

26 January, 2011

Dear Mary Schapiro, Chairman, Securities and Exchange Commission and Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Ms. Casey, Ms. Walter, et Messrs. Aguilar and Paredes, Commissioners, Securities and Exchange Commission,

I write not as to this Rule, which is merely a procedural codification of needed changes from Dodd-Frank. However, I write instead with respect to a related issue under Section 415 of the Dodd-Frank Act and rules such as this one which, though tiny in their scope and procedural in their nature, make it incrementally harder again to properly re-examine the accredited investor rule.

Many proxies in the United States have now outlived not only their utility, but their accuracy. The most debated is the use of race as a proxy for disadvantage in college admissions. One of the few standards that has managed to age even less gracefully is the use of net worth excluding primary residence as a proxy for investor sophistication.

Once a piece of relatively accurate legislative shorthand, the accredited investor standard now encompasses a population that stretches from the boardroom to the middle-class suburb. The accredited investor standard, to serve its intended purpose as an exception to consumer safeguards, must bear some relation to the ability of consumers to understand financial instruments. In this, it fails miserably, not only as an estimation of skill, but as a metric for vulnerability. Many investors above an arbitrary threshold will, invariably, be just as outmatched in the market as their lower-net-worth peers – they will simply have farther to fall.

Yet, financial instruments continue to be more complex and less decipherable while an ever-larger number of Americans fall within the accredited investor rule's non-protection. Those who suddenly find themselves beyond the threshold of the accredited investor rule are, ironically, the ones least comfortable with the complex range of investments allowed for accredited investors – it is difficult to imagine how an unremarkable and poorly-attended-to undergraduate education and a seven-figure salary earned on the basketball court equips one to ably manage even a relatively simple portfolio.

One argument that has for decades persisted both in the policy conversation and in the literature is that wealthy people can hire able counsel to guide them through the complex world of more unusual investments. It needn't be said that in a post-Madoff world this argument seems particularly dubious. And, as you are aware from your interactions with the financial industry, the client worth only a few million dollars is unlikely to be able to hire the best advice on every issue without bankrupting himself in the process.

I urge you, Madam Chairman and Commissioners, to consider the implications of the accredited investor rule going forward rather than merely bringing SEC regulation in line with Dodd-Frank with no additional substantive change.

Thank you, Madam Chairman and Commissioners several, for this opportunity to comment on the proposed Rule.

Sincerely,

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