

March 9, 2011

*VIA ELECTRONIC MAIL*

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

**Re: Net Worth Standard for Accredited Investors; SEC Release IA-3144; File Number S7-04-11**

Dear Ms. Murphy:

The Investment Adviser Association<sup>1</sup> appreciates the opportunity to comment on the Commission's proposed rule to amend the accredited investor net worth standard in rules under the Securities Act of 1933 to reflect the requirements of section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").<sup>2</sup> Section 413(a) of the Dodd-Frank Act requires that the definition of "accredited investor" in Securities Act rules be modified to exclude the value of a person's primary residence when determining whether the person qualifies as an accredited investor on the basis of having a net worth in excess of \$1 million. We appreciate the Commission's efforts to efficiently implement the Dodd-Frank Act and submit comments with respect to one aspect of the proposal.

Prior to the Dodd-Frank Act, the standard for an accredited investor required a minimum net worth of more than \$1 million, but permitted the investor's primary residence to be included in calculating net worth. Under the proposed rule, the amount excluded from a person's net worth to account for the person's primary residence would be 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.<sup>3</sup> We support the proposed

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<sup>1</sup> The Investment Adviser Association is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of more than 500 firms that collectively manage in excess of \$10 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> Net Worth Standard for Accredited Investors, SEC Rel. IA-3144 (Jan. 25, 2011) ("Proposed Rule"), available at <http://sec.gov/rules/proposed/2011/33-9177.pdf>.

<sup>3</sup> Proposed Rule at 7.

method of calculating the value of the primary residence and believe it is more appropriate than the other methods considered.

The Commission has asked for comment on whether there should be a transition or grandfathering provision to address subsequent investments by investors that were qualified as accredited prior to the Dodd-Frank Act. As proposed, the rule would not permit a company or fund to treat an investor as accredited if the investor subsequently loses that status, even if the investor had previously invested in the company or fund at a time when it satisfied the accredited investor standard. We submit that the Commission should allow for subsequent investments by an investor who previously qualified as accredited but was disqualified by the change effected by section 413(a) of the Dodd-Frank Act. We agree with the Commission's observation that, "an investor that qualified as an accredited investor in a previous sale under Regulation D before enactment of the Dodd-Frank Act may wish to invest in the same company or fund in order to retain its proportionate interest in the company or fund or to exercise rights that have arisen because of that interest."<sup>4</sup> The Commission also contemplates that companies may desire to make offerings to current investors who invested as accredited investors.<sup>5</sup> Without a grace period, grandfathering, or other transitional scheme, investors and companies who planned for long-term investments may be prevented from fully achieving their goals. Investors will be deprived of preemptive rights, rights of first refusal, and other contractual protections.<sup>6</sup> Further, existing investors presumably have already conducted due diligence on and are familiar with the issuer, and have determined that the investment is appropriate for them.<sup>7</sup> Permitting follow-on investments with respect to the same investment and issuer therefore poses little risk of harm.

To enable investors to protect their existing investments, we propose a minimum one year grace period for follow-on investments by investors who previously qualified as accredited. We propose that for one year after the effective date of the rule investors who previously qualified as accredited but are now disqualified as a result of the exclusion of the value of their primary residence from their net worth be permitted to be treated as accredited by companies and funds in which they invested prior to losing their accredited status. This year will serve as an adjustment period for companies and investors during which agreements and commitments can be renegotiated and the dates of any rights offerings that were planned for the near to mid-future can be accelerated. This grace period would apply only to investors directly affected by the implementation of section 413(a). In the alternative, we suggest comparable transitional rules to avoid disrupting current relationships between companies and their investors.

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<sup>4</sup> *Id.* at 14.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 15.

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We appreciate the Commission's consideration of our comments and welcome the opportunity to work with the Commission to craft a transitional provision that will protect investors. Please feel free to contact me if we may provide additional information regarding these or other issues.

Sincerely,

/s/ Karen L. Barr

Karen L. Barr  
IAA General Counsel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner