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Before the House Committee on Financial Services, Subcommittee on Capital Markets

Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform

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Chairwoman Wagner, Ranking Member Sherman, and other members of the subcommittee, thank you for the opportunity to speak with you today about the proliferation of the private markets, and the significant impact it is having on our capital markets, investors, and economy overall.

I am a Professor of Law at the Duke University School of Law, where I study and teach complex financial instruments and market regulation. I am also a member of the Board of the Healthy Markets Association, which focuses on market efficiency and fairness, as well as the SEC's Investor Advisory Committee, where we are scheduled to have a discussion on these issues in just a few weeks.

Executive Summary

- The federal securities laws can be thought of as a bargain wherein an issuer's ability to raise capital from the public was conditioned upon the issuer disclosing basic, relevant information and providing investors with clear rights.

- No amount of wealth or sophistication is a substitute for robust securities laws that provide <u>all</u> investors with the information needed to make informed investment decisions.

- Allowing retail investors to access the private markets simply increases the likelihood that everyday investors will be worse off from investing in unproven, opaque investments, with limited liquidity and no information to value their investments.

- The lack of audited financial statements and absence of standards on valuations mean that private market investments are often materially inaccurate in their valuations.

- The private companies that would most likely solicit capital from retail investors are disproportionately likely to be those that were unable to obtain financing from institutional investors. This creates adverse selection problems, exposing retail investors to the worse investments in the private markets without the protections of federal securities laws.

The Public Markets Exist to Promote Capitalism

The federal securities laws were designed to ensure that if companies raised money from the public, that they would first have to provide the public – including investors of all levels of sophistication and wealth – basic financial, governance, and operational information.

When Congress enacted the Securities Act of 1933, it explicitly stated that it was to address the "wanton misdirection of the capital resources of this Nation."[1] Contrary to much of the rhetoric

[1] H.R. Rep. 73-85 (1933), at 2-3.

we hear today, the requirement that companies make basic disclosures was not solely about protecting investors – it was about protecting capitalism.

The federal securities laws can be thought of as a bargain wherein an issuer's ability to raise capital from the public was conditioned upon the issuer disclosing basic, relevant information and providing investors with clear rights.

This bargain helped spur the US capital markets, and drive the economy, by performing two essential functions. First, it ensured that market participants and regulators had a clear understanding of companies, including their finances, governance, and operations. It is only with this information from not just one company, but all companies, that market participants can efficiently allocate capital across the economy. Second, the securities laws "leveled the playing field between investors and issuers, as well as between different types of investors, by ensuring that all investors—not just those with market power or access—had access to key information in a timely manner."[2]

While we may dispute the degree to which there is a level playing field in the public markets, we cannot dispute that there are rules and laws that ensure all investors have access to all of the same information. For example, Regulation Fair Disclosure expressly prohibits companies from selectively disclosing information to some investors and not others.[3]

Public companies must provide audited financials and make basic disclosures about their governance and operations. Further, even auditors must be thoroughly examined and overseen, to ensure that someone is "watching the watchers." Investors in public companies – again, whether large or small – also have the right to sue for securities law violations. Given the trillions of dollars in our increasingly complex markets, and the limited resources of regulators, this right is essential to promoting market integrity.

The securities laws exist to promote capitalism, which depends upon informed investors allocating capital to its perceived highest uses. Conversely, the expansion of exemptions and exceptions to these securities laws – and particularly the exemptions for "accredited investors," fundamentally weaken that bargain, and undermine the efficient allocation of resources. They introduce waste, fraud, and abuse.

As Congress and the SEC have expanded the number and scope of exemptions to the federal securities laws – including the expansion of investors to whom unregistered securities may be sold – we have seen a dramatic expansion of the riskier, generally less efficient, and generally less fair private markets.[4]

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[2] Healthy Markets Association, *In the Public Interest: Why Policymakers and Regulators Must Restore the Public Markets*, Jan. 2022, *available at* https://healthymarkets.org/product/public-vs-private-markets-a-special-report.

[3] *Selective Disclosure and Insider Trading*, SEC, Sec. Act Rel. No. 7881, Aug. 15, 2000, *available at* https://www.sec.gov/rules/final/33-7881.htm.

