October 14, 2021

Arnerich Massena
650 NE Holladay Street,
The Liberty Centre, Suite 1500
Portland, OR 97232

RE: Limitations on IRA investment choice in House Reconciliation Bill Sections 138312 and 138314

Dear Elected Official:

Thank you for your service to our country; we appreciate your thoughtful representation of all Oregonians during these unprecedented times. Our Portland-based investment firm employs 35 individuals and serves over 200 families, the majority of whom are based in the Pacific Northwest. We are fortunate to work with successful entrepreneurs, doctors, executives, and other professionals, most of whom have personally built their wealth through hard work, risk taking, and dedication to their craft. Our clients often hire us because of our expertise in the private markets, and as you consider the proposed limitations on IRA investment choice in Sections 138312 and 138314 of the House Reconciliation Bill, we ask that you consider how this may unintentionally override the intent of the SEC's "accredited investor" regime and, equally important, adversely impact families and individuals here in Oregon and around the country.

The Proposal is bad for small business

According to the SEC, "In 2019, registered offerings accounted for $1.2 trillion (30.8 percent) of new capital, compared to approximately $2.7 trillion (69.2 percent) that we estimate was raised through exempt offerings."[1] The Securities Act of 1933 implemented rules to protect investors from being taken advantage of or risking their entire savings investing in something they may not understand. The Act created the concept of the "accredited investor" – an investor who can evaluate unregistered offerings based on their financial sophistication – and this definition was modernized and expanded last year.[2] As noted by the SEC, accredited investors are integral in funding American small businesses through private securities offerings.[3] However, the proposed legislation trumps the expanded accredited investor definition by preventing these individuals from investing their

[1] *See* S.E.C. Public Statement, "Statement on Amendments to the Exempt Offering Framework" (11/2/2020), *and* Amendments to Accredited Investor Definition, 85 Fed. Reg. 64,234 (2020), at 64,235.
[2] *See* Amendments to Accredited Investor Definition, 85 Fed. Reg. 64,234 (2020).
[3] *See id.* at 64,235.

retirement funds in private offerings. This flies in the face of the SEC's reasoning for the definition's expansion, which included increasing the access to private capital for small companies – especially those owned by underrepresented minorities and women – by expanding the pool of accredited investors.[4] So, while the SEC worked to be more inclusive in their definition of accredited investor, this proposal eliminates retirement funds as a source these investors can use to fund these small businesses, completely reversing the intent of allowing more Americans to invest in the people who need their capital to get their businesses off the ground.

The Proposal makes Oregonians' retirements riskier

As an SEC-registered investment advisor, we recommend alternative assets for our clients' portfolios, including their retirement accounts. We believe that planning for a successful retirement requires a well-diversified portfolio of investments with uncorrelated returns, and alternative assets (including private equity and private real estate) are a powerful diversifier. Public stock exchanges contain listings for 20% of the companies in the U.S. that have annual revenues over $100 million. The other 80% of these companies are privately held.[5] Under the proposal, investors will only be able to access these privately held companies if they have saved their money in the right sort of account. This is exacerbated by the fact that the pool of publicly traded companies in which IRA investors will be limited to invest has become drastically shallow. Between 1996 and 2016, the number of publicly listed companies in the U.S. fell by half, from 7,300 to 3,600 companies.[6] This significantly decreases the diversification in many retirement accounts and materially increases the risk that individuals may fall short of their retirement goals.

Furthermore, individuals who have already invested in alternative assets in their IRA will be forced to choose between liquidating these investments in a short-term fire sale or incurring the negative tax consequences of stripping their IRA of its tax benefits. Consider individuals who purchased a private equity fund with IRA dollars in August 2021: These investors recently initiated positions knowing that funds will likely not be available to them for ten years while the new companies grow. If they are forced to sell their positions by 12/31/2023, as proposed, they will be selling to a limited market, early in the fund life cycle when values are lowest, to potential buyers who know the sellers have no leverage as the end of 2023 approaches. This is clearly inequitable and will hamstring their retirement accounts. However, the alternative is to pay the income tax on the IRA (including potential early-withdrawal penalties) – an equally inequitable result, especially given the lack of vetting or other notice to the financial industry ahead of these proposed changes.

The Proposal hurts small business and our community

IRA owners support small businesses when investing in private equity or private real estate, and these private projects are vital to our community. A few recent examples: IRA dollars from our clients were invested in a company called Zero Mass Water, which built the hydropanels that provide drinking water to residents of the Warm Springs Reservation. In another example, Vapotherm, a once-tiny company funded primarily by investors in Portland, Oregon (including many of our clients'

---

[4] *See id.* at 64,271. For representative articles addressing the funding plight of minority- and women-owned business, *see* Jonnelle Marte, *Minority-owned business struggle to access credit during pandemic, Fed survey finds*, Reuters, Feb. 3, 2021, and Keenan Beasley, *For Black entrepreneurs, the racial wealth gap makes finding funding nealy impossible*, Fast Company, Jul. 23, 2020.

[5] *Source*: Bow River Capital, CAICS Association (November 2019); World Bank Federation of Exchanges Database (December 2019); McKinsey Global Private Markets Review (2019).

[6] Paul Smith, *Shrinking public markets limit the playing field for the average investors*, CNBC (Jan. 4, 2019)

IRA dollars), now provides front-line respiratory therapy for COVID patients around the world. IRA funds are behind the renovation of several commercial real estate projects on the east side of the Willamette River in downtown Portland as well. Without IRA dollars, these businesses and projects – and many others like them – may suffer or fail to get off the ground, to the detriment of our community.

In addition, I'm sure you are aware that Oregon is home to some world-class asset managers, many of whose investment products are held in IRA accounts. These are just some of the local companies that will be negatively affected if a portion of their business is forced to change hands at fire sale prices due to the proposed legislation: Morrison Street Capital, 3x5 Partners, 801 West, Variant, and Urban Development Partners.

The Proposal does more to increase the wealth gap than shrink it

The proposed legislation will make it more difficult for investors to access the broad investment world by effectively creating a second level of accredited investors – those who are accredited AND have additional assets outside of their retirement accounts. This sort of restriction runs contrary to the stated intent of the legislation, which is to make things more equitable, not less. It also favors giant pension plans over individual IRA investors, as these plans will continue to be able to invest in private assets, while individuals' IRAs are restricted to public markets.

The Proposal will hurt professional service firms

Professional service firms (whether SEC-registered investment advisors like our firm, state RIAs, financial planners, attorneys, or tax professionals) that have recommended or advised clients on private investments will bear the brunt of our clients' anger over the proposed legislation's impact. While we have spent years building relationships, confidence, and trust with our clients, the negative financial impact of forced liquidation sales of private assets or tax penalties for IRA accounts will likely fall squarely on our shoulders. It takes years for us to build the trust we have with our clients and it only seconds to erode it when they lose a substantial amount of money on investments we have recommended.

Thank you for the time and consideration you have given to our concerns. We are happy to provide details on any of the points raised above and would welcome the chance to discuss the proposed legislation in person. Please contact our office if we can be of any assistance in this process. Thank you again for your service.

Best regards,

Reegan Rae, CPWA®
Co-CEO, Managing Principal,
Senior Investment Advisor
rrae@am-a.com

Bryan Shipley, CFA, CAIA
Co-CEO, Chief Investment Advisor,
Managing Principal, Senior Investment Advisor
bshipley@am-a.com