



October 6, 2014

On behalf of the private investment fund industry (hedge funds, private equity funds, venture capital funds and real estate funds) and other growing operating businesses seeking capital in the United States from private investors rather than banks, the Hedge Fund Association (HFA) is concerned with the U.S. Securities and Exchange Commission's (SEC) discussion of proposed changes to the definition of an "accredited investor" under Rule 501 of Regulation D. The HFA strongly and respectfully urges the SEC to reject an increase in the current requirements, originally set in 1982, to account for inflation. It is important to note that the definition was significantly narrowed when the value of an investor's primary residence was excluded under The Dodd–Frank Wall Street Reform and Consumer Protection Act. Such a change would fundamentally undermine the private placement market which infused nearly \$50 billion into the United States' economy in 2013 and will materially and negatively impact small business growth by reducing the number of accredited investors in the United States by more than half.<sup>1</sup>

For example, while on the surface the hedge fund industry appears to be thriving, the vast majority of the inflows to the industry have accrued to a small number of large funds. The disparity in assets under management between large and small funds has widened since the recession of 2008, and smaller funds have found it even more difficult to raise capital and stay in business. Small fund managers rely heavily upon investments made by high net worth individuals rather than institutional investors. An increase in the financial requirements under the accredited investor standard will have a devastating impact on emerging and small managers. In turn this will reduce Americans employed as analysts, traders, back office support, marketing, accountants, attorneys, compliance personnel, personnel assistants and receptionists both internally to these firms seeking capital, as well as third party vendors such as administrators, broker-dealer, accounting firms, law firms, technology companies and in the travel and hospitality industries. The private investment fund industry and growing operating businesses seeking capital from private investors rather than banks will be harmed and the legacy of this decision will have a deep and long lasting negative impact on all of these industries and our economy.

While the HFA fully appreciates and shares the SEC's goal of protecting investors from making investments which are beyond their financial sophistication, the HFA believes using net worth or income as a litmus test for investor sophistication is outdated. Under the current standard, wealthy individuals can lose a great deal of money by making ill-informed investment decisions while well informed, highly sophisticated and less wealthy investors are prevented from investing in private funds because of an arbitrary economic cut off. The HFA believes that the goal of protecting investors can be better achieved through alternative means. The HFA favors a number of alternatives, such as (i) a knowledge or education-based standard, (ii) a requirement that a non-sophisticated investor engage an

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<sup>1</sup><http://www.forbes.com/sites/devinthorpe/2014/07/15/sec-mulls-changes-to-accredited-investor-standards-18-crowdfunders-react/>



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independent registered investment professional to review and approve the investment, or (iii) limiting the maximum percentage of net worth that any investor may contribute.

The HFA was very supportive of The Jumpstart Our Business Startups Act (JOBS Act), which was passed with the intent of making capital raising easier on growing business, and private investment funds. Any restriction on the definition of "accredit investor" that is arbitrarily based on a net worth criteria would in our opinion undermine the intent and objective of the JOBS Act.

The HFA welcomes the opportunity to work with the SEC and Congress to ensure that any new definition of "accredited investor" achieves objectives that both the regulators and the industry desire and assist the government in adopting more commercially prudent standards. The HFA supports any sensible change that enhances investor protection, but is strongly opposed to any change in the rule which would further restrict the investor pool resulting in a higher barrier to entry for start-up funds, increased challenges for emerging private investment funds and growing operating businesses, and a stifling of capital formation. This will result in a loss of jobs not only within each of these companies, but also at companies which they employ such as administrators, law firms, auditors, banks and broker-dealers and many other related industries who rely so heavily on smaller/startup private investment funds and growing operating businesses for much of their business. We are in the process of a slow recovery from a global recession, and the SEC and Congress must be careful not to implement any rule that will stifle job growth and in fact lead to job losses in these precarious times.