[4] See generally, Elisabeth de Fontenay, The Deregulation of Private Capital and the Decline of the Public Company, 68 Hastings L. J. 445 (2017); see also, George S. Georgiev, The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms, 18 N.Y.J.L. & Bus. 221, 227-29, 241 (2021).

Access to Private Markets

The public markets are being weakened today by the ever-growing private markets. In the private markets, investors who can be classified as "accredited investors" and "qualified institutional buyers" can participate in private offerings—that is, securities transactions not subject to the robust disclosure obligations and integrity protections imposed on issuers in public markets.

An underlying presumption of the "accredited investor" and "qualified institutional buyer" (QIB) standard is that these investors do not need the protection of the federal securities laws because they have wealth or sophistication. Time and experience have consistently demonstrated that this assumption is misguided.

The toxic assets from the Global Financial Crisis that decimated millions of investors, including many of the largest public pensions and university endowments in the world, were exempt offerings sold to QIBs – the most wealthy and most sophisticated.

More recently, a quick glance at the largest investors in FTX brings up the names of some of the most sophisticated venture capital investors in the world: Blackrock, Lightspeed Venture Partners, Sequoia, Softbank, Thoma Bravo, Tiger Global, and even the Ontario Teachers' Pension Plan.[5] Even these wealthy, experienced private markets investors were unable to identify the operational and financial failings that culminated in FTX's collapse.

What do these lessons teach us? *No amount of wealth or sophistication is a substitute for robust securities laws that provide <u>all</u> investors with the information needed to make informed investment decisions.*

In the decades after the adoption of the federal securities laws, even exempt offerings required issuers to make basic disclosures to investors. For example, more than four decades after the adoption of the securities laws, the Fifth Circuit Court of Appeals noted, "just as a scientist cannot be without his specimens, so the shrewdest investor's acuity will be blunted without specifications about the issuer. For an investor to be invested with exemptive status he must have the required data for judgment."[6]

In fact, the seminal Supreme Court case upon which the SEC has purportedly built its vast exemption framework was one in which the court found that an offering to a small number of employees was a "public" offering that required registration because "[t]he employees here were not shown to have access to the kind of information which registration would disclose."[7]

Over the last four decades, however, Congress and the SEC have repeatedly and significantly undermined the premise that all investors need basic information to make informed decisions.

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[5] Press Release, FTX Trading Ltd. Closes $900M Series B Round -- Largest Raise in Crypto Exchange History, FTX Trading Ltd., July 20, 2021, *available at* https://www.prnewswire.com/news-releases/ftx-trading-ltd-closes-900m-series-b-round----largest-raise-incrypto-exchange-history-301337709.html and Press Release, FTX Trading Ltd. Closes $420 Million Series B-1 Funding Round, FTX Trading Ltd., Oct. 21, 2021, *available at* https://www.prnewswire.com/news-releases/ftx-trading-ltd-closes-420-million-series-b-1-funding-round-301405473.html.

[6] *Doran v. Petroleum Management Corp.*, 545 F.2d 893 (5th Cir. 1977).

[7] *SEC v. Ralston Purina*, 346 U.S. 119, 126-127 (1953).

Concerningly, for example, Rule 506 imposes no substantive disclosure obligations or limits on issuers selling securities to "accredited investors."

It is undeniable that the Fifth Circuit was right all those years ago. And, similarly, SEC Commissioner Caroline Crenshaw's speech a few weeks ago[8] underscores this point: investors – all investors – need essential information to make good decisions.

Some have boldly suggested that the limitations on private offerings to investors who meet the "accredited investor" or "qualified institutional buyer" definitions is somehow discriminating against those who do not meet those definitions. Some have argued that the SEC should further expand these definitions to provide for greater access to these markets by more potential investors.

This is perverse logic, at best.

There already are markets where all investors participate on a level playing field—the public markets. Expanding the definition of "accredited investor" is not going to result in more investors becoming millionaires. Rather, it is going to cause the very opposite result. If the scope of the accredited investor definition is broadened, this will expand the opportunities for wealth extraction and amplify wealth inequality in the country.

Private Markets Are An Insiders' Game

While the public markets provide all investors with access to material information, safeguarding investors against fraud, the same is not true in the private markets.

