PUBLIC INVESTORS ADVOCATE BAR ASSOCIATION

piaba.org
888-621-7484
1300 McGee Dr, Ste 112, Norman, OK 73072

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Ms. Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-2026-17; Registered Offering Reform

Dear Ms. Countryman:

I write on behalf of the Public Investors Advocate Bar Association ("PIABA"), an international bar association comprised of attorneys who represent investors in securities arbitration and litigation. Since its formation in 1990, PIABA has promoted the interests of the public investor in all securities and commodities arbitration forums, while also advocating for public education regarding investment fraud and industry misconduct. Our members and their clients have a strong interest in rules promulgated by the SEC as they relate to investor protection.

PIABA appreciates the opportunity to comment on the Commission's proposed Registered Offering Reform amendments (the "Proposal").[1] PIABA writes to address one component of the Proposal, the proposed definition of "qualified purchaser" under Section 18(b)(3) of the Securities Act of 1933, which would preempt state registration and qualification requirements for every registered offering, including offerings of securities not listed on any national securities exchange. PIABA urges the Commission to withdraw that definition.

The proposed definition exceeds what Congress authorized.

Section 18(b)(3) permits the Commission to treat as covered securities those sold to "qualified purchasers, as defined by the Commission by rule." The word "qualified" is a limitation, and Congress told the Commission what it meant. The House Report accompanying the National Securities Markets Improvement Act of 1996 states that "[i]n all cases, however, the Committee intends that the Commission's definition be rooted in the belief that 'qualified' purchasers are sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary."[2] The Senate Report agrees, explaining that qualified purchasers "do not require the protections of registration" based on their level of wealth and sophistication.[3] Whatever room those passages leave, they do not permit a definition encompassing every

[1]Registered Offering Reform, Release Nos. 33-11418; 34-105513; IC-36160 (May 19, 2026) (the "Release"), published in the Federal Register on May 26, 2026. Citations herein to 91 FR pages refer to that publication; pinpoint citations in the form "Release at __" refer to the pagination of the SEC-issued release, available at https://www.sec.gov/files/rules/proposed/2026/33-11418.pdf.

[2]H.R. Rep. No. 104-622, at 31 (1996).

[3]S. Rep. No. 104-293, at 15 (1996).

purchaser of every registered security. Congress does not qualify a term and then intend it to mean everyone. The House Report did contemplate that the qualified purchaser exemption would be available in registered as well as exempt offerings.[4] But the nature of the offering says nothing about who is qualified; the sophistication limitation governs the definition of the purchaser however the securities are offered.

The Commission has said so itself. In 2001, in its first attempt to define the term, the Commission wrote that the House Report "makes clear that the primary factor" in defining qualified purchaser "must be the financial sophistication of these investors," and it accordingly proposed to limit the term to accredited investors.[5] The Commission never adopted that definition and later confirmed it was no longer under consideration; when it revisited the term in 2007, it proposed a definition narrower still, limited to a new category of "large accredited investors," which it likewise never adopted.[6] The Proposal now abandons the sophistication touchstone entirely without acknowledging the Commission's prior interpretation or explaining the reversal, which the Administrative Procedure Act does not permit.[7]

Nor does *Lindeen v. SEC*, which the Release cites, support the Proposal.[8] *Lindeen* sustained the qualified purchaser definition adopted for Regulation A Tier 2, a regime that paired preemption with offering caps, investment limits for non-accredited investors, and ongoing reporting. Purchasers there were protected by the conditions of the offering itself. The Proposal imposes no conditions at all. And *Lindeen* rested on *Chevron* deference, which the Supreme Court has since overruled in *Loper Bright Enterprises v. Raimondo*.[9] Under the best reading of a statute whose text and history tie preemption to purchaser sophistication, a definition covering every retail investor in America cannot stand.

Preemption would strip retail investors of substantive protections that Federal law does not replace.

The registered offerings of unlisted securities affected by the Proposal are overwhelmingly non-traded REITs, non-traded BDCs, and other direct participation programs sold to retail investors. Congress preempted state registration only where a merit substitute existed, exchange listing standards under Section 18(b)(1) or the Investment Company Act's substantive restrictions under Section 18(b)(2). For unlisted offerings, the states supply that substance through NASAA's

[4] H.R. Rep. No. 104-622, at 32 (1996) ("The Committee further intends that the qualified purchaser exemption apply to all offerings of securities, whether registered or exempt under the Securities Act.").

[5] Defining the Term "Qualified Purchaser" Under the Securities Act of 1933, Release No. 33-8041 (Dec. 19, 2001), 66 FR 66839, 66845 (Dec. 27, 2001).

[6] Revisions of Limited Offering Exemptions in Regulation D, Release No. 33-8828 (Aug. 3, 2007), at n.79 (confirming that the 2001 proposal was "no longer under consideration by the Commission") and proposed Rule 146(c) (proposing to define "qualified purchaser" as any "large accredited investor" solely for offerings made in compliance with proposed Rule 507).

[7] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016).

[8] 825 F.3d 646 (D.C. Cir. 2016); *see* Release n.449.

[9] 603 U.S. 369 (2024).

uniform statements of policy, which state examiners apply in the registration process. Those statements of policy require, among other protections, independent directors and independent approval of conflicted transactions, limits on fees and compensation paid to sponsors and their affiliates, restrictions on loans to affiliates, appraisal requirements for affiliated acquisitions, minimum income, net worth, and concentration standards, and equal voting rights with access to fund records. Sophisticated institutional investors extract these same protections through bargaining power. Retail investors cannot, and a fully disclosed unfair structure is still unfair.

