PIABA
PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

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Via Electronic Mail

Chairman French Hill
Ranking Member Maxine Waters
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515
Fsc119@mail.house.gov

Re: Pending Bills Before the HFSC set to Expand Access to Private Investments and Unregistered Securities

Dear Chairman Hill and Ranking Member Waters:

The Public Investors Advocate Bar Association (PIABA)[1] appreciates the opportunity to submit this letter relating to legislation pending before your committee that will only serve to increase the number of investors who fall victim to investment fraud and Ponzi schemes. The urge to loosen capital restrictions and allow for greater access to private markets by further eroding the accredited investor standard is misguided and will backfire and cost public investors irreplaceable retirement funds.

Congress has sought to whittle the accredited investor standard before, and PIABA opposed it then much like it opposes it now. PIABA does support addressing the accredited investor standard including updating it to make it more relevant for 2025. PIABA appreciates the interest in expanding access to private investment to a broader swath of Americans. The unfortunate reality is, repeatedly over history, private investments and unregistered securities victimize retail investors on an ever-growing basis. It would be a potentially grave mistake for many retail investors if these bills were passed into law without sufficient investor protection measures. As written, these bills seek to greatly expand the definition of "accredited investor" providing more carveouts which will expose more retail investors to the speculation and fraud endemic in private placement securities.

At the outset, the accredited investor standard remains an imperfect standard and has faced criticism for years.[2] The SEC's reliance on financial thresholds, which are regularly manipulated

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[1] PIABA is an international bar association comprised of attorneys who represent investors in securities arbitrations and litigation. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums and court room nationwide, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules which govern the conduct of those who provide advice to investors.

[2] Thomas M. Selman, *Protecting Retail Investors: A New Exemption for Private Securities Offerings*, 14 Va. L. & Bus. Rev. 41 (2020); Wallis K. Finger, *Unsophisticated Wealth: Reconsidering the SEC's "Accredited Investor"*

by the financial advisors that sell these products, also fails because it implies that allegedly "wealthy" investors possess the appropriate level of financial sophistication to assess private market offerings without needing to rely on mandated disclosures. Wealth, however, does not translate to investment acumen. Despite their considerable wealth and financial sophistication, many venture capital investors have fallen victim to private offering security frauds.

Several bills in markup before the Committee seek to amend the accredited investor standard based on experience and acumen. In some instances, like amending the definition to include those individuals who are licensed financial advisors, makes sense. Other bills seeking to expand the definition, however, will have a seriously negative impact on retail investor protection.

I. Current Bills in Mark-Up That Will Grossly Increase Fraud and Manipulation of Retail Investor Savings

a. PIABA Agrees that the Qualifying Net-Worth should be Adjusted for Inflation Every Five Years, But Strongly Urges Congress to Reset The $1 million threshold to Reflect That it Has Not Been Adjusted in Forty-Three Years.

The Fair Opportunities for Professional Experts Act seeks to adjust the accredited investor standard in two important ways. First, it requires the SEC to adjust the $1 million threshold used to establish financial accreditation every five years based on the consumer price index. This is a positive development and one PIABA could support except for one reason: the $1 million net-worth accreditation threshold has been $1 million *since 1982.* For some context, in 1982, the IRS estimated that there were 475,000 individuals with a net worth of $1 million or more.[3] Contrast this with statistics published by Credit Suisse Global Wealth Report found that in 2023, there were almost 30 million "millionaires" in the United States.[4]

Regulation D, the safe harbor and registration exemption which gave birth to the accredited investor exception, became law in 1982 and neither the net-worth nor the income thresholds used have been adjusted for inflation once. $1 million in 1982 is now the equivalent of $3,557,500 today. Similarly, an annual income of $200,000 in 1982 is equivalent to $671,500 annual income today. If the Congress and the SEC insist upon using wealth and income as a measure of investor sophistication – a premise PIABA rejects based on the anecdotal experience of its membership fighting on the front lines for investors in disputes involving Regulation D private placements – then the Congress should act and reset the threshold to reflect the intent of Congress in 1982: reset

Definition Under the 1933 Act, 86 WASH. U. L. REV. 733 (2009); Howard M. Friedman, *On Being Rich, Accredited, and Undiversified: The Lacunae in Contemporary Securities Regulation*, 47 OKLA. L. REV. 291 (1994); *Syed Haq, Revisiting the Accredited Investor Standard*, 5 MICH. BUS. & ENTREPRENEURIAL L. REV. 59 (2015); Gregg Oguss, *Should Size or Wealth Equal Sophistication in Federal Securities Laws?,* 107 NW. U. L. REV. 285 (2012).

