



May 10, 2023

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6628

Re: **Petition for Rulemaking to Amend the Definitions of “Qualified Purchaser”
and “Qualified Institutional Buyer”**

Dear Ms. Countryman:

The Private Investor Coalition (“PIC”) respectfully petitions the Securities and Exchange Commission (the “Commission” or “SEC”), pursuant to Rule 192 of the SEC’s Rules of Practice,¹ for rulemaking to amend the following rule provisions:

- Rule 144A(a) under the Securities Act of 1933 (defining qualified institutional buyer)²
- Rule 2a51-1(g) under the Investment Company Act of 1940 (special rules for certain qualified purchasers)³

Specifically, we request that the SEC amend the definition of “qualified institutional buyer” in Rule 144A(a) to include “family offices” and “family clients” in a manner that is consistent with the SEC’s definition of “accredited investor” in Rule 501(a) under the Securities Act of 1933,⁴ as described more fully in this request. We also request that the SEC amend the definition of “qualified purchaser” in Rule 2a51-1(g) to incorporate by reference the definition of accredited investor in Rule 501(a)(12) and (13). Our requested language changes are set forth in Exhibit A.

The amendments we are seeking are consistent with the SEC’s recently amended definition of accredited investor in Rule 501(a).⁵ As described below, the SEC’s reasons for amending the

¹ 17 C.F.R. § 201.192(a).

² 17 C.F.R. § 230.144A(a) (“Rule 144A(a”).

³ 17 C.F.R. § 270.2a51-1(g) (“Rule 2a51-1(g”).

⁴ 17 C.F.R. § 230.501(a) (“Rule 501(a”).

⁵ See Order Designating Certain Professional Licenses as Qualifying Natural Persons for Accredited Investor Status, 85 Fed. Reg. 64234 (Oct. 9, 2020) (“Adopting Release Amending Rule 501”).

definition of accredited investor to include family offices and family clients apply equally to the definitions of qualified institutional buyer and qualified purchaser.

Under the Commission's Rules of Practice, "[a]ny person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary."⁶ This rule allows anyone to "petition for the amendment or repeal of any Commission rule."⁷ A petitioner must "include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule."⁸ Upon recommendation from "the appropriate division or office," the Commission then takes "such action as [it] deems appropriate," and the Secretary must notify the petitioner of the action taken.⁹

I. PIC Has A Strong Interest In This Rulemaking Request, Given Its Broad Representation of Single Family Offices.

PIC is a nationwide organization consisting of single family offices ("SFOs") that share a common interest in public policy issues impacting the SFO community. Family offices are entities established by wealthy families to manage their assets, plan for their families' financial future, and provide other services to family members. They typically operate as institutional investors, and not retail customers, in terms of their trading and investment needs and are staffed with their own experienced financial industry, legal and accounting professionals. The Commission has previously observed that single family offices generally serve families with at least \$100 million or more of investable assets.¹⁰

Family offices are exempt from registration as "investment advisers" under the Investment Advisers Act of 1940 ("Advisers Act") pursuant to the Dodd-Frank Act and the Family Office Rule.¹¹ Under the Family Office Rule, a single family office generally is a company that has no clients other than "family clients."¹² Family clients of single family offices generally are family members, former family members, and certain key employees of the family office, as well as

⁶ 17 C.F.R. § 201.192(a).

⁷ *N.Y. Republican State Comm. v. SEC*, 799 F.3d 1126, 1136 (D.C. Cir. 2015).

⁸ 17 C.F.R. § 201.192(a).

⁹ *Id.*

¹⁰ *See* Adopting Release Amending Rule 501, at 64249, n. 180 (citing Family Offices Proposed Rule, 75 FR 63753 (Oct. 18, 2010) ("Proposing Release for Family Offices Rule").

¹¹ *See* 17 CFR § 275.202(a)(11)(G)-1; Family Offices Adopting Release, 76 FR 37983 (June 29, 2011) ("Family Offices Rule Adopting Release").

