March 2, 2015

U.S Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Brent J. Fields
Secretary, Securities and Exchange Commission

Re: Release No. 33-9693; 34-73876 (the "***Release***")
File No. S7-12-14

Dear Mr. Fields:

The Investment Program Association ("***IPA***")[1] respectfully submits this letter in response to the request for public comment by the Securities and Exchange Commission ("***SEC***") on the Proposed Amendments (the ***"Proposed Amendments"***) to Section 12(g) of the Securities Exchange Act of 1934 (the ***"Exchange Act"***) emanating from the JOBS Act. We understand that the Release is intended to reflect the new, higher thresholds for registration, termination of registration and suspension of reporting previously set forth in Title V and Title VI of the Jumpstart Our business Startups Act (the ***"JOBS Act"***).

Background

The Proposed Amendments are intended to implement Section 501 of the JOBS Act. Specifically, the JOBS Act amended Sections 12(g) and 15(d) of the Exchange Act by adjusting the thresholds for registration, termination of registration, and suspension of reporting. These adjustments require an issuer to register a class of non-exempt equity securities within 120 days of its fiscal year end if, on the last day of the issuer's fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is "held of record" by either 1) 2,000 persons, or 2) 500 persons who are not "Accredited Investors". The Accredited Investor determination would be made as of the last day of the fiscal year of the issuer rather than at the time of sale. The definition of Accredited Investor would be that which is currently found in Regulation D, Rule 501(a) (***"Rule 501(a)"***).

[1] Formed in 1985, the IPA provides 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.

Summary of IPA's Position

The IPA applauds the SEC for seeking comments on the Proposed Amendments. We make the following two recommendations:

I. The "accredited investor" test should to be determined at the time of the last sale, not annually;

II. If the above recommendation is not embraced and yearly recertification is required, the SEC must avoid any adverse impact to investors that have invested in securities already issued in reliance upon the statues in effect prior to the adoption of these Proposed Amendments, and should only make changes that provide some certainty for investors on a go-forward basis.

The following are what we believe to be supporting details with respect to the aforementioned positions:

I. The "accredited investor" test should to be determined at the time of the last sale, not annually;

A. Annual reconfirmation will be burdensome to issuers, costly to investors, offer little investor protection, and make the amendments implemented by the JOBS Act unworkable.

1. The Release acknowledges, when discussing the definition of "held of record" with respect to employee compensation plans, that it is important for non-reporting companies to "control how and when they become subject to the reporting requirements" and such control is "particularly beneficial for smaller or cash-constrained issuers." Under Section 12(g), as it existed in the pre-JOBS Act, issuers had control over whether they would become a reporting company simply by monitoring the number of investors to whom they issued securities. Under the post-JOBS Act Section 12(g), this control remains with the issuer only if accredited investor status is determined at the time of the sale of securities. If the rules under Section 12(g) are amended to require determination of accredited investor status at the end of each fiscal year, rather than only at the time of the sale, such determination takes control out of the issuer's hands and any issuer with more than 500 investors would face a great deal of uncertainty with respect to whether it would ever become subject to the reporting requirements for issuers subject to Section 12(g). This potential uncertainty is magnified in light of the

fact that the accredited investor definition will be undergoing constant review and is subject to regular adjustment as a result of the Dodd-Frank Act. Issuers will likely seek to avoid this uncertainty, and retain control over how and when they become subject to reporting requirements, by selling to fewer total investors (perhaps keeping the total under 500 for absolute certainty), which would negate the benefit of the JOBS Act increase of the investor threshold under Section 12(g).

2. The process of reaffirming accreditation on an annual basis would likely be very costly to issuers and investors, both in terms of actual expenses and the costs of dedicated personnel to manage the communication and follow-up process. Re-determining accreditation could take months, involve numerous communications to investors, their advisors and their broker-dealers, including follow-up communications to those investors that are not easily reachable. These added costs would yield little value for investors, especially if they were holding illiquid securities with no readily available secondary market. Furthermore, these costs would be paid from funds that would otherwise be available for distribution to investors, re-invested on their behalf, invested in order to increase share value and stimulate job growth.

B. The IPA is concerned that the Proposed Amendments will not result in a significant benefit to investors. The ones that are most likely to be impacted are unlikely to hold freely transferrable equity securities.