[3] https://www.irs.gov/pub/irs-soi/82pwesl.pdf

[4] https://finmasters.com/millionaire-statistics/#gref

the thresholds to $3.5 million net worth and/or annual income of $650,000, and require the SEC to reset those numbers based on inflation every five years.

Subsection E of the Fair Opportunities for Professional Experts Act would give the SEC the authority to determine whether an investor qualifies as accredited based on education or job experience, or for having professional knowledge related to a particular investment. This information is to be verified in some way by a self-regulatory organization. Section E of this proposed bill creates an untenable expansion of the accredited investor standard based on an amorphous regulator-created resume to be verified by FINRA in more undefined ways. Subsection E creates an opening for massive expansion of the accredited investor standard based on undefined credentials and PIABA opposes it. PIABA would support an expansion of the accredited investor standard for licensed financial advisors and investment advisors, but not based on undefined credentials.

b. PIABA Opposes Several Proposed Bills Aimed at Eroding the Accredited Investor Standard.

The "Accredited Investor Definition Review Act" seeks to expand the definition of accredited investor based on undefined "certifications, designations, or credentials as the Commission determines necessary or appropriate…" While PIABA appreciates the Congress's willingness to offload this critical investor protection issue to the SEC, the bill's lack of clarity regarding what these credentials or certifications are, opens the definition up to far reaching expansion that would not be in the best interests of retail investors. Hypothetically, does an investor with an MBA automatically qualify as accredited? Does an investor who is an attorney qualify automatically? These credentials do not, in and of themselves, imbue the level of sophistication necessary to truly understand the risks of investing in non-publicly offered securities, especially those involving the solicitation by financial advisors or investment advisors.

PIABA also opposes the "Equal Opportunity for All Investors Act of 2025" for similar reasons. This bill proposes to instruct the Commission to create an examination and certification program that would result in self-accreditation. Unless investors are provided with the same level of information that the selling broker-dealers are provided, and allowed to participate in the vetting and due diligence process so that the investor can truly understand the business prospects and veracity of the representation made in an offering memorandum, whether an investor can pass a test simply fails to recognize reality. If an investor is allowed to sit in on a broker-dealer due diligence committee meeting or participate in the meetings between the broker-dealer and the executive officers of the private company, that would change the equation because it would allow for equal access to all of the available information for these apparently sophisticated investors. That of course will never happen.

The "Risk Disclosure and Investor Attestation Act" exposes retail investors to very real risk of undue influence of financial or investment advisors by expanding the accredited investor standard to include self-certifications to the issuer of the securities that the investor understands the risks of investing in private offerings. This self-certification places the issuer's and financial advisor's motives in direct conflict with the investors. The reality of the retail investor space is that most investors believe their advisors are their fiduciaries, only act in their best interest, and perform their responsibilities at the highest level. Most alternative investment issuers already require investors to "check the box" on a form acknowledging "risks". These forms are included in the pile of documents presented to retail investors, mostly seniors, by their trusted advisors. Many times, the forms are prefilled by the advisor, or the investor is encouraged to sign and date blank forms, because the trusted advisor will take care of the rest. Adding another form, this time prepared by the Commission, will do nothing to advance the interests of retail investors and only create more confusion

Private placement securities are sold, not bought. Retail investors rarely seek out a private placement investment. Rather, the vast majority of private placements that end up in a retail investor's portfolio, are solicited by financial advisors and investment advisors. Private placements are also at the peak of the risk spectrum. Companies, generally, that cannot access public markets for various reasons, choose to raise capital privately because of two primary reasons: First, raising capital in a public offering is expensive and complicated; and Second, the level of disclosure required for a private placement versus a company joining the public markets is incomparable. FINRA and the SEC have reacted to the ever-increasing volume of private investment opportunities being sold by broker-dealers and investment advisors to retail investors by requiring the firms and advisors to perform reasonable due diligence on the securities offering prior to soliciting any investor. FINRA has published many Regulatory Notices over the years, including Regulatory Notice 10-22 and Regulatory Notice 23-08 which details the steps broker-dealers should take to fully vet a private company before allowing brokers to sell it to investors.