In the private markets, the company or private fund can permissibly discriminate between investors providing some investors with no information and others with information that is both more timely and more reliable. A company may also raise an unlimited sum from an effectively unlimited number of accredited investors following a Super Bowl commercial without providing any specific information at all to anyone.[9]

If retail investors are able to invest in private securities, they are not likely to be provided with sufficiently comprehensive, reliable, and comparable information so as to make an informed investment decision. Retail investors would almost certainly lack the capacity to demand information and would have to depend on the willingness of the company or private fund to provide it. This would leave retail investors in the dark, lacking basic information to assess or value their investments.

Indeed, even some of the largest public pension funds in the world often struggle to get basic, timely, comprehensive, reliable, and comparable information about their holdings. There is no reason to think that retail investors would fare better in the private markets, and much reason to believe it would be far worse.

Consider the following hypothetical example. What would one expect to occur if a company's lead venture investor and founder suspects (or knows) that their experimental drug is failing, thereby

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[8] Remarks of Caroline Crenshaw, SEC, before the 50th Annual Securities Regulation Institute, Jan. 30, 2023, *available at* https://www.sec.gov/news/speech/crenshaw-remarks-securities-regulation-institute-013023.

[9] Healthy Markets Association, *In the Public Interest: Why Policymakers and Regulators Must Restore the Public Markets*, Jan. 2022, *available at* https://healthymarkets.org/product/public-vs-private-markets-a-special-report.

making the company worthless? With no disclosure requirements, the founder would be under no obligation to disclose this information and, therefore, she could sell her shares to those who do not know. If retail investors are allowed access to the private markets, one can reasonably expect that sales by the company's lead investor in the above hypothetical will be directed towards retail investors who know little and do not have the ability to ask for more information.

Such information asymmetry is commonplace in the private markets. Allowing retail investors to private offerings will simply expose them to a market that is inherently uneven in the distribution of information and increase the likelihood that they are victims of fraud. These characteristics are a feature, not a bug, of the private markets and will certainly result in retail investors being exploited by low-value private offerings and losing their hard-earned investments.

Lack of audited financial statements. Many private operational companies and funds do not provide basic audited financial statements to investors, which makes it next to impossible for investors to value their investments. The financials used by the now-bankrupt FTX to raise approximately $2 billion from some of the most sophisticated investors in the world underscore this point. FTX's financials were neither robust nor were they reliable. Yet, well-known investors poured money into FTX and are unlikely to receive any returns on their investments. When large, wealthy investors suffer these losses, some may argue that they should have known better. When those institutional investors are representing millions of retirees' pensions or college savings, it is difficult to reconcile. However, for most retail investors trading their own personal savings, such losses could – and often would be – catastrophic. We are seeing this today with many reports of catastrophic losses in the crypto markets, which have been largely operating outside of the parameters of the securities laws.

Allowing retail investors to access the private markets simply increases the likelihood that everyday investors will be worse off from investing in unproven, opaque investments. While multi-billion-dollar frauds like FTX may be uncommon, multi-billion-dollar mis-valuations are increasingly common. Worse, as state securities regulators[10] can attest, extremely risky investments that are almost certain to lead to significant losses for private markets investors are extremely common.

Another important point to note is that in the private markets, corporate insiders, favored investors, and other favored parties often receive better prices. They can negotiate better fees and lower expenses. For example, smaller institutional investors, including some public pensions, often pay fees in private equity or venture capital funds that are significantly higher than larger, more sophisticated, or more connected investors. Again, retail investors are almost certain to get the worst deals.

Lack of liquidity. A major limitation in private markets that will significantly impact retail investors is the innate lack of liquidity. In private markets, the ability to sell investments is often severely limited; and, in some cases, there may be no market at all for investors to exit their positions. Investors may have no choice but to sell their interests back to the issuer (possibly for less than they were bought), or write the value of their investments down, potentially to zero. This is precisely what happened when many sophisticated US investors were unable to sell their interest in Russian securities over the past year. But that can also happen with a ten-person technology startup. To whom would a retail investor sell her interest? The ability to sell a private security – whether back to the issuer, to

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[10] See e.g., North American Securities Administrators Association, *NASAA Reveals Top Investor Threats for 2022*, Jan. 10, 2022, *available at* https://www.nasaa.org/61477/nasaa-reveals-top-investor-threats-for-2022/.

a broker or dealer who originally sold it, or to some other third party – is likely far more limited for retail investors.

