March 14, 2018

The Honorable Sean Duffy
2330 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Duffy:

I am writing to express the Investment Program Association's (IPA) support for H.R. 5051, the "Public Company Registration Threshold Act," which would amend the Securities Exchange Act of 1934 ("Exchange Act") to solve a problematic rulemaking promulgated by the Securities and Exchange Commission ("SEC").

For over 33 years the IPA has supported individual investor access to a variety of asset classes with low correlation to the traded markets and historically available only to institutional investors, including: lifecycle real estate investment trusts, business development companies, interval funds, energy and equipment leasing programs and real estate private equity offerings. These portfolio diversifying investment products have been held in the accounts of more than 3 million individual investors. With over $135 billion in capital investments, they remain a critical component of an effectively balanced investment portfolio and serve an essential capital formation function for national, state and local economies. The mission of the IPA is to advocate through education and public awareness.

As you know, when Congress passed the bi-partisan JOBS Act in 2012 it took an important step of raising the thresholds for mandatory public company registration under Section 12(g) of the Exchange Act. As a result, the threshold was raised from 500 persons, to 2,000 persons or 500 persons who are not accredited investors. This important change has the potential to unlock tremendous amounts of capital for the U.S. economy and spur economic growth.

Historically, when an issuer conducts a Rule 506 securities offering, accredited investor verification requires only self-certification, i.e., an individual states—at the time of sale—that they are accredited and certifies the basis on which they are accredited. Unfortunately, when the SEC drafted the rules implementing this section of the JOBS Act, it overturned thirty years of established precedent by providing that the determination under Section 12(g) of unaccredited investor status must be made annually, as of the last day of the issuer's most recent fiscal year, rather than at the time of the sale of securities. This places non-public companies at tremendous risk of inadvertently crossing this registration threshold.

The cost of public company reporting is tremendous—upwards of six figures yearly—to comply with an initial registration, annual and quarterly reporting, legal and accounting fees, etc. These costs continue indefinitely unless a company is able to reduce its shareholder base and deregister—another timely and costly endeavor. Even a large sophisticated company, particularly those with non-cash flowing investments and a fixed pool of reserves, may not have operating capital or cash reserves for public company reporting. A number of factors can affect

accredited investor status, including stock market changes, job loss, retirements of aging investors, divorce or even death (where one investor may become three).

These costs are ultimately borne by the individual investor—in most cases, an investor that intentionally purchased shares in a private, non-public company. Many of these investors want a company to use its capital to grow, expand operations, provide investor returns and, if it is sufficiently large and has strong capital reserves, conduct a public offering.

Moreover, many companies—including smaller, growing companies intended to benefit directly from the JOBS Act that have already raised capital—are likely unaware of this annual certification requirement and may fold, or be non-compliant, raising SEC enforcement concerns. This is concerning for companies that the JOBS Act was intended to benefit, who raise money from friends, family and loyal customers.

The end result of this rule is that companies that have already raised capital may be faced with unexpected consequences and legitimate companies are faced with continuing uncertainty. The only way to ensure with certainty that a fund or issuer will remain private would be to sell only to 500 investors or less, dramatically reducing the amount of capital they can raise to invest in our economy. This rule does not serve to affirmatively protect investors; in fact, the consequences would hurt the company, and existing, qualified/accredited investors.

Your legislation, H.R. 5051, would solve this problem by removing the unnecessary 500 non-accredited investor threshold, bringing needed certainty to non-public companies and their investors, and unlocking the true potential of the JOBS Act. The IPA supports this common-sense legislation and stands ready to support it as it is considered in the U.S. Congress.

The IPA appreciates this Committee's effort to consider the legislation. If the IPA may be of any assistance to this Committee, please do not hesitate to contact me or Anya Coverman, IPA's Director of Government Affairs and General Counsel.

Sincerely,

Anthony Chereso
President & CEO, Investment Program Association