Investors do not have access to the same level of information that broker-dealers have access to when debating whether to invest in a private offering. Instead, investors rely on the advice of their trusted advisors who, sometimes, deliver marketing materials about the offering and a placement memorandum – which is not the same as a prospectus and contains far fewer detailed and reliable risk disclosures. Retail investors rely on the fact that the broker-dealer has fully-vetted the investment prior to offering it. As such, whether an investor is an MBA or an airline pilot has no relevance to the actual decision making process for retail investors. PIABA reiterates that *any expansion of the accredited investor standard must be accompanied by concomitant language expressing Congress's expectation that the SEC and FINRA will ensure broker-dealers and registered investment advisors comply with their obligations to fully vet and ensure the legitimacy of the companies seeking to raise capital and their representations made in offering memoranda.*

c. PIABA Opposes the Investment Opportunity Expansion Act

PIABA opposes the Investment Opportunity Expansion Act because it sets forth an untenable reliance on declarations of a retail investor's net worth, or income, that are regularly manipulated and overstated by financial advisors. Although the proposed bill sensibly limits the exposure to the private placement asset class, it still depends on financial and investment advisors ensuring that these metrics are not overstated, which is against the financial advisor's best interest which is to sell as much of these products as they possible can. Likewise, the proposed bill provides no instructions or guidance to the Commission to ensure appropriate training and supervision is in place to ensure that financial advisors are not encouraging their clients to overstate their income and net worths so that they qualify to invest in more of these high-commissioned private placements.

d. PIABA Opposes the Proposed Bill that would Expand the Accredited Investor Standard to Include Those Receiving Advice from Certain Professionals.

This bill hands the keys to the accredited investor standard to the financial and investment advisors who are paid exorbitant commissions to sell them. This proposed bill embraces the very conflict of interest that exposes retail investors to the speculative risk inherent in investing in private placements. The lack of real disclosure, the high commissions paid to brokers, and the hands off approach to managing the asset by the financial advisor all combine to create a perfect storm of conflicts. If a financial advisor has the option to recommend a retail investor invest $200,000 in a private placement, which will pay the advisor between $10,000 and $20,000 in commissions, and result in no ongoing management of the asset, why would the advisor instead recommend a diversified portfolio of exchange-traded index funds, for a small management fee of perhaps $2,000 per year, and requires ongoing management like rebalancing and dividend reinvestment, etc. The fact is, the conflict of interest is far too great, and cannot simply be disclosed, because the retail investor relies on that licensed and regulated profession to provide honest and unbiased advice. This bill would act to provide all financial advisors and investment advisors with the golden ticket – by virtue of the client-broker relationship, the investor is automatically accredited regardless of sophistication, net worth, income, or any other metric used, traditionally, to approximate accreditation. This proposed bill is a handout to the brokerage industry and would gut investor protection, exposing every retail investor to grossly conflicted, and potentially damaging, financial advice. This proposed bill is woeful.

e. The Private Investment Marketplace is a Hot Bed for Fraud That Impacts Retail Investors

Private placements and unregistered securities make up a substantial percentage of reported investor complaints. In February 2021, the SEC charged GPB Capital Holdings, LLC and other defendants with operating a "long running and multi-faceted scheme" which defrauded investors out of almost $1 billion.[5] United States Attorney for the Eastern District of New York brought criminal charges in 2021 and the defendants were convicted of securities fraud in August 2024. The investors GPB targeted to raise capital were retail investors. GPB used a network of over

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[5] *Securities and Exchange Commission v. GPB Capital, et al.,* 21-cv-00583 (E.D.N.Y.)

sixty broker/dealers and registered investment advisers to reach the pockets of retired and financial unsophisticated investors.