Additionally, private market investments are often frozen for months or years. Even the most sophisticated investors are frequently locked into losing investments in times of stress. For example, late 2022 and again in January 2023, the Blackstone Real Estate Investment Trust denied investors who sought to redeem their investments.[11] Investors who wanted to withdraw billions of dollars out of the fund were simply told, no, the fund would keep the money for now.[12]

That generally cannot happen with a mutual fund or another public investment with which retail investors are common. But in the private markets, retail investors could be locked into an investment with little-to-no-recourse, potentially exacerbating their financial condition. While the negative consequences on an institutional investor should not be underappreciated, the potential negative consequences on an individual retail investor would be hard to overstate.

Importantly, because private market investors can permissibly be treated differently, some investors may be restricted in their ability to buy and sell their interests, while others may not. Different investors in the same private securities may often have very different terms. Some investors may be locked up for years, while others may be able to buy and sell freely. More troublingly, corporate executives, favored investors, and other connected persons or firms often get very different terms of when, how, and under what terms they can buy and sell their interests. When combined with the differences in access to essential information, the impact of these differences between larger and smaller institutional investors in the same private securities may be profound. It would only be far worse for retail investors.

I conclude by noting that the Securities and Exchange Commission proposed last February to require at least private funds to have audits.[13] But, as of today, there are no requirements that private operational companies provide information to the markets or public. Indeed, this is true no matter how many employees or customers, or how big their revenues or purported valuation. To expose retail investors to these markets, in which they have no access to information, no right to demand information, and fewer protections, is to set them up to be consistently on the losing end of each transaction.

Private Market Valuations and Performance Statistics Are Often Dubious

In the private markets, asset and company valuations – and the performance numbers that are derived from them – are often loosely bound by reality.

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[11] Chibuike Oguh and Herbert Lash, *Blackstone's $69 bln REIT curbs redemptions in blow to property empire*, Reuters, Nov. 12, 2022, *available at* https://www.reuters.com/business/finance/blackstone-limits-redemptions-69-billion-reit-2022-12-01/; and Chibuike Oguh, *Blackstone REIT blocks investor withdrawals in January*, Reuters, Feb. 1, 2023, *available at* https://www.reuters.com/business/blackstone-real-estate-income-trust-hit-monthly-redemption-limit-january-2023-02-01/#:~:text=Feb%201%20(Reuters)%20%2D%20Blackstone,investors%20looking%20to%20cash%20out (noting that Blackstone had permitted investors to withdraw only $1.3 billion in January from the fund, even though investors had requested the company to allow them to withdraw $5.5 billion from the struggling fund).

[12] Id.

[13] See *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, SEC, 87 Fed. Reg. 16886 (Mar. 24, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-03-24/pdf/2022-03212.pdf.

While private market values may tend to appear more stable and diversified from public markets investments, that is extremely likely a function of the illiquidity of the investments themselves.[14] In fact, many sophisticated investors explicitly acknowledge that the valuations in private markets are often extremely inaccurate and delayed.[15] While some very large institutional investors may value this "feature," it is extremely unlikely that retail investors would.

Professional institutional investors have very different processes for determining, which often lead to very different purported valuations. For example, registered investment companies are required by the SEC to adopt, implement, and follow policies, procedures, and practices to determine "fair value" of those holdings. When the SEC revised its rules in late 2020 as one of then-Chair Clayton's last major rule adoptions, the Commission explained that:

> proper valuation promotes the purchase and sale of fund shares at fair prices and helps to avoid dilution of shareholder interests. Furthermore, investors may have stronger assurance that they can rely on valuations to express the risk and return profile of a fund, making investors' decisions better informed. Thus, investors may be better able to evaluate a fund and consider whether a fund fits into their investment goals in terms of returns and risk (e.g., ability and willingness to bear risk). Improper valuation can cause investors to pay fees that are too high or to base their investment decisions on inaccurate information.[16]

Unfortunately, while those robust rules apply to mutual funds, there are very few meaningful requirements for private equity or venture capital funds. Worse, both private equity and venture capital funds have common industry practices that are likely to lead to materially inaccurate valuations.