¹² A family office also (1) must be wholly owned by family clients and exclusively controlled (directly or indirectly) by one or more family members or family entities (each as defined in the rule), and (2) must not hold itself out to the public as an investment adviser. *See* 17 CFR § 275.202(a)(11)(G)-1(b).

certain of their charitable organizations, trusts, and other types of entities, such as family investment partnerships.¹³

II. The Requested Rulemaking Is Necessary and Appropriate.

Rule 144A(a)(1) defines a qualified institutional buyer to include certain entities, acting for their own accounts or the accounts of other qualified institutional buyers, that in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity.¹⁴

Rule 2a51-1(g), in turn, contains a presumption that certain persons who qualify as financially sophisticated or have sufficient assets under other SEC rules may be deemed to be a qualified purchaser. Specifically, Rule 2a51-1(g)(1) provides that a person who meets the definition of qualified institutional buyer in Rule 144A will be deemed to be a qualified purchaser.¹⁵ This presumption in Rule 2a51-1(g)(1) derives from the statutory definition of qualified purchaser in Section 2(a)(51)(A) of the Investment Company Act of 1940,¹⁶ which generally defines a qualified purchaser to include: any natural person or company, trust, estate, foundation or charitable organization owned or formed by two or more related natural persons that owns not less than \$5,000,000 in investments, as defined by the Commission. Section 2(a)(51)(B) provides the SEC with authority to adopt rules and regulations related to the definition of qualified purchaser, as it deems necessary or appropriate in the public interest or for the protection of investors.¹⁷

Like the definition of accredited investor in Rule 501,¹⁸ the definitions of qualified institutional buyer and qualified purchaser are used to determine an investor's financial sophistication for purposes of securities offerings. However, because the definitions of qualified institutional buyer and qualified purchaser do not apply at the family office level, but rather apply at the individual beneficial owner level (or individual family client level), these definitions raise unique problems for single family offices. Single family offices typically have several dozens of family clients that are organized as trusts, charitable organizations, and investment vehicles for a single family and managed by a single family office appointed by that family. Requiring single family offices to measure qualified institutional buyer or qualified purchaser status for each individual family client, at each individual beneficial owner level, raises significant administrative problems for family offices. It is also an unfair and inappropriate measure of sophistication

¹³ For a full list of family clients, see 17 CFR § 275.202(a)(11)(G)–1(d)(4). The family office rule defines a “family member” to include “all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another family member became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants’ spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.” 17 CFR § 275.202(a)(11)(G)–1(d)(6).

¹⁴ 17 C.F.R. § 230.144A(a)(1).

¹⁵ 17 C.F.R. § 270.2a51-1(g).

¹⁶ 15 U.S. Code § 80a–2(a)(51)(A).

¹⁷ 15 U.S. Code § 80a–2(a)(51)(B).

¹⁸ 17 C.F.R. § 230.501.

because these family clients' investment decisions are controlled by persons who are experienced financial professionals and are fully capable of evaluating the merits and risks of an investment.

In 2020, the SEC recognized this problem in the context of the accredited investor definition under Rule 501(a) and expanded this definition to include certain qualifying single family offices ("qualifying family offices").¹⁹ Qualifying family offices are generally defined in Rule 501(a) as family offices (1) with assets under management in excess of \$5,000,000, (2) that are not formed for the specific purpose of acquiring the securities offered, and (3) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment.²⁰ At the same time the SEC amended the definition of accredited investor to include certain family offices, the SEC also amended the definition of accredited investor to include any family client of a qualifying family office, provided such family office is directing the prospective investment.²¹

We ask that the SEC include the same definitions of family office and family client for purposes of the definition of qualified institutional buyer in Rule 144A, except with a \$100 million threshold instead of a \$5 million threshold, and the definition of qualified purchaser under Rule 2a51-1(g).

The reasons underpinning the SEC's 2020 amendments to Rule 501(a)'s definition of accredited investor are directly relevant here.

First, as noted in the Adopting Release Amending Rule 501, the SEC's underlying premise for expanding the definition of accredited investor in Rule 501(a) to include qualifying family offices and their family clients was that "family offices and their professionals have the knowledge, experience and sophistication to apply to investment decisions, even though a family client may not."²² That premise applies equally to the definitions of qualified institutional buyer and qualified purchaser.

Second, family offices and their family clients are often among the most wealthy and financially sophisticated investors who hire legal, financial and investment professionals to help them manage their assets. As the SEC stated in the Adopting Release Amending Rule 501: "[w]e continue to believe that family offices and their family clients can sustain the risk of loss of investment, given their assets."²³ The SEC further stated that "[w]e also continue to believe that certain protections otherwise afforded to less financially sophisticated investors by federal securities laws are not necessary to protect family offices or their clients."²⁴

¹⁹ See Adopting Release for Rule 501 Amendments.