Also in 2021 are two examples of Texas-based private investments that have ruined the retirement of hundreds of retail investors; The DeepRoot Funds and Heartland Capital. Both of these entities used unregistered "finders", or RIAs, to sell private equity interests in these companies to retail investors across the country.[6] Both ended up in liquidation amid allegations of securities fraud by the SEC and Department of Justice and have collectively cost retail investors about $150 million. Litigation poised to recover these funds from these "finders" usually goes nowhere because they are uncollectable and carry no viable liability insurance coverage.

Another recent example of a private issuer that resulted in a Ponzi scheme is iCap Enterprises, a purported real estate private placement which filed for Chapter 11 bankruptcy protection in late 2023 which was then accused of defrauding retail investors of more than $230 million. The judge specifically called iCap a Ponzi Scheme.[7] As the landscape changes for investors and access to private placement investments becomes easier, and in some instances almost automated, the frauds continue to roll out. On February 12, 2025, Elchonon "Elie" Schwartz pleaded guilty to wire fraud in connection with $62.8 million of funds raised from retail investors in two real estate private placements.[8] Schwartz utilized a real estate crowdfunding platform, CrowdStreet, Inc., and only "accredited investors" invested in his offerings. Despite the existence of numerous red flags in connection with the real estate offerings, including the lack of an identified escrow account to prevent the issuer, here Schwartz, from using investor funds any way he wanted, he still sold-out the offerings, with the assistance of CrowdStreet's marketing efforts. These problems for retail investors are compounding and the newsreel is filled with similar stories almost daily.

The SEC studied Regulation D issuers versus the public markets and reported their findings to Congress in August 2020.[9] The study determined that, from 2009 to 2019, reporting companies that previously had a Regulation D offering filed for bankruptcy at a rate of 3.5%, versus reporting companies that *did not offer* Regulation D offerings, which had a 1% bankruptcy rate. That is more than threefold higher risk of bankruptcy for Reg-D issuers than non-Reg D issuers. But the reality is far worse in all likelihood. The Commission noted, however, that many Regulation D companies fail without any corollary bankruptcy filing because they have neither the assets nor the liabilities requiring it. So, they just fail, without fanfare leaving investors holding the bag.

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[6] *Securities and Exchange Commission v. Robert J. Mueller, Deeproot Funds, LLC, and Policy Services, Inc.* 21-cv-00785 (W.D. Tex.); *and Securities and Exchange Commission v. The Heartland Group Ventures, LLC, et al;* 21-cv-01310 (N.D. Tex.).

[7] https://www.analysisgroup.com/news-and-events/news/bankruptcy-judge-rules-real-estate-firm-a-ponzi-scheme-after-testimony-by-analysis-group-managing-principal-jeffrey-kinrich/

[8] https://www.justice.gov/usao-ndga/pr/head-commercial-real-estate-investment-firm-pleads-guilty-628m-fraud-scheme-targeting

[9] https://www.sec.gov/files/report-congress-regulation.pdf

Combined with the increased risk of fraud exposing retail investors to untenable risks, the failure rate of Regulation D companies is much higher than public companies.

PIABA appreciated Congress's attempts to broaden access to investor capital for non-public companies. PIABA also respects Congress's desire to allow "Main Street" investors to participate in private markets alongside Wall Street and Silicon Valley. PIABA does not support eroding existing investor protections designed to provide a firewall between speculation and fraud and retail investors. Yes, the accredited investor standard must change. It should be adjusted to reflect financial reality in 2025, not 1982. Likewise, PIABA is highly skeptical of providing the SEC with discretion to create credentials or write an exam so that investors can otherwise qualify as accredited. Further, while we appreciate restricting the percentage of any investor's net worth that can be concentrated in these assets, the proposed legislation does so by relying on net worth and income metrics from 1982 and relies on numbers regularly manipulated by the financial advisors that solicit the sale of these high-commissioned investments. Last, accreditation via osmosis because an investor's financial advisor sold them the private placement, give the keys to the castle with all the gold to the securities industry and SIFMA. PIABA will not support such a reckless measure.

Sincerely,

Adam Gana
President, Public Investors
Advocate Bar Association