The Federal regime does not fill the gap. The Release's own list of the Federal protections said to justify preemption describes staff review of Securities Act registration statements as merely "potential," in contrast to the recurring review of periodic reports that Section 408 of the Sarbanes-Oxley Act mandates.[10] The Commission's economic analysis concedes that preemption "may remove an additional layer of investor protection" and that state merit review offers protections "distinct from" the staff's disclosure-based review.[11] An unlisted registered offering that no state reviews may receive substantive review from no regulator at all. The gap is not theoretical. As the Washington Department of Financial Institutions details in its comment on this file, state examiners prevented registration of the Vault demand notes of an iCap Enterprises affiliate, whose offering the Commission had declared effective in 2020, after concluding the issuer could not meet debt offering standards. iCap proved to be a $250 million Ponzi scheme. After withdrawing its Washington application, iCap assured state regulators that it had not sold and would not sell the notes in the state; the adjudicated findings establish that the representation was untrue, and that iCap sold at least $238,000 of the notes to Washington investors. Washington also reports that registration applications rarely satisfy the disclosure and substantive requirements as first filed, even after Commission effectiveness.[12] The Division of Corporation Finance itself describes a review that "does not evaluate the merits of any transaction or determine whether an investment is appropriate for any investor."[13] State anti-fraud authority under Section 18(c), which the Proposal leaves in place, cannot prevent or cure an unfair structure that is fully disclosed, and it could not have stopped iCap before Washingtonians' money was gone.

One example makes the loss concrete. Effective January 1, 2026, the amended NASAA REIT Guidelines cap a non-accredited investor's aggregate investment in non-traded REITs, BDCs, and similar programs at 10 percent of liquid net worth, a standard that at least 20 jurisdictions had applied in some form for years. That limit binds issuers only through state

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[10]*See* Release section II.F.2, 91 FR 31078 (May 26, 2026); see also Release n.462 (noting that, as required by section 408 of the Sarbanes-Oxley Act, Commission staff review each reporting company at least once every three years).

[11]*See* Release section IV, at 263.

[12]Comment Letter of the Washington Department of Financial Institutions, Securities Division, on File No. S7-2026-17 (July 22, 2026) (describing Washington's refusal of the registration); *see also* Washington Department of Financial Institutions, Securities Division, Findings of Fact, Conclusions of Law, and Final Order, In the Matter of iCap Enterprises, Inc., et al., Order No. S-23-3608-26-FO02 (Apr. 24, 2026), adopting Statement of Charges, Order No. S-23-3608-26-SC01 (Feb. 17, 2026); iCap Vault 1, LLC, Registration Statement (Form S-11) (declared effective 2020).

[13]SEC, Division of Corporation Finance, Filing Review Process, https://www.sec.gov/about/divisions-offices/division-corporation-finance/filing-review-process-corp-fin (last visited July 23, 2026).

registration, and Section 18(a)(3) would bar the states from imposing it on covered securities. No Federal rule imposes any quantitative concentration limit. Indeed, the two regimes that previously extended preemption to public offerings sold to non-accredited retail investors, Regulation A Tier 2 and Regulation Crowdfunding, both paired preemption with investment limits. The Proposal would pair it with nothing. PIABA's members represent the retirees who end up with 30, 40, or 50 percent of their liquid net worth in illiquid non-traded products, and the concentration standards in these prospectuses are often the clearest objective benchmark in the ensuing arbitration. The Proposal would erase the standard and weaken the remedy at the same time.

The Proposal's premises do not withstand its own citations.

The stated justification for preemption is the burden of complying with varying state frameworks. But the authority the Release cites for state-law variation is NASAA's Uniform Securities Acts resource, which documents that most state securities laws are built on one of three uniform model acts.[14] States also accept the Commission's own registration statement and prospectus for state-level disclosure compliance and have long operated a coordinated review program for these offerings, so the burden at issue is not duplicative paperwork. It is the substantive standards themselves. The Commission concedes it has no data quantifying state compliance costs for registered offerings, and the figure it borrows from the Regulation A context, roughly $130,000 to $170,000 in aggregate fifty-state filing and legal fees, is immaterial to the multi-billion dollar funds that would benefit most.[15] The remaining empirical support concerns startups and small businesses, and the GAO and Regulation D studies the Release cites are, by the Release's own account, confounded by offering caps and other factors.[16] Multi-billion dollar funds register at the state level today. The burden argument is, at bottom, a request to be free of the uniform statements of policy.

The timing could not be worse, and Regulation Best Interest cannot absorb the loss.

Non-traded REITs and BDCs are in the midst of significant liquidity and performance problems, with repurchase programs suspended and investors unable to exit. These products are increasingly marketed for retirement accounts. Removing the structural protections of state registration at the very moment investors are trapped in illiquid vehicles would inflict irreparable harm and would erode the confidence in public markets the Proposal is meant to build. Nor can conduct standards substitute. Regulation Best Interest and fiduciary duty govern recommendations, not offering structures, and it is difficult to see how a financial professional could recommend an unlisted product stripped of the statement of policy protections when comparable exchange-listed alternatives exist with listing standards intact and historically better

[14] *See* Release n.447.

[15] *See* Release section IV, at 261.

[16] *See* Release nn.445–446, 629–630.

returns. The disputes generated by those recommendations will arrive in arbitration only after the losses are suffered, which is when PIABA's members meet these investors.

Conclusion

The proposed definition of "qualified purchaser" cannot be squared with the text or the history of Section 18(b)(3), it eliminates substantive protections that the Federal disclosure regime does not replace, and its justifications are contradicted by the Release's own citations and concessions. PIABA respectfully urges the Commission to withdraw the proposed definition and preserve state registration and qualification authority over registered offerings of unlisted securities.

PIABA appreciates the Commission's consideration of these comments.

Respectfully submitted,

Michael C. Bixby
President, Public Investors
Advocate Bar Association