1. We disagree with the assertion in the Release that the higher registration and reporting requirements could benefit "a significant number of shareholders with freely tradable shares who lack current disclosure information about the issuer." Rather, we believe that most impacted shareholders will not hold "freely tradable" securities.

a) First, this amended rule impacts only issuers with 2,000 or fewer investors, and it is likely that most of these small issuers raised capital in reliance on Regulation D. Setting aside the restriction on sales as a result of securities sold pursuant to Regulation D, and assuming an issuer's charter documents allow for the free transfer of securities (which is often not the case, as discussed below), there is not a ready market for securities issued pursuant to Regulation

D, so even if investors have the right to transfer such securities, they would still not be "freely tradable".

b) Second, many small issuers are formed as limited partnerships or limited liability companies for tax purposes. Issuers restrict the ability of investors to transfer their securities in part to protect them from becoming invested in a publicly traded partnership subject to a corporate tax. The issuer prevents any significant level of trading to avoid these adverse tax consequences for its investors, and the securities are not "freely tradable".

c) Given that most impacted investors will likely not hold "freely tradable" securities, the limited benefits of public company reporting for holders of such securities are likely far outweighed by the significant costs of reporting as noted above.

d) By definition, this change will impact only small issuers with fewer than 2,000 investors. These issuers are more likely to be cash-constrained and adversely impacted by the cost of reporting. The SEC expressly acknowledged the potential adverse impact of unexpected reporting costs on smaller, cash-constrained issuers in the Release when discussing securities issued to employees: "These changes could be particularly beneficial for smaller or cash-constrained issuers that could more easily issue securities to their employees as a form of compensation without being subject to Exchange Act reporting requirements and the associated compliance costs." The SEC also acknowledged in the Release that it does not know how many small entities will be impacted by this rule change: "We cannot estimate the number of small entities affected by these proposed rules. By definition, they are not yet subject to Section 12(g) registration and reporting requirements…". The unexpected imposition of reporting costs could have a devastating impact on this unknown, but potentially vast, number of small issuers.

C. The IPA is concerned that any adjustment to the definition of accredited investor as required by Section 413(b) of the Dodd-Frank Act, will cause many investors who were accredited at the time of their investment to lose their accreditation for reasons unrelated to their income and/or assets, and cause small entities, if yearly recertification is required, to become reporting companies at the expense of their investors.

> The question, from an economic standpoint, is what happens if an entity determines at the end of any given fiscal year that it now has more than 500 non-accredited investors as a result of a change in the definition of accredited investor? This possibility becomes increasingly problematic and likely if and/or when the SEC redefines the accredited investor definition on a periodic basis. A group of investors, with no change in net worth or net income could become non-accredited simply as a result of a definitional change. It is an odd result that these investors suddenly require more information about the issuer simply because the SEC changed the definition of accredited investor. Although one solution for existing issuers would be to grandfather any investors who qualified as accredited investors at the time of investment prior to any modification of the definition of Rule 501, this does nothing to address the issue on a go-forward basis.

D. The IPA is concerned that the need to become a reporting company, if necessitated by factors outside an issuer's control as a result of a yearly recertification, may run contrary to an issuer's long term business plan and the investors' economic best interest.

> 1. As previously noted, if yearly recertification of accredited investor status is required, it is a real possibility that an issuer that never planned on reporting publicly, and offered and sold its securities only to accredited investors specifically, among other reasons, to avoid the cost to investors of such reporting obligations, could suddenly find that it has more than 500 non-accredited investors and is subject to full reporting obligations under the Exchange Act. We have noted in several instances the potential adverse impacts of imposing the cost of ongoing public reporting on a small issuer and its investors. The ongoing cost of this reporting can be conservatively estimated at approximately $650,000 per year. This is the estimate of ongoing annual costs only, and does not include any cost of the initial registration triggered by Section 12(g). This estimate is based upon the SEC estimates outlined in its December 2013 Release with proposed amendments to Regulation A emanating from the JOBS Act (Release Nos. 33-9497; 34-71120; and 39-2493) (the "Regulation A Release"). In most instances, the SEC compared the burden of the reduced reporting obligation with

the full reporting obligation under Section 13, and the above estimate is based on the cost of full reporting noted in the Regulation A Release. Where the full cost of reporting was not noted in the Regulation A Release, the estimate is based upon the estimated burden hours noted on the applicable SEC form. The estimate uses the SEC estimated $400 per hour for external professionals and an estimated $200 per hour for issuer employees. Although this method, using essentially all SEC estimates, yields the estimate of $650,000 per year, the costs could be much higher, particularly for issuers new to public reporting requirements. In fact, the Regulation A Release, citing an IPO Task Force report, stated that two recent surveys concluded that regulatory compliance costs following an IPO average $1.5 million per year.

