



September 6, 2016

Via Electronic Submission (www.sec.gov)

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

**Re: Report on the Review of the Definition of “Accredited Investor”
File No. 4-692**

Dear Mr. Fields:

The Investment Program Association (“IPA”) and the Alternative & Direct Investment Securities Association (“ADISA”), jointly submit the following comments with respect to the review of the definition of “accredited investor” by the U.S. Securities and Exchange Commission (the “Commission”). On December 18, 2015, the Staff of the Commission (the “Staff”) issued a Report on the Review of the Definition of “Accredited Investor” (the “Report”), and the Commission has requested comments with respect to the matters addressed therein and to any other matters relevant to the definition of “accredited investor.”

The IPA and ADISA both deliver education and engage in advocacy on behalf of the direct investment industry. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios. They are essential elements in the capital formation process, and help drive growth in the United States economy. The industry includes multiple program sponsors and managers that work with 30,000-plus investment professionals serving the interests of more than 2 million investors.

ADISA and the IPA share a common mission to ensure that investors, financial professionals and program sponsors are informed and educated about investing fundamentals and the role that alternative and direct investment programs can play in portfolio construction and investment management. Both organizations are driven to promote product transparency, high ethical standards and dedication to being advocates for the best interest of investors.

Introduction

Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) directs the Commission to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition should be modified or adjusted for the protection of investors, in the public interest and in light of the

economy. For the reasons set forth herein, the IPA and ADISA believe that there is no objective, measurable basis for changing the definition at this time. The two organizations further submit that the potential for market disruption and investor harm that might result from changing the definition outweighs any potential investor protection or other public policy benefit, and believe that changes to the definition might in fact negatively impact the ability of companies and businesses across the country to raise needed capital for their operation and growth.

No Changes Are Needed to Protect Investors

In the Dodd-Frank Act, Congress effectively required that the Commission review whether the definition serves to adequately protect individual investors who participate in private offerings conducted under Regulation D. In its Report, the Staff discussed various ways in which the definitional elements applicable to individuals could or should be raised to exclude, in the future, persons who qualify – albeit perhaps narrowly – under the current definition. Notably, however, the Report did not identify, and neither the IPA nor ADISA are aware of, evidence that demonstrates conclusively that fraud or significant economic harm has been visited upon investors in private placements was a result of the current definition. In fact, if there are concerns around the existence of fraud in the private markets, they have been linked more to programs, etc., involving high net worth investors, rather than those sold to investors who only narrowly qualify as accredited investors.

At bottom, the original investor protection goals that support the notion of limiting Regulation D offerings to accredited investors have not been shown to be undermined by the current definition. The current definition appears to adequately identify investors whose financial sophistication and ability to sustain the risk of loss of investment or have the ability to fend for themselves. As noted in the Report, moving up the net worth threshold for accreditation, whether by adding an indexing element or otherwise, would have the effect of substantially reducing the number of persons and households that would qualify as accredited investors. There is no proof that the persons and households that would no longer be “accredited” if the definition threshold were raised are in fact unable to fend for themselves or have otherwise experienced harm by being permitted to invest in private placements, as is currently the case. Quite simply, there is no evidence to suggest that these investors are being harmed currently, and that excluding them from participation in future private placements would contribute to the SEC’s goal of investor protection.

We note in this regard that the SEC Advisory Committee on Small and Emerging Companies (the “Committee”), issued its recommendations on July 20, 2016, and point out the fact that the Committee ultimately recommended that there be no changes to the current financial thresholds found in the definition. As set forth in its report, the Committee observed that several 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.

There is no Discernible Public Interest to be Served

It is undoubtedly true, and the Staff acknowledged in its Report, that more people qualify as accredited investors than did previously, especially when the current totals are compared to those in existence at the time that the definition was first adopted. By itself, however, the fact that more people can participate in private offerings now than four (or nearly 40) years ago does not constitute a compelling and policy-based public interest rationale for revising the definition.

In addition, and as noted in the Committee's recently submitted report, there is a substantial likelihood that a decrease in the size of the accredited investor pool brought about by an increase in the net worth threshold applicable to individuals would have a disproportionate effect on women and minority entrepreneurs. The IPA and ADISA share this concern and support expanding the availability of investment opportunities and capital formation for all US citizens and residents, including women and minorities.

Avoiding disruption to the Private Placement environment

Economic growth in the United States, though positive, has been weak by historical standards. This weakness suggests the need to avoid changes in regulations and regulatory policy that could have a negative impact on capital formation and, in turn, job creation. The IPA and ADISA agree, therefore, with the Committee's assertion that one of the primary goals of the Commission in reviewing the current regulation should be to ensure that no changes are proposed that could harm or otherwise damage the current private offering marketplace and the role it plays in capital formation. As noted in the Committee report, "[i]f 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."

Additionally, ADISA and the IPA want to focus attention on the large, potentially destabilizing impact on investors and investment programs that can and likely would result from introducing definitional changes into the private offering environment. Several years ago, when the value of an individual's principal residence was removed from his or her net worth calculation, an enormous number of investors went from accredited to non-accredited literally overnight. These investors lost access to private placements as a result of the change, despite there being no evidence to support that these investors had been harmed by their inclusion prior to that time in the universe of accredited investors.

That change was implemented, admittedly, at the direction of Congress. In the present instance, since any changes introduced by the Commission would have to be based on investor protection, public policy and/or economic issues and there would need to be a compelling basis for introducing change. The likely disruptive consequences of the proposed change would have to be offset, if not wholly outweighed, by the potential benefits to be achieved by said change.

Any changes to the definition of accredited investor introduced by the Commission would likely have a far-ranging and negative impact on all manner of investors and private placement offerings. Investors who are accredited under the current definition and who have purchased interests in various companies and programs through private placements would be at substantial risk of being excluded from future participation in the same companies and programs in which they already have invested, or excluded from making investments in follow on or successor programs. Adopting rule changes that substantially impact on-going programs and capital raising efforts is potentially threatening to the formation process itself and seemingly punishes issuers and investors alike without a substantial policy-based rationale.¹

At bottom, the impact on the capital formation process of changing the definition of accredited investor is not susceptible to precise measurement. It is, nonetheless, highly likely that the result of any increase to the net worth threshold established for individual participation in private placement offerings would decrease the number of persons eligible to participate in private placement offerings and decrease the number of offerings and/or the amount of capital raised from those who are still deemed accredited after the change. Introducing a revised definition without any real assurance that said change is likely to substantially improve investor protection or address proven harm would constitute unfortunate regulatory policy, and should be avoided at all costs.

¹ In similar fashion, issuers that currently enjoy an exemption from registration of their securities under the Section 12(g) of the Securities Exchange Act of 1934 would, under new rules adopted under that section, potentially have to register their securities solely because changes to the definition of accredited investor. Because the exemption ties in part to the number of non-accredited investors holding these securities, an issuer might have to register such securities under the Act solely because the annual affirmation of accredited status required under the rule moved too many accredited holders into non-accredited status.

On behalf of our respective organizations, we would like to thank the Commission and Staff for their consideration of our comments on the important issue of investor accreditation. We are prepared to provide any additional information that the Staff may require to ensure that investor interests are protected and that the private capital needed to drive our nation's economy remains accessible.

Respectfully submitted,



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