January 31, 2011

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

Re: File Number S7-04-11
SEC Release No. 33-9177

This is to express our objections to the SEC's proposed amendments to Regulation D's $1,000,000 minimum net worth standard for natural persons to be designated as *accredited investors*. Section 413 of the Dodd-Frank Act unambiguously states that this net worth calculation must "exclude the value of the [investor's] primary residence." Put another way, Congress mandated that the value of the investor's primary residence be removed from the asset side of the investor's balance sheet in calculating an investor's net worth. Instead of following this mandate, the SEC now proposes to dilute its effect by adding, after the Dodd-Frank language, the phrase "calculated by subtracting from the estimated fair market value of the property the amount of debt secured by the property, up to the estimated fair market value of the property." The SEC proposes to remove from the debt side of the investor's balance sheet any debts secured by the asset that Congress removed from the asset side of the investor's balance sheet. This proposal would significantly undermine Dodd-Frank's reform by significantly decreasing the number of investors otherwise entitled to the full panoply of disclosures required by Regulation D for non-accredited investors. Consequently, the SEC should withdraw its proposed additional language, and, consistently with the statute, clearly exclude the entire fair market value of the residence in calculating net worth for accredited investor status.

Congress, in enacting the Dodd-Frank reform to exclude the investor's home from the $1,000,000 minimum net worth accreditation standard, was clearly cognizant of longstanding criticisms of Regulation D's income and net worth criteria for accreditation of individual investors. As noted by numerous authorities since Regulation D's promulgation, these wealth-based standards for natural persons never rationally related to investors' *ability* to fend for themselves, to bear the economic risks of offered investments or to assess the risks of those investments. Prior to Dodd-Frank, it had become common practice for securities professionals to accredit investors largely, if not solely, on the basis of the fair market value of those investors' homes. Moreover, the $1,000,000 threshold was set almost thirty years ago and would require a net worth of well over $2,000,000 in today's dollars, based on the consumer price index. Stated conversely, the $1,000,000 net worth standard as presently applied represents a net worth of roughly $450,000 at the time Regulation D took effect. Even assuming that the $1,000,000 standard provided some evidence of prospective investors' abilities to fend for themselves at the time of its promulgation back in 1983, it is highly unlikely the SEC would make this assumption today on the basis of an investor's net worth of less than half-a-million dollars. It is incredible for anyone, especially the SEC, to assert that $450,000 in net worth magically transforms ordinary investors in Regulation D offerings, who are entitled to prescribed disclosures based on SEC disclosure formats, into *accredited* investors, who are not entitled to those prescribed disclosures at all.

It was in this context that Congress in the Dodd-Frank Act statutorily mandated the exclusion of *the value of an investor's primary residence* from the $1,000,000 net worth calculation. Congress did not mandate exclusion of the *net equity* the investor may or may not have in that primary residence, based on any leveraging of that asset, whether to buy the home or to invest in securities. Congress, in using the phrase "the value of an investor's primary residence," was referring to the fair market value of the improved real estate used as the primary residence. Congress did not address, directly or indirectly, the issue of debts that might be owed by a given investor since those debts would be separately included as a necessary part of the required net worth calculation. Similar to the example given in the SEC's release, let's assume we have a retired couple with total assets of $1,700,000, including a home valued at $1,200,000, and a mortgage debt of $600,000, resulting in a net worth of $1,100,000. Under the SEC's proposal, these retirees would be accorded accredited investor status, and, consequently, those selling securities to them would not be required to provide them with the disclosures otherwise required by Regulation D. Indeed, the SEC's proposal would serve to increase this retired couple's net worth by $600,000, the amount of the mortgage indebtedness, and $600,000 more net worth than would be calculated under the Dodd-Frank reform. On the other hand, application of Congress' mandate to exclude the entire value of the primary residence in calculating net worth would deny accredited investor status to this retired couple. In other words, excluding the entire value of their home from their total assets would result in a negative net worth calculation of ($100,000) for this couple, thereby denying them accredited investor status and *entitling them to the disclosures* prescribed by Regulation D. In stark contrast, the SEC's proposed rule would leave these investors in the dark.

In proposing this rule, the SEC has failed to follow either the letter or spirit of Congress's mandate by significantly diluting Dodd-Frank's required exclusion of the value of the primary residence in calculating accredited investor minimum net worth. The SEC, despite intense criticism across the board for its regulatory failures in recent years, most recently from the Financial Crisis Inquiry Commission, seems not to have lost its deregulatory fervor, continuing to favor the financial services industry over investors. This proposal, if adopted, would suggest that the SEC has lost sight of its mission to protect securities investors through *increased* rather than *decreased* disclosures. We urge the SEC to withdraw its proposed additional language and, consistently with the Dodd-Frank Act, adopt a rule that would exclude the entire fair market value of the residence in the accredited investor net worth calculation. We also urge the SEC to consider additional exclusions of investors' interests in pension funds, IRA's, SEP's and other retirement accounts. Certainly, these other assets, critical to investor well-being in retirement, should not be considered in determining whether an investor is rich enough to be considered an accredited investor. Moreover, exclusion of both the home and retirement assets would ensure that a greater number of investors will be provided the maximum disclosures required by Regulation D in making their investment decisions.

Sincerely,

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