2. For an issuer that has little or no cash flow, unexpectedly imposing the above costs could be enough to bankrupt the issuer to the obvious detriment of its investors. Even for an issuer with sufficient cash flow to cover these costs, such costs will be paid from funds that would otherwise be distributed to investors, re-invested on their behalf, increase share value and create jobs.

II. If the above recommendation is not embraced and yearly recertification is required, the SEC must avoid any adverse impact to investors that have invested in securities already issued in reliance upon the statues in effect prior to the adoption of these Proposed Amendments, and should only make changes that provide some certainty for investors on a go-forward basis.

A. If yearly recertification is required, an issuer should only be subject to such recertification requirements if there is a ready market for such issuer's securities and those securities are freely tradable.

B. If yearly recertification is required, issuers ought to be able to reduce the cost to investors of compliance by relying upon third party representations including:

1. Broker-Dealers and their Registered Representatives;

2. SEC Registered Investment Advisors;

3. State Registered Investment Advisors;

4. Attorneys; and

5. Certified Public Accountants.

C. If yearly recertification is required, an issuer needs to be able to rely on negative assurances in updating accredited investor status, so as to avoid prolonged and expensive attempts to track down non-responsive investors.

1. If an issuer makes a reasonable inquiry and receives no response from an investor, the issuer needs to be able to continue with a reasonable belief that the accredited investor status based on prior information is unchanged.

2. In the event an investor response is received, the IPA strongly believes an annual statement from the investor certifying accreditation should be sufficient. Additional due diligence should not be required. As noted above, a written representation by an acceptable third party, similar to that which occurs at the time of the original sale, should also be acceptable.

D. The SEC, at a minimum, needs to avoid adverse impacts to issuers that have issued securities in reliance on the statues in effect prior to the adoption of the Proposed Amendments, and should consider changes that provide some certainty to issuers on a go-forward basis.

1. At a minimum, issuers that have sold securities prior to the effective date of this rule should not be required to re-affirm Accredited Investor status annually, as they may not have accounted for the possibility of becoming a public reporting company at the time of the offering and may not have funds to pay for such reporting as described in detail above. Ultimately, the application of a new annual test to those issuers that were structured in reliance on the old rule could serve no useful purpose and actually harm investors.

2. On a go-forward basis, if the annual determination of accredited investor status was based only on the definition of accredited investor that was in place at the time the securities were sold (not taking into account any subsequent changes to such definition), issuers would have more certainty and control as they would not have to worry about whole groups of investors becoming non-accredited simply due to a definitional change.

3. A safe harbor relating to existing information could help reduce administrative costs and, potentially, the unplanned shift to a reporting company, by allowing issuers to rely on previously obtained information without any requirement for issuers to actively re-affirm accredited investor status unless the issuer has information that would lead it to believe that previously accredited investors are no longer accredited. However, issuers are often wary of relying on this type of subjective safe harbor. Furthermore, this type of safe harbor would likely not be heavily relied upon following any change to the definition of accredited investor, which change would likely be sufficient to trigger a need for re-affirmation by the issuer. Any issuer that was unable or unwilling to rely on this safe harbor, either in general or following any change in the definition of accredited investor, would face the same uncertainty and potential unexpected costs discussed above.

4. Finally, if the definition of accredited investor for purposes of Section 12(g) were changed to include categories not tied directly to net worth or net income (i.e., if anyone represented by a Broker Dealer or Registered Investment Advisor were deemed to be an accredited investor), then the CPI adjustment of the accredited investor definition might not have such a dramatic impact and many of the issues described above could be avoided.

In conclusion, the IPA appreciates the opportunity to comment upon the Release, and we thank the SEC staff for its hard work and dedication to fulfilling its mandate under the JOBS Act. As always, the IPA stands ready to discuss any of the above at any time in order to work with the SEC towards creating an environment that encourages capital formation, share value, and job growth.

Respectfully submitted,

Kevin Shields
Chairman, Investment Program Association

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