I want to thank the staff of the Division of Corporation Finance and the Division of Investment Management for putting together this proposal. Thank you also to Chairman Jay Clayton, who has prioritized this issue on the Commission’s agenda. The accredited investor definition stands at the intersection of two components of the SEC’s mission: protecting investors and facilitating capital formation. I think the proposal today makes important strides toward furthering both of these objectives. While I support it, I believe there is more we can learn from commenters and more we should deliberate before we consider adopting the staff’s recommendations as presented.

Background

With respect to investor protection, the accredited investor definition stands between millions of Americans and opportunities for them to invest their wealth in private offerings. While this barrier was intended to protect investors from downside risk, it has also shut out all but the wealthiest from upside gains that private companies have made over the last several decades. Technically, the most effective way to protect people from losing money on an investment is to prohibit them from investing at all. But, that is not how I—or, I’d venture, many at the SEC—interpret our mission of “protecting investors.” In the public markets, our approach has been to design regulations that ensure people have the information they need to make good investment decisions, and then let them decide where to place their money. In the private markets, we have somewhat lightened the disclosure obligations for companies in exchange for restrictions on how they can raise capital through securities offerings as well as limits on who can invest in those offerings. And, of course, the anti-fraud provisions of our federal securities laws apply to both public and private offerings.

Investor Protection or Investor Suppression?

Since the 1980s, these limits on individuals have been based on wealth: with few exceptions, only those making over a certain amount of money each year, or with a certain high level of net worth can invest even a small amount in a private offering. For decades, the Commission has built upon this framework, including its questionable financial thresholds.[1] But, it’s time we reviewed this approach. I doubt that even the Commission who first adopted Regulation D would argue that they came up with perfect criteria for who should qualify as an accredited investor. Did any prior Commission dispositively ascertain that
an individual who made $200,000 in income for two years or had a net worth of more than $1,000,000 was a savvy enough investor to recognize a good investment from a bad one? Did anyone consider the outcome that only the wealthiest Americans would have access to investments that would have the most upside for growth over time?

The reality is that we should seriously question our historical approach to the accredited investor definition. Wealth is a crude measure of a person's ability to make financial decisions. Today, I am happy to consider a recommendation that offers other ways for individuals to qualify as accredited investors, including certain professional certifications, designations, and other credentials. Surely, it is only sensible that someone entrusted to manage other people's investments in the private markets should be considered financially sophisticated enough to invest his or her own money in the same types of offerings.

While today's proposal makes headway toward a more rational framework for protecting investors than the one we have now, I believe we could have proposed further changes. For example, I am an SEC Commissioner. I am one of five votes every time the SEC decides to bring charges against a company we determine has made any untrue statement of a material fact, violated Regulation D, or failed to restate its financial statements when required. One might think I would be capable of understanding the risks of a private investment opportunity and recognize the information I would need to make an informed decision. Yet, I am not an accredited investor—not now under the current rules and not even if the amendments are adopted as proposed. More strikingly, many of the expert staff of the SEC who review, promulgate, and enforce our securities laws would not qualify (based on the income threshold) as an “accredited investor” and would still be deemed to require the protections of registration under the Securities Act of 1933. Based on this outcome, I wonder whether we have missed the mark.

There are, of course, others who feel very differently—those who deem the addition of any new categories of persons or entities to the definition of accredited investor to be a severe erosion of investor protections. But, as the example I just cited (of myself and many SEC staff) demonstrates, this proposal does not open the floodgates for fraudsters to bilk widows and orphans out of their life savings. Judging by the way some people have criticized the SEC’s plan to amend the accredited investor definition, one might think the SEC is going to force people to give up all of their money to invest in private offerings. Yet, I can assure you that that requirement is nowhere in this proposal. Of course, not every private company will turn out to be a good investment, just as not every public company would be a good investment. But depriving people of investment opportunities based on certain income and wealth thresholds objectively makes little sense.

**Facilitating Capital Formation?**

I have focused up to this point on the SEC's mission to protect investors, but today's proposal is also an important development for capital formation. I believe these proposed changes to incrementally increase the pool of accredited investors will provide more flexibility to smaller companies seeking to raise capital. But, I hope to see comments on the important questions the staff included about possible further changes. Should we have altered the financial thresholds to account for geographic differences in income or average wealth? Do our rules discourage companies from setting up shop in areas where there is a lower cost of living? These are concerns that many have raised, including at our annual Government-Business Forum on Small Business Capital Formation, and I take them very seriously.[2]

**A Vote for a Step Forward**

Despite these ideas about areas for further study, I look forward to supporting today's proposal. Thank you again to the SEC staff, who have spent years listening to market participants and considering the best approach to recommend to the Commission today. I appreciate these efforts and your thoughtfulness in making this recommendation. Finally, I look forward to the input we will receive from commenters. I encourage anyone who is interested in investing, as well as those seeking to raise
capital, to read this release and write in to let us know what you think. Your feedback will only help us improve in our efforts to update and modernize the definition of “accredited investor.”

[1] The Commission established the $200,000 individual income and $1 million net worth threshold in 1982 and the $300,000 joint income threshold in 1988 and has not updated them since, with the exception of amending the net worth standard to exclude the value of the investor’s primary residence in 2011.