

**SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES**

Washington, DC 20549-3628

July __, 2016

The Honorable Mary Jo White
Chair
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chair White:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendations regarding the definition of "accredited investor." These recommendations were discussed at an Advisory Committee meeting held on May 18, 2016 and approved by the members of the Advisory Committee present and voting at a meeting held on July 19, 2016.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request with respect to these recommendations.

Respectfully submitted on behalf of the Advisory Committee,

Stephen M. Graham
Committee Co-Chair

Sara Hanks
Committee Co-Chair

Members of the Advisory Committee

Robert Aguilar
Xavier Gutierrez
Brian Hahn
Kyle Hauptman
Jenny Kassan
Catherine V. Mott
Jonathan Nelson*
Patrick Reardon
Lisa Shimkat
Tisha R. Tallman*
Annemarie Tierney
Gregory C. Yadley
Laura Yamanaka

Non-voting members

Michael Pieciak
Mark Walsh

* Not present at the meeting held on May 18, 2016.

**Not present at the meeting held on July 19, 2016.

Enclosure

cc: Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Keith Higgins
Elizabeth Murphy
Sebastian Gomez
Julie Davis

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

Recommendations Regarding the Accredited Investor Definition

From the May 18, 2016 and July 19, 2016 Meetings

AFTER CONSIDERING THAT:

1. The Advisory Committee’s objective is to provide the U.S. Securities and Exchange Commission (the “Commission”) with advice on its rules, regulations and policies with regard to its mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation, as they relate to, among other things, capital raising by emerging privately held small businesses (“emerging companies”).
2. Emerging companies play a significant role as drivers of U.S. economic activity, innovation and job creation. Their ability to raise capital in the unregistered securities markets is critical to the economic well-being of the United States.
3. The exemptions from registration available in Regulation D under the Securities Act of 1933 are the most widely used transactional exemptions for securities offerings by issuers. In 2015, issuers utilizing Regulation D raised over \$1.35 trillion, an amount comparable to what was raised in registered offerings.
4. The “accredited investor” definition is a centerpiece of Regulation D. It is intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act’s registration process unnecessary. Under Securities Act Rule 501(a), a natural person is accredited if that person:
 - earned income that exceeded \$200,000 (or \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or
 - has a net worth over \$1 million, either alone or together with a spouse (excluding the value of the person’s primary residence).
5. In March 2015, the Advisory Committee made recommendations to the Commission as the Commission staff reviewed the definition of accredited investor. At the core of those recommendations was the statement that “the primary goal should be to ‘do no harm’ to the private offering ecosystem.”
6. If the individual income and net worth thresholds underlying the definition of accredited investor were raised significantly, it would considerably decrease the number of households that qualify as accredited investors. This decrease would have a disparate impact on those areas having a lower cost of living, and those areas already often coincide with regions of

lower venture capital activity. The Committee also is concerned that a decrease in the accredited investor pool would have a disproportionate effect on women and minority entrepreneurs.

7. Some commentators have urged that the accredited investor thresholds be increased in order to prevent fraud against investors who may be unable to fend for themselves. The Committee is not aware of any evidence suggesting that fraud in the private markets is driven or affected by the levels at which the accredited investor definition is set.

THE COMMITTEE RECOMMENDS THAT:

1. The core of the Advisory Committee’s 2015 recommendation regarding the definition of “accredited investor” in Rule 501 remains the same: the overarching goal of any changes the Commission might consider should be to “do no harm” to the private offering ecosystem.
2. The Commission should not change the current financial thresholds in the definition except to adjust on a going–forward basis to reflect inflation.
3. The Committee would support expanding the definition to take into account measures of non-financial sophistication, regardless of income or net worth, thereby expanding rather than contracting the pool of accredited investors.
4. Simplicity and certainty are vital to the utility of any expanded definition of accredited investor. Accordingly, any non-financial criteria should be able to be ascertained with certainty.
5. The Commission should continue to gather data on this subject for ongoing analysis of what attributes best encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act’s registration process unnecessary.