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Comments to Proposed SEC Rule on Accredited Investors

1. Should the value of the residence be calculated by netting out the debt secured by the residence, as proposed? Or would it be more appropriate to exclude the entire fair market value of the residence from net worth, without netting out any associated debt?

   Yes, the value of the residence should be calculated by netting out the debt secured by the residence, as proposed. If you exclude the entire value of the residence you would disqualify more investors from participating in private placements based solely on the size of the home they purchased. For example, an investor who owns a $20,000,000 home, with a $10,000,000 mortgage, and $10,000,000 in cash investments, could otherwise be excluded from investing in private placements as an accredited investor. Home ownership is likely the single largest investment most people make, regardless of their net worth. They should not be penalized for allocating a significant amount of their net worth to home ownership. Investors should have the right to decide what portion of their net worth they want to invest in securities versus their home. The focus of the rule should be to exclude the "illiquid portion" of someone's net worth that is invested in their home.

2. Would it be more appropriate to substitute the word "equity" for the word "value" when referring to the primary residence in our accredited investor net worth standards?

   Yes, the word equity would be more appropriate than value because it would be more consistent with the SEC's proposed interpretation of the rule.

3. Should we interpret Section 413(a) to exclude from the net worth calculation both the fair market value of the primary residence and all indebtedness secured by the primary residence, regardless of whether such indebtedness exceeds the fair market value of the property?

   Yes. Whether a home's net value is up or down is highly speculative in today's current environment. Appraisers are now including the value of foreclosed homes and short sales in home appraisals because they are so common. This has resulted in significantly lower appraised valuations for homes than a willing buyer and seller may otherwise agree on. Trying to evaluate home values and associated debt will create a tremendous burden on the securities sales process.

4. Is another interpretation of Section 413(a) superior to those we discussed?

   No Comment.

5. Should we define the term "primary residence" for purposes of our accredited investor net worth rules? If we define the term, should we use a definition under the federal income tax code? If so, should we also incorporate into our definition a reference to guidelines issued under the federal income tax code? Alternatively, should we define "primary residence" as the commonly understood meaning of the term—the home where a person lives most of the time? What alternative definitions would you recommend? For

example, should we define the term by listing several factors to consider? Would the factors from the IRS publication listed in note 35 be the appropriate factors, or are there different factors that should be included?

No, investors and businesses should have the freedom to make good faith representations to one another in connection with the sale of securities. A person's primary residence is also based, in part, on someone's intent. The fewer regulations the better, and the last place you want to send someone for a clear answer is the tax code.

6. Should we require inclusion of debt secured by a primary residence in our proposed accredited investor net worth standard if proceeds of the debt are used to invest in securities? How would these proceeds be traced? Would companies and their prospective investors find this standard workable? Should distinctions be made among different kinds of securities? Are there other assets besides securities that should be taken into account?

   No, investors should be able to choose whether or not to have investments in securities or homes. If they choose to invest in securities, they will have a liquid net worth from which to make investments. Many investors already leverage their homes to create investment liquidity.

7. Should the rule provide that the calculation of net worth must be made as of a specified date before the sale of securities under Regulation D, for example, 30, 60 or 90 days, as well as at the time of sale? If not, would investors be likely to inflate their net worth by borrowing against their homes to attain accredited investor status? If we required that the net worth calculation be made a significant period of time in advance of the sale, would such a requirement make the calculation unduly complex or otherwise make exempt offerings to accredited investors less useful for issuers?

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8. Issuers and investors have calculated net worth under the Regulation D accredited investor standards for many years without specific instructions in the rules on how the calculation should be performed. Would guidance in the rules on how to calculate net worth, in addition to the new standards governing valuing the primary residence and treating related mortgage debt, be helpful? For example, should we adopt rules specifying what should be included as assets and debt, and how various kinds of assets should be valued? If so, what additional rules would be appropriate?

   No, investors and businesses should have the freedom to make good faith representations to one another in connection with the sale of securities. The securities rules are meant to protect investors. Investors who "inflate" their net worth for purposes of participating in private placements do not warrant protecting. Imposing more rules will increase compliance costs and further impede the creation of new capital. Creating specific valuation rules is tantamount to writing accounting standards to which there is no end.

9. Should we adopt any transition or other rules providing that an investor who previously qualified as an accredited investor before enactment of Section 413(a), or adoption of the proposed amendments, may continue to qualify as such for purposes of subsequent or "follow-on" investments, such as investments to protect its proportionate interest in a company or fund or to exercise rights that arise because of that interest, or would that be inconsistent with the purposes of Section 413(a)? If we should adopt such an approach, are there other types of investments that should qualify for such treatment? Would investors' ability to protect their then-existing investments be inappropriately adversely affected if we did not provide such treatment? Would issuers' ability to raise capital be inappropriately impeded if we did not provide such treatment? If we did this, should we limit the amount of permissible follow-on investments, such as limiting them to the amount necessary to protect the investor from dilution? What conditions should we place on qualifying for such treatment? Is this unnecessary because the Section 4(2) private placement exemption may be available for sales to such an existing investor? Instead, should we provide that an investor who previously qualified as an accredited investor, but no longer qualifies as a result of Section 413(a), would not count towards the 35 non-accredited investor limitation of Rules 505(b) and 506(b)[43] for offerings by issuers in which the investor held investments at the time the Dodd-Frank Act was enacted?

Yes, investors who have already invested in a company or fund should be "grandfathered" as accredited investors under the new rule. The information requirements that must be provided to non-accredited investors are materially different than accredited investors. Most companies and funds will simply exclude these investors from participating in any future offering of securities. They will not attempt to rely on broader 4(2) exemptions because it will create unnecessary securities risk related to the offering process. As a result, investors who have already purchased an interest in a fund or company will be excluded from future offerings which may conflict with their existing "bargain for" rights. These rules should simply "not apply" to existing funds and company investors who have already chosen to invest in a fund or business and who are already familiar with the business. Instead of protecting investors, which is the point of the new rule, the rules will hurt existing investors. You would essentially be telling investors that they are no longer "smart enough" to continue to invest in these funds or companies.