U.S. Securities and Exchange Commission
100 F Street, N.E.
Room 3650
Washington, D.C. 20549-3628
Attn: Elizabeth Murphy

Re: Section 413 of Dodd-Frank[1]; SEC File No. S7-04-11

Dear Ms. Murphy:

The Investment Program Association (IPA) appreciates the opportunity to comment upon various changes contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") to the definition of "accredited investor" under Rule 501 of the Securities Act. The IPA was formed in 1985 to provide the direct investment industry with effective national leadership, and today is the leading advocate for the inclusion of direct investments in a diversified investment portfolio. IPA members include direct investment product sponsors, FINRA member broker-dealer firms, and direct investment service providers.

IPA has followed with great interest the various rule and study proposals contained in the Dodd-Frank Act and would like to voice its opinion regarding Section 413, the definition of "accredited investor," that materially and adversely affects the business of IPA members and stifles small business capital formation in the United States.

Primary Residence Indebtedness

Section 413 of the Dodd-Frank Act modified the accredited investor net worth test standard for individuals to $1 million, *excluding* the value of the investor's primary residence. Although the dollar threshold for the net worth test was not increased, by excluding the value of an investor's primary residence, the Dodd-Frank Act has effectively tightened the eligibility standards for individuals to meet the test for accredited investors. The SEC staff's published guidance[2] noted that when determining

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net worth for accredited investor purposes, the value of an individual's primary residence, as well as the related amount of any mortgage or other indebtedness secured by such residence, must be excluded. In addition, the SEC staff indicated that, pending future SEC rulemaking as a result of the Dodd-Frank Act, any indebtedness secured by the residence in excess of the home's value should be considered a liability and deducted from the investor's net worth.

The deduction of the mortgage debt in excess of the value of the primary residence makes what was intended to be a simple calculation a much more difficult and subjective calculation that has the potential to change on a daily basis, force investors to incur additional expenses to obtain a third party appraisal on their primary residence to identify with specificity that portion, if any, of mortgage indebtedness in excess of value simply to determine whether or not there should be a deduction to their net worth.

<u>Distinction Between "Recourse" and "Non-recourse" Indebtedness</u>

In the event the SEC staff continues to interpret the definition of an accredited investor's net worth to include a deduction for the mortgage debt in excess of the value of the primary residence, the IPA believes that such a deduction should only apply where the mortgage debt is recourse to the investor, and not in situations where the mortgage debt is non-recourse. Accordingly, it is self-evident that if a "debt" is not a personal liability of the investor (i.e., non-recourse) under applicable law, it should not or cannot be a "liability" on such investor's financial statement in calculating or determining such investor's "net worth."

<u>Further Definition Adjustments are Unjustified "In Light of the Economy"</u>

In addition, the Dodd-Frank Act requires the SEC to conduct a review to "determine whether the requirements of the definition … should be adjusted or modified for the protection of investors, in the public interest, and *in light of the economy*." Emphasis added.

IPA believes that "in light of the economy" and the fragile nature of the current economic recovery, any increase in either the income or net worth standards for accredited investors would be devastating to IPA members who are in the business of small business capital formation for U.S. businesses in the current investment environment. IPA believes that the Dodd-Frank Act requires the SEC take into consideration the current economic climate, and, therefore believes that any changes to the net worth or accredited investor standard should be to lower the standards or leave them at current levels, not increase the qualifying investment criteria.

In addition, IPA disagrees with the recommendation by the North American Securities Administrators Association to add additional qualifications to the accredited investor test for "invested assets" if the investor must qualify for this test under all circumstances. IPA believes that an "invested assets" test is duplicative because the broker-dealer suitability analysis and the investment adviser's fiduciary duty standard already requires investors to be rejected from qualifying to invest in a private placement if they do not meet the diversification/concentration and portfolio allocation tests particular to that investor's individual situation.

Exclusion of Initially Accredited Investors Who Are No Longer Accredited Due to Section 413

The IPA believes that excluding current investors in an investment vehicle from participating in a new round of financing or another investment in the same investment vehicle in order to avoid dilution of their investment puts those investors at risk due to nothing other than a change in the definition of net worth. If these investors had the financial sophistication to make the initial investment, including performing due diligence sufficient to make such investment decision, disallowing them from making additional investments penalizes them for nothing other than a change in the definition. In addition, the additional burden on issuers and sponsors of these investment vehicles, such as IPA's members, will be at a significant disadvantage in soliciting current investors for additional investments when such need arises. IPA believes that there should be a grandfathering provision relating to current investors who previously qualified as accredited investors in relation to current investments, thereby allowing them to continue to be treated as "accredited investors" for purposes of those current investments.

The IPA appreciates the opportunity to make its views on the accredited investor definition known and appreciates the SEC's willingness to take those views into account while processing the rulemaking edicts contained in the Dodd-Frank Act.

Respectfully submitted,

Jack L. Hollander

Jack L. Hollander
Chairman, IPA Executive Committee

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[1] Without commenting thereupon, the IPA has observed that the staff of the Division of Corporation Finance of the SEC (the "SEC Staff"), while taking the position that the deletion of the value of an investor's primary residence from the net worth calculation for natural person accredited investors in Rules 215(e) and 501(a)(5) of the Securities Act of 1933, as amended (the "Securities Act"), was effective July 21, 2010, upon the effectiveness of Section 413(a) of the Dodd-Frank Act, the SEC Staff has proposed making other changes to the definition of "accredited investor." *See*, http://www.sec.gov/rules/proposed/2011/33-9177.pdf . Therefore, this IPA comment letter is focused on such other proposed changes.

[2] Compliance and Disclosure Interpretations, SEC Division of Corporation Finance, Questions 179.01 and 255.47, available at http://www.sec.gov/divisions/corpfin/securitiesactrules-interps.htm.