Private equity funds are often compared to peers with similar holdings but are in the private markets. But finding public markets analogues can be increasingly challenging, given the Congressionally and regulatorily driven push away from the public markets. Further, even if there are analogues, the claimed valuations (and claimed internal returns) seem to rarely line up.

For example, the Blackstone Real Estate Investment Trust mentioned earlier released a note as it was facing billions of institutional investor redemptions in December 2022 declaring that it was up 8.4% through November 2022,[17] even though similar publicly traded funds were trading down over 25% during the period. Is the difference a reflection of Blackstone's extreme investing prowess

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14 *See* Cliff Asness, The "Illiquidity Discount", AQR, Dec. 19, 2019, available at https://www.aqr.com/Insights/Perspectives/The-Illiquidity-Discount; see also Jamie Powell, *Calpers and the "illiquidity premium"*, Financial Times, Jan. 21, 2020, available at https://www.ft.com/content/026f9136-0430-4f03-9d54-f1fd6770a46f.

15 Ben Meng, CalPERS, *video available at* https://www.ft.com/content/026f9136-0430-4f03-9d54-f1fd6770a46f ("In private markets, since it's private and not traded on an exchange, so they are marked, they [private investments] are reporting less frequently, the valuation is really based on a model valuation and not really a market transaction, and many times the valuation is delayed, so not timely valuation.").

16 *Good Faith Determinations of Fair Value*, SEC, 86 Fed. Reg. 748, 784 (Jan. 6, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-26971.pdf.

17 Blackstone, *What drove BREIT's November performance and what does it mean?*, Dec. 2022, *available at* https://www.breit.com/wp-content/uploads/sites/33/2022/12/November-2022-Performance-FAQ.pdf?v=1671143124 (claiming an 8.4% return for 2022 through November).

(as its executives have claimed),[18] or something else? Perhaps BREIT investors' own concerns with the valuations may have helped spur the multi-billion dollar run on the fund.

Venture capital valuation risks are often worse. As Matt Levine explained recently:

> Public companies don't work this way: If they want to raise money, they sell stock at whatever their stock price is. It would be somewhat silly for a public company to say "we can't raise money by selling stock because our stock price is lower than it was six months ago," or for a mutual fund to say "we can't buy your stock because the price has gone down." But in private markets it's a thing.
>
> One reason it's a thing has to do with the accounting conventions of the venture capitalists themselves. If your VCs invested at a $250 million valuation, and you do a new round at a $150 million valuation, then they have to write down their investment by 40%. They have to tell their own investors that they lost money for them; their assets under management have gone down and they can't charge as much in fees. They would prefer for their investments only to go up.[19]

Perhaps this set of incentives might help explain how FTX, for example, was able to raise capital:

- in mid-2020 at a valuation of $8 billion,
- in July 2021 at a valuation of $18 billion,
- in October 2021 at a valuation of $25 billion, and
- in January 2022 at a valuation of $32 billion.

Lastly, I note that last February, the SEC finally proposed some long overdue reforms to require more basic disclosures and policies and procedures by these private markets firms.[20] Those efforts have enjoyed support from pensioners and some asset owners, while also running into stiff industry opposition.[21] I encourage you to support that rulemaking.

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[18] *See e.g.*, Joy Wiltermuth, *'Just imagine if we had focused Breit in downtown San Francisco or downtown Chicago,' says Blackstone's Jon Gray of the real-estate megafund's 8% return for 2022*, MarketWatch, Jan. 31, 2023, *available at* https://www.marketwatch.com/story/just-imagine-if-we-had-focused-breit-in-downtown-san-francisco-or-downtown-chicago-says-blackstones-jon-gray-about-the-real-estate-mega-funds-8-return-for-2022-11675201191.

[19] Matt Levine, *Private Markets Don't Like to Go Down,* Bloomberg Opinion, *available at* https://www.bloomberg.com/opinion/articles/2023-01-04/private-markets-don-t-like-to-go-down (Jan. 4, 2023).

[20] *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, SEC, 87 Fed. Reg. 16886 (Mar. 24, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-03-24/pdf/2022-03212.pdf.

[21] *Comments on Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, SEC, *available at* https://www.sec.gov/comments/s7-03-22/s70322.htm.

Retail Investors Provide Insiders an Exit, Not Capital to Grow Businesses

Professional venture capital investors often say that they invest in many companies because most of the private companies in which they invest fail to grow. Exposing the average retail investor to the high likelihood of loss based on limited information and no protection will only heighten wealth inequality.

Further, there are significant adverse selection problems for retail investors in this space. As my colleague at Duke Law, Professor Elisabeth de Fontenay told this subcommittee a few years ago, the odds of a retail investor even having an opportunity to invest in a "promising" private startup are "extraordinarily remote."[22] The private companies that would most likely solicit capital from retail investors are disproportionately likely to be those that were unable to obtain financing from institutional investors. When coupled with the fact that in recent years, many venture capital firms have been willing to invest millions of dollars to fund private companies in under 24 hours of "due diligence," the need of these companies to turn to retail investors for funding should be highly suspicious.

Lastly, I worry about retail investors being set up to be the last in line for bad private investments. We are witnessing an aggressive push by many private fund advisers to recruit increasingly "retail" investors just as we are seeing signs of massive overvaluations in the private markets. This desire to tap into retail investors is not to secure more funding for growth, but to enable insiders to exit at inflated valuations. This leaves retail investors holding the proverbial bag, having invested in investments worth a fraction of the price paid and almost no recourse.

For example, while Blackstone was denying redemption requests from BREIT investors in December, it was also simultaneously lowering its investment minimums through the Fidelity platform from $1 million to $2500 and promising yet another institutional investor guaranteed returns of at least 11.25% per year.[23] Aggressively soliciting new investors to help pay guarantees promised to previous investors has a legacy of not ending well for the later investors. I urge you to do what you can to prevent retail investors from being those later investors.

Policy Recommendations

1. **Restore the public markets.** Congress and the SEC have eroded the public markets so severely that the vast majority of securities offerings are now exempt from requirements to make even basic disclosures, permit egregious discrimination amongst investors, and may deny basic investor rights (such as vote for sue for wrongdoing). I urge you to reverse course and work to restore the public markets. This should include directing the SEC to eliminate the "shareholder of record" loophole and count each investor as an investor. Companies with thousands of shareholders should be required to make basic financial, operations, and

[22] Testimony of Elisabeth de Fontenay, Hearing on Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment, Before the House Financial Services Cmte, Subcmte on Investor Protection, Entrepreneurship, and Capital Markets, 116 Cong. 2019, *available at* https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-jonesr-20190911.pdf.n

[23] UC Investments Creates Strategic Venture with Blackstone to Invest $4 Billion in BREIT Common Shares (Jan. 3, 2023) *available at* https://www.blackstone.com/news/press/uc-investments-creates-strategic-venture-with-blackstone-to-invest-4-billion-in-breit-common-shares/.

governance information available to the public. This is currently on the SEC's agenda, and I hope you will support that effort.

2. **Stop exploitation of private markets investors by ensuring all exemptions are conditioned upon the timely provision of essential information to all investors.** For decades after the federal securities laws were adopted, the vast majority of securities offerings were public, and offerings to even a single employee could be considered "public." That was because the SEC and courts wanted to ensure that investors received the information they needed to make smart decisions – regardless of whether an offering was public or private. In 1982, the SEC created out of thin air – with no statutory basis – what is now the "accredited investor" and exemption of Regulation D, which permits offerings with no disclosures or information at all. That should be reversed. I urge you to ensure that all investors in private securities have the same essential information at the same time, including over time.

3. **Direct the SEC to demand robust due diligence, audits, and robust fair valuation practices for private funds.** This should include supporting and expanding upon the SEC's February 2002 proposal for private funds.

4. **Do not expose employees to further private market abuses.** Regulators and courts[24] have long recognized that employees may be subject to pressures when accepting securities from their employer, particularly if those securities may be in lieu of additional cash or other compensation. Further, there are particular concerns for employees with private securities, as the potential limitations on valuations, redemptions, resales, and other rights may materially negatively impact them.

Conclusion

Thank you for inviting me today, and I look forward to any questions.

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[24] *See, e.g., Ralston Purina*, at 126-127.