²⁰ 17 C.F.R. § 230.501(a)(12).

²¹ 17 C.F.R. § 230.501(a)(13).

²² Adopting Release for Rule 501 Amendments, at 64249.

²³ *Id.*

²⁴ *Id.*

These policy reasons, which the SEC cited in amending Rule 501(a)'s definition of accredited investor, apply equally to expanding the definitions of qualified institutional buyer and qualified purchaser to include certain family offices and their family clients. To be sure, for decades the SEC has acknowledged the unique status of family offices and their family clients and it would be inconsistent policy to recognize this unique status for the definition of accredited investor, but not for other similar definitions serving similar purposes with respect to an investor's status, such as qualified institutional buyer and qualified purchaser.²⁵

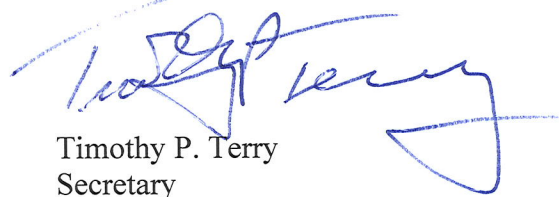
Consistent with the SEC's Rule 501(a) amendments, our proposed amendments would only apply to family office investments that are directed by a person "who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment."²⁶ This requirement will ensure that the person directing the investments of the family office or family clients is able to evaluate the risks and take steps to protect the interests of family clients, particularly with respect to family clients who do not on their own meet the definitions of a qualified institutional buyer or qualified purchaser.

For all of the above reasons, the Commission should amend Rule 144A(a) and Rule 2a51-1(g) to include family offices and family clients, consistent with the Commission's recent amendments to Rule 501(a). Our proposed revisions to the definition of qualified institutional buyer and qualified purchaser are set forth at Exhibit A. We appreciate the SEC's consideration of this matter.

* * *

PIC would be pleased to answer any questions you may have regarding the requested relief. Thank you for your consideration of this matter.

Sincerely,



Timothy P. Terry
Secretary

²⁵ See also Proposing Release for Family Offices Rule, at 63754 ("We viewed the typical single family office as not the sort of arrangement that Congress designed the Advisers Act to regulate. We also were concerned that application of the Advisers Act would intrude on the privacy of family members. . . . The Act was not designed to regulate the interactions of family members in the management of their own wealth.").

²⁶ *Id.*, at 64250. Of course, the asset threshold for a qualified institutional buyer would be \$100 million as opposed to \$5 million.

Exhibit A

Amend § 230.144A by adding paragraphs (a)(1)(vii) and (viii)

New language is shown in bold, underline:

(a) Definitions.

(1) For purposes of this section, qualified institutional buyer shall mean:

* * * * *

(vii) Any “family office,” as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1): (i) With assets under management of at least \$100,000,000, (ii) That is not formed for the specific purpose of acquiring the securities offered, and (iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(viii) Any “family client,” as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1), of a family office meeting the requirements in paragraph (a)(1)(i)(K) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(1)(i)(K)(iii).

Amend § 270.2a51-1 by adding paragraph (g)(5)

New language is shown in bold, underline:

(g) Special rules for certain Prospective Qualified Purchasers

(1) Qualified institutional buyers. Any Prospective Qualified Purchaser who is, or who a Relying Person reasonably believes is, a qualified institutional buyer as defined in paragraph (a) of § 230.144A of this chapter, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser, shall be deemed to be a qualified purchaser provided

(i) That a dealer described in paragraph (a)(1)(ii) of § 230.144A of this chapter shall own and invest on a discretionary basis at least \$25 million in securities of issuers that are not affiliated persons of the dealer; and

(ii) That a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of § 230.144A of this chapter, or a trust fund referred to in paragraph (a)(1)(i)(F) of § 230.144A of this chapter that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

* * * * *

(5) Accredited Investor. Any Prospective Qualified Purchaser who is, or who a Relying Person reasonably believes is, an accredited investor as defined in paragraph (a)(12) or (13) of § 230.501 of this chapter shall be deemed to be a qualified purchaser.