

2014 SEC Government – Business Forum on Small Business Capital Formation

Accredited Investor Definition

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Current Accredited Investor Definition

- Individuals
 - Wealth
 - Income
- Entities

Role of Accredited Investor Definition

- Bring certainty to exceptions to Rule 506 limitations on number of investors and information requirements (and to 4(a)(5) exemption).
- Identify permitted investors if general solicitation used (Rule 506(c))
 - Since JOBS Act
 - Verification requirement
- Identify holders of record who do not count toward 500 limit until 2,000 limit crossed for 12(g) registration

Assessing Accredited Investor Definition

- All can agree on desirability of balancing investor protection and facilitation of capital formation, including importance of investor confidence to capital formation
- Issue is structuring “right” balance
 - Tightening definition impairs capital formation; expanding it enhances capital formation

Assessing Accredited Investor Definition (continued)

- Surrogate for sophistication/ability to fend for oneself or to hire someone who can (and secondarily to bear loss of investment)
- Is precision necessary/desirable or just general approximation?
- Should it be approached theoretically/analytically or practically/pragmatically?

Alternatives for Accredited Investor Definition Revision

- Scrap wealth/income test and adopt truer sophistication test
- Add qualitative sophistication criteria
- Index quantitative wealth/income tests
 - Retroactive/prospective
 - Reasons for and against indexing
- Do nothing based on absence of evidence of a problem

Factors to Consider

- Investor protection
 - Does it enhance investor protection?
 - Is there a problem in need of fixing?
- Capital formation
 - Is it enhanced or impaired?
- Is the test workable?
- Is the test “verifiable”?
- Political impact