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VIA U.S. MAIL and E Mail

September 20, 2013

Elizabeth M. Murphy, Secretary,  
Securities and Exchange Commission  
100 F Street, NE,  
Washington, DC 20549-1090.

Re: File Number S7-06-13

Dear Ms. Murphy:

The California Mortgage Association ("CMA") has requested the undersigned to prepare a response to the Commission's Request for Comment on the Definition of "Accredited Investor". The CMA is a nonprofit trade association with a more than a fifty year history representing real estate brokers and lenders in California who make and arrange loans secured by real property which are funded by private investors.

The CMA members have performed a valuable economic function in providing capital and liquidity in the real estate market by using entrepreneurial skill to underwrite and fund transactions that for one reason or another are not funded by larger financial institutions such as banks. In the past decade the largest market share served by these lenders has been small to medium sized real estate developers, builders, and commercial real estate borrowers.

In the recent financial downturn, where bank lending became much more restricted, the members of this association provided the bridge for moving capital from private lenders to commercial borrowers. In order to accomplish this important economic function, the brokers use various processes to fund these loans, including sale of a single loan to a single investor, sale of loans to up to ten investors as provided by state statute, but in the case of larger loans and more complex transactions, the members of this association use securities transactions to provide for disclosure

and sale. One of the methods used is sale of securities as proved by Regulation D and in particular transactions as allowed under Rule 506.

The offerings under Rule 506 are an important component in raising capital and changes in the definition which would negatively impact the number of eligible investors would be deleterious to this membership and to the commercial borrowers who have used the services of the members to obtain needed capital.

A recent survey of members concluded that there was little or no reason for any change in the current criteria of Rule 501 (a) (5) as of either income or net worth. The responses stated that the members do not have any information that the current tests have resulted in any damage or loss to investors by allowing them to participate in an investment which was not appropriate to their risk profile or asset values, liquid or otherwise. To the contrary there are no known administrative or legal actions where such an allegation was either made or proved. In short the rule as is seems to work and it should not be changed.

Any proposed increase in the current criteria would have a severe negative impact on the number of eligible investors and correspondingly the availability of critically needed capita. At the outset it would be germane to quantify the current number of households which meet the current standards.

According to the GAO study of Alternative Criteria for Qualifying as an Accredited Investor Should be Considered (GAO 13-640) <sup>1</sup> issued in July of this year:

"GAO analysis of federal data on household net worth show that adjusting the \$1 million threshold to approximately \$2.3 million, to account for inflation, would decrease the number of households as qualifying from approximately 8.5 million to 3.7 million"

A couple of points need to be made. First there were 114 million households in the United States according to the 2010 census, so at the current net worth level just over 7% of the households would qualify under the existing rule.

Second, the census statistics show that just over 6% of the households in the United States have incomes in the top five percent, with an a lower limit of \$186,00 per year.<sup>2</sup>

It is submitted that using income and net worth that allow investment in these Rule 506 transactions to only the top six or seven percent of all households in the United States is an appropriate demarcation and no change should be made.

An additional part of the questions presented ask if the current criteria, income and or net worth, are the appropriate criteria or should other tests such as investor knowledge and experience in financial matters demarcate if the potential investor is capable of evaluating the risks and rewards

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<sup>1</sup> <http://www.gao.gov/assets/660/655963.pdf>

<sup>2</sup> [http://en.wikipedia.org/wiki/Household\\_income\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Household_income_in_the_United_States)

Elizabeth M. Murphy, Secretary,  
Securities and Exchange Commission  
9/23/2013  
Page 3

of the prospective investment. As to this point some of those responding to the recent survey endorsed the ideas of testing, or experience as an ALTERNATIVE to the existing criteria thereby rationally increasing the investor pool.

At the same time we would caution that creating a new set of rules and regulations that emulate the requirements of investment advisors or other fiduciaries would be difficult to define, difficult to implement, and the necessary accompanying vagueness would act to limit and inhibit the appropriate soliciting of needed investment capital.

The desire to change the definition of Accredited Investor should proceed in light of the stated goal of the JOBS act to help small business (the full name of the act is “Jumpstart our Business Startups”). Decreasing the pool of eligible accredited investors by either raising the current standards or imposing additional criteria will serve only to limit the pool of capital vitally needed by the borrowers served by CMA.

In summary it is the position of CMA that the current standards are working well, limiting the potential pool of investors to the top six or seven percent of American Households, and that any additional criteria should be provide additional alternative tests rather than to restrict the existing criteria.

Thank you for the opportunity to submit this information. Please also copy the CMA directly with any correspondence relating to this matter at the following address:

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Very truly yours,

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Elizabeth M. Murphy, Secretary,  
Securities and Exchange Commission  
9/23/2013  
Page 4