rise of the internet, social media, and other forms of communication, information about issuers and other participants in the exempt markets is more readily available to a wide range of market participants. Technologies such as powerful home computers and mobile computing devices, as well software-based tools with which to evaluate investment opportunities, were not available to investors at the time the accredited investor definition was promulgated."² We also know that advances in technology have simplified investment processes, enabled performance tracking and disclosure and lowered minimum investment amounts, thus enabling investors more easily to make informed investment decisions invest in privately-offered securities at a lower risk level versus their overall portfolio. With this in mind and building on our comment to the original concept release, we will respond to the Commission's proposed rules and specific questions regarding each proposal relevant to marketplace lending.

¹ MLA is an association of technology-enabled lending companies with a mission to promote transparent, efficient, and customer-friendly financial systems by supporting the responsible growth of marketplace lending, fostering innovation in financial technology, and encouraging sound public policy. Our members include two-sided platforms that connect borrowers and investors, technology-enabled platforms that lend from their balance sheets, and hybrids of these two models.

² Page 79 <https://www.sec.gov/rules/proposed/2019/33-10734.pdf>

1. Professional Certifications and Designations and Other Credentials

We believe that certain professional certifications indicate an appropriate level of financial sophistication that renders investors less in need of the protections of registration under the Securities Act. Specifically, we think the “Securities Industry Essentials” (SIE) examination, when paired with certain other designations and certifications, is more than sufficient in providing an investor with the information needed to make an informed decision about investing in privately-offered securities and mitigates risk appropriately. Thus, the passage of any other FINRA series tests (other than just FINRA's Series 7 and Series 82 examinations, as proposed) in which the SIE is a co-requisite should also be considered sufficient. While we understand that the SEC does not manage the distribution of such tests, we think this concern is mitigated by at least two considerations. First, it is important that the proposed professional certifications and designations incorporated into the revised "Accredited Investor" definition, be certifications or designations which are accessible for the general public to obtain online, as is the case with other FINRA series tests generally and the SIE. Second, issuers and other market participants may readily verify whether an investor has passed FINRA series tests (other than just FINRA's Series 7 and Series 82 examinations) through FINRA's BrokerCheck for example, which is a general factor which the Commission is proposing to include as one of the criteria to be considered in recognizing qualifying professional credentials.³

Additionally, we think the Commission should consider other credentials to qualify an investor as an Accredited Investor. First, a Level 1 Certified Financial Advisor (CFA) certification would be more than an appropriate level of financial sophistication needed to invest in privately-offered securities. The curriculum includes analysis and valuation of the various asset types, including alternative investments. Second, we believe that an investor that has (A) (x) attained a credential as a certified public accountant (CPA) or (y) provided documentation of a bachelor's degree with a major in business administration, finance or economics; and (B) has worked in the securities industry for at least three years with respect to analysis and/or valuation of various investments, as certified by such investor's employer(s), has the appropriate level of financial sophistication needed to invest in privately-offered securities.

2. Permit Spousal Equivalents to Pool Finances for the Purposes of Qualifying as Accredited Investors

We agree with the Commission's proposal to allow natural persons to include joint income from spousal equivalents when calculating joint income under Rule 501(a)(6), and to include spousal equivalents when determining net worth under Rule 501(a)(5). We see no reason to distinguish between different types of relationship structures for the purpose of these rules and, in that regard, believe that the proposed amendments would

³ Page 33 <https://www.sec.gov/rules/proposed/2019/33-10734.pdf>.

remove unnecessary barriers to investment opportunities for spousal equivalents, including those in same-sex relationships.

3. Financial thresholds in the accredited investor definition

While we recognize that the thresholds have not changed since 1982, the rules were amended in 2011 to exclude an investor's primary residence making the bar significantly higher to qualify as an accredited investor which we think, when paired with technology-enabled smaller investment sizes, improved disclosures and monitoring, more than makes up for inflationary calculus. We additionally maintain that wealth is not an accurate measure of sophistication and that it does not mitigate the relative financial risks of investing. Most importantly, if the Commission were to adjust the thresholds to account for inflation since 1982, it would significantly reduce the pool of accredited investors in which issuers can solicit thus having disruptive market effects. We encourage the Commission to keep the current thresholds in place, and monitor the market for any widespread problems or abuses associated with Regulation D offerings to accredited investors that would indicate that an immediate and/or significant adjustment to the rule's financial thresholds is warranted.

4. Limited Liability Companies

Considering the widespread adoption of the limited liability company (LLC)⁴ since its creation in 1977 as a corporate form, MLA believes an LLC should be added to the list of entities specified in Rule 501(a)(3), as proposed, and that adding the entity should be non-controversial.

5. Investment Limits

MLA encourage the Commission to institute a sliding scale to determine investment limits for investors that do not meet the net worth or income thresholds under Rules 501(a)(5) and 506(a)(6), respectively. By doing so, the Commission measures financial sophistication and ensures an investor's capacity to allocate their investments in a way to mitigate or avoid risks of unsustainable loss. We recommend adopting a sliding scale of investor limits similar to that instituted in the Crowdfunding Rule for investors that have an annual income less than \$200,000 or have a net worth of less than \$1 million. If *either* your annual income *or* your net worth is less than \$107,000, then during any 12-month period, you can invest up to the greater of either \$2,200 or 5% of the lesser of your annual income or net worth. If *both* your annual income *and* your net worth are equal to or more than \$107,000, then during any 12-month period, you can invest up to 10% of annual income or net worth, whichever is lesser, but not to exceed \$107,000.

⁴ 64% of Funding Circle's small business customers are LLCs. Funding Circle, a member of the MLA is the world's largest online lender for small business loans operating in the U.S., UK, Netherlands and Germany.

The following table provides a few examples:

Annual Income	Net Worth	Calculation	12-month Limit
\$30,000	\$105,000	greater of \$2,200 or 5% of \$30,000 (\$1,500)	\$2,200
\$150,000	\$80,000	greater of \$2,200 or 5% of \$80,000 (\$4,000)	\$4,000
\$150,000	\$107,000	lesser of 10% of \$150,000 (\$15,000) or 10% of \$107,000 (\$10,700)	\$10,700
\$199,000	\$900,000	lesser of 10% of \$199,000 (\$19,900) or 10% of 900,000 (\$90,000)	\$19,900

MLA appreciates the opportunity to comment on the Commission's proposed rules. While we do not believe marketplace loans, either whole or fractional, should be treated as securities or limited to only accredited or institutional investors, we do think the changes we have highlighted above are appropriate. We hope and encourage the Commission to propose new Crowdfunding Rules (CR) that permit the efficient and cost-effective offering of debt by lenders and thus a fully functioning retail lending marketplace similar to that of the UK crowdfunding regime. In doing so, the Commission will help more small businesses access the capital they need that the current banking system is failing to provide.⁵

Please do not hesitate to contact me at nat.hoopes@marketplacelendingassociation.org should you have any questions.

Sincerely,

Nathaniel L. Hoopes

⁵ <https://www.fundingcircle.com/us/resources/decade-after-financial-crisis-american-small-businesses-move-on-from-bank-first-approach-to-financing/>

Executive Director
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