



The Commonwealth of Massachusetts

*Secretary of the Commonwealth
State House, Boston, Massachusetts 02133*

*William Francis Galvin
Secretary of the Commonwealth*

March 11, 2011

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

Re: Net Worth Standard for Accredited Investors
Release No. 33-9177; IA-3144; IC-29572
File No. S7-04-11

Dear Secretary Murphy:

The Massachusetts Securities Division (the “Division”) welcomes this opportunity to comment on the U.S. Securities and Exchange Commission’s (the “Commission”) request for public comments on the amendments to the definition of “accredited investor” in Securities Act rules to reflect the requirements of Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

The Securities Division is a department within the Office of the Secretary of the Commonwealth of Massachusetts. The Division is charged with the responsibility to implement and enforce the Massachusetts securities laws. As such, the Secretary of the Commonwealth is the chief securities regulator for Massachusetts.

Section 413 of the Dodd-Frank Act begins the long-overdue process of bringing the financial standards for individuals to be considered accredited investors up to date. As the Commission and several commenters have noted, the rule that investors are considered accredited based on a total net worth of \$1 million was established nearly 30 years ago. Prior to the Dodd-Frank Act that rule was never updated, despite repeated requests from investor advocates. For many years, this low threshold for accredited investor status has deprived vulnerable investors of the protections provided by securities registration.

Secretary Elizabeth M. Murphy
US Securities & Exchange
March 11, 2011
Page Two

Under the Commission's regulations, accredited investors are presumed to be able to fend for themselves in the financial markets if they meet minimum levels of income or net worth, even when they are not sophisticated. Such financial benchmarks, particularly individual net worth, have no correlation whatsoever to an investor's actual ability to fend for herself in a transaction involving a complex, illiquid, or high-risk securities.

When the Dodd-Frank Act became law on July 21, 2010, Section 413(a) immediately removed the value of an investor's primary residence from the calculation of an investor's net worth for accreditation purposes. Despite the clear and simple language of the Dodd-Frank Act, the Commission now proposes to adopt a rule that excludes both the value of the investor's primary residence and mortgage debt on that property, up to its estimated fair market value. The Commission's proposed rule would have the effect, for most investors, of removing mortgage debt secured by the investor's residence from that investor's balance sheet, thereby raising the investor's net worth. As a result, a larger number of investors will be considered accredited for the purposes of Regulation D and other exemptions than would otherwise be the case.

We urge the Commission not to adopt the rule as it is currently proposed. The proposed rule undercuts the plain language of the statute, which simply removes the value of the primary residence for the purpose of determining accreditation, not the investor's net equity.

Also, we note that most home loans provide for recourse against the borrower if the value of the property securing the loan does not cover the full loan amount. Because homeowners are on the hook for their mortgage loans, it makes no sense to remove such loans from the liability side of these investors' personal balance sheets.

Apart from this proposal, we urge the Commission reconsider whether financial qualifications alone should ever be used to determine whether investors need the protections provided by registration of securities under the Securities Act.

Investors are particularly at risk when they are determined to be accredited on the basis of just their net worth, without any showing of either sophistication or a high income. In our experience, such "asset rich" investors are often older, conservative savers who are not in a position to replace funds lost in bad investments. The Commission should exercise maximum caution when setting a standard for investors to qualify as being accredited based solely on net worth.

Secretary Elizabeth M. Murphy
US Securities & Exchange
March 11, 2011
Page Three

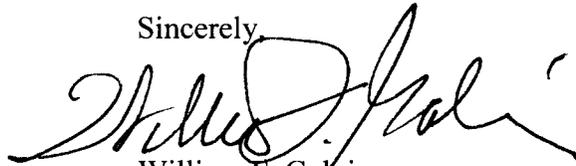
These issues relate to sales practices as well. Too many brokerage firms hide behind the cover of a customer's accredited investor status to defend their failing to adequately determine suitability.

Going forward, if the Commission wishes to continue to use financial benchmarks to determine when individual investors can fend for themselves in the financial markets, it should augment the standard to include the investor's financial investments owned. Moreover, in regard to such standards, we agree with comments submitted by Professors Manning Warren III and Marc Steinberg that retirement accounts and pensions should be excluded when determining whether an individual should be considered accredited.

The federal and state securities laws are based on a policy of investor protection. This policy mandates that the Commission implement Section 413(a) of the Dodd-Frank Act in a way that mirrors the plain language of that statute and establishes an accreditation standard that safeguards less sophisticated investors.

Please contact me or Bryan Lantagne, Director of the Massachusetts Securities Division, at (617) 727-3548, if you have questions about these comments or I can assist in any way.

Sincerely,

A handwritten signature in black ink, appearing to read "William F. Galvin". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts