

February 14, 2023

By Electronic Delivery

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services
2134 Rayburn House Office Building
Washington, DC 20515

The Honorable Ann Wagner
Chair
House Financial Services Subcommittee on Capital Markets
U.S. House of Representatives
2350 Rayburn House Office Building Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2221 Rayburn House Office Building
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
House Financial Services Subcommittee on Capital Markets
U.S. House of Representatives
2181 Rayburn House Office Building Washington, DC 20515

Re: Legislation Referenced at Hearings on February 8

Dear Committee Chairman McHenry, Ranking Member Waters, Subcommittee Chair Wagner and Ranking Member Sherman:

On behalf of the Investment Adviser Association (IAA), I want to offer our thanks for your leadership on the House Financial Services Committee and for the Capital Markets Subcommittee's February 8 hearings on "Empowering Entrepreneurs: Removing Barriers to Capital Access for Small Businesses" and "Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-Wealthy and the Need for Reform."

By way of background, the IAA is the leading trade association representing the interests of fiduciary investment advisers. Our member firms collectively manage more than \$35 trillion in assets for a wide variety of institutional and individual investors. In addition to serving as the voice of the advisory profession on Capitol Hill and before the SEC, DOL, CFTC and other U.S. and international regulators, the IAA provides extensive practical and educational resources to its membership.

We are writing to offer our support and suggestions regarding certain of the discussion drafts referenced in the committee memoranda for the February 8 hearings. Specifically, we offer comments regarding: 1) Chair Wagner's draft legislation to direct the SEC to update its definition of "small entities" under the Regulatory Flexibility Act, and 2) two of the draft proposals to expand the definition of accredited investor, Representative French Hill's "Fair Investment Opportunities for Professional Experts Act" and the discussion draft "to expand the definition of 'accredited

investor’ to include individuals receiving individualized investment advice or individualized investment recommendations with respect to a private offering from a professional who qualifies as an accredited investor.”

SEC Definition of “Small Entities” Under the Regulatory Flexibility Act

Small businesses are the backbone of the fiduciary advisory community with 58 percent of investment advisory firms having 10 or fewer non-clerical employees and 88 percent having 50 or fewer non-clerical employees. Policy decisions must preserve the vital place of these small businesses in the financial services ecosystem and allow them to thrive. To that end, the IAA has urged the SEC to act on the recommendations made by its Asset Management Advisory Committee in its 2021 report on small businesses, which include tailored regulation of smaller advisers and a more appropriate definition of small business for purposes of cost-benefit analysis.

The IAA has also strongly supported the bipartisan “Investment Adviser Regulatory Flexibility Improvement Act,” designed to ease the regulatory burden on smaller advisory firms and previously passed by the U.S. House of Representatives.

The Regulatory Flexibility Act was intended to require agencies to analyze the economic impact of their regulations on small businesses and consider less burdensome ways to achieve their regulatory goals. However, *the SEC has been able to avoid application of the Act to smaller advisory firms because its definition of small entity includes only advisory firms with less than \$25 million AUM while the threshold since 2011 for advisers to register with the SEC (with limited exceptions) is \$100 million AUM.*

Congress gave the SEC authority under the Regulatory Flexibility Act to update this definition, but the agency has failed to do so. The SEC must be required to meaningfully consider the unique challenges of smaller advisory firms and the cumulative impact of policy decisions on their businesses and their ability to serve the investing public.

Rep. Wagner’s bill would require the SEC to report to Congress and conduct a rulemaking updating its definition of small entity to ensure it covers a meaningful number of businesses under its jurisdiction. It is a more broadly applicable version of the “Investment Adviser Regulatory Flexibility Improvement Act.” The IAA strongly supports its passage.

Accredited Investor

The IAA believes that the definition of accredited investor should be expanded to provide greater opportunities for retail clients to invest in private offerings. We believe this would be best accomplished while providing an appropriate level of investor protection by reference to a retail client’s use of an investment adviser or other third-party financial services professional.

We agree with both Subcommittee Chair Wagner and Ranking Member Sherman regarding the importance of expanding the definition. Chair Wagner stressed the need to

expand the ways in which Main Street investors can access opportunities usually only available to the wealthy or highly educated. She stated, "Congress must modernize the outdated accredited investor definition and expand the number of individuals who qualify as accredited investors to open up more funding opportunities for all entrepreneurs." The IAA agrees with Chair Wagner.

We also agree with Ranking Member Sherman, who discussed that there must be an appropriate blend of investor protection and access to capital. He stated that the accredited investor definition needs improvement and expressed concern with the use of net worth as a test of sophistication. "What we could do," he stated, "is change the definition of accredited investor to the following standards: someone who's investing less than 5 percent of their net worth in a particular investment; someone who by virtue of their own licenses and [qualifications] is a sophisticated investor; *or someone whose advisor is sophisticated, but that advisor needs to be a fiduciary, truly independent, not receiving a commission, and not expecting to get a referred business from the promoter....*"[emphasis added]

We are attaching to this letter proposed revisions to two of the discussion drafts that were referenced at the hearing. The IAA's suggested revisions would ensure that clients of fiduciary investment advisers that are registered with the SEC are considered accredited investors.

We look forward to working with you and committee members on these legislative proposals and greatly appreciate your consideration of our views.

Respectfully,

A handwritten signature in black ink that reads "Karen L. Barr". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Karen L. Barr
President & CEO

Attachment

Attachment – IAA Proposed Revisions

See edits in red and underlined to two bills to expand the definition of accredited investor under SEC rules.

I. House Committee on Financial Services Bill:

[https://financialservices.house.gov/uploadedfiles/accredited_investor - purchaser representative.pdf](https://financialservices.house.gov/uploadedfiles/accredited_investor_-_purchaser_representative.pdf)

Text of changes:

“(5) by adding at the end the following: “(iii) any individual receiving individualized (a) investment advice from an individual described under section 203.501(a)(10) of title 17, Code of Federal Regulations, or (b) individualized investment recommendations with respect to the applicable transaction from an individual described under section 203.501(a)(10) of title 17, Code of Federal Regulations.”

II. Rep. Hill Bill:

https://financialservices.house.gov/uploadedfiles/fair_investment_opportunities_for_professional_experts_act.pdf

Text of changes - add at the end:

“(F)(1) any natural person receiving (a) investment advice from an individual described under section 203.501(a)(10) of title 17, Code of Federal Regulations, or (b) individualized investment recommendations with respect to the applicable transaction from an individual described under section 203.501(a)(10) of title 17, Code of Federal Regulations.

“(F)(2) DEFINITIONS.—In subparagraph (F)(1): “(i) INVESTMENT ADVICE.—The term ‘investment advice’ shall be interpreted consistently with the interpretation of the phrase ‘engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities’ under section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

“(ii) INVESTMENT RECOMMENDATION.—The term ‘investment recommendation’ shall be interpreted consistently with the interpretation of the term ‘recommendation’ under section 240.15l-1 of title 17, Code of Federal Regulations.”