Investment Program Association

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October 9, 2007

Via Electronic Mail

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-18-07; Rel. No. 33-8828; IC-27922 Revisions of Limited Offering Exemptions in Regulation D

Dear Ms. Morris:

The Investment Program Association (the "IPA") is pleased to submit its comments regarding the proposal of the Securities and Exchange Commission (the "Commission") to revise the limited offering exemption in Regulation D (the "Proposal"). The IPA, organized in 1985, is a national trade association that represents the interests of sponsors and other industry participants in the promotion of non-traded investment programs, including non-traded real estate investment trusts, real estate programs, equipment leasing programs and oil and gas programs. Members of the IPA include most of the major publicly offered direct participation program sponsors.[1] We appreciate the opportunity to comment.

The Proposal simplifies and clarifies the existing limited offering exemptions and expands their availability by (1) the creation of a new limited offering exemption to "large accredited investors" under proposed Rule 507 that would allow issuers to publish a limited announcement of the offering; (2) the addition of a new "investments-owned" standard as an alternative means for qualification as an "accredited investor;" (3) the shortening of the length of time required by the integration safe harbor of Regulation D; and (4) the provision of uniform disqualification provisions throughout Regulation D. We generally favor the Proposal, but respectfully submit the following comments.

Proposed Definition of Large Accredited Investor

We believe that for consistency, the same categories for qualification as an accredited investor should be used in the definition of "large accredited investor," but with higher dollar amount thresholds. Specifically, with regard to individuals, we believe that in addition to the investments-owned standard and annual income standard proposed

[1] More information is available about the IPA at our website, http://ipa-dc.org.

by the Commission, a net worth standard should be added to the categories for qualification as a large accredited investor and calculated in the same manner as the net worth standard in Rule 501(a). We propose that in order to qualify as a large accredited investor under this category, an individual should have a net worth of at least $1.5 million as opposed to $1 million for accredited investors. We propose the $500,000 increase to the net worth standard for large accredited investors as compared to the net worth standard for accredited investors to offset the increased risks that proposed Rule 507 poses by virtue of allowing limited advertising.

Proposed Rule 507 - Exemption for Limited Offers and Sales to Large Accredited Investors

We are in favor of the proposed Rule 507 offering exemption that would allow issuers to publish a limited announcement of an offering to large accredited investors, but we request that the Commission provide further clarification in the new rules that a proposed Rule 507 tombstone advertisement will not be deemed to be a general solicitation for purposes of a separate and distinct Rule 506 offering (i.e. a Rule 506 offering that could not be integrated with the proposed Rule 507 offering because the two offerings would not meet the five-factor test for integration) being conducted by the same sponsor. For example, if a sponsor launches a Rule 506 offering in December of year one and then launches a separate and distinct proposed Rule 507 offering in January of year two, the use of a tombstone advertisement in connection with the January proposed Rule 507 offering should not be deemed to be a general solicitation for purposes of the December Rule 506 offering. Because the type of information that would be permitted in a tombstone advertisement in connection with a proposed Rule 507 offering is limited, for example, in that the tombstone advertisement must state the offering is being made only to large accredited investors, we believe it would be hard to construe such an advertisement as a general solicitation for purposes of a separate and distinct Rule 506 offering. However, without clarification from the Commission, many issuers who conduct Rule 506 offerings will not also take advantage of the new proposed Rule 507 for fear that the accompanying advertisement would make it impossible for them to continue conducting Rule 506 offerings.

Proposed Addition of Investments-Owned Standard

We support the addition of an investments-owned standard as an alternative means for qualification as an accredited investor under Rule 501(a). The IPA appreciates that the investments-owned standard "may reduce and simplify compliance burdens for companies by providing an alternative standard" and is "intended to ease issuers' threshold determinations."[2] The IPA also appreciates that the new standard would not, *de facto*, result "in a reduction in the number of investors eligible for accredited investor status."[3]

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[2] Revisions of Limited Offering Exemptions in Regulation D, Securities Act Release No. 33-8828, 72 Fed. Reg. 45,116, 45,123-45,124 (proposed August 3, 2007).
[3] *Id.* at 45,124.

We also agree with the Commission's decision to add the investments-owned category as an alternative to, and not as a replacement of, the other categories for qualification as an accredited investor under Rule 501(a).

The ownership of an investment portfolio of great value, by itself, is under-inclusive as a qualification to be an accredited investor and thus should not be the only means for qualification as an accredited investor. The investments-owned category would exclude individuals who have not yet had time to amass such a portfolio but could be determined to be sophisticated investors by other metrics. As some commentators to SEC Release 33-8766 noted previously, a single investment-owned standard would have an inequitable impact on young, educated people who possess sufficient financial knowledge to understand the risks but lack the requisite money to invest.[4] Excluding one of the existing categories would prevent such sophisticated investors, who have historically been deemed not to need the level of protections that registration under the Securities Act of 1933 provides, from qualifying.

The other categories for qualification under Rule 501(a) as an accredited investor provide necessary alternatives to individuals who might not otherwise meet the new alternative investments-owned standard. For example, the $1 million net worth standard, including the value of a primary residence, is key to the ability of young educated individuals (with or without children), who often invest their money into a personal residence and consequently take more time to build up their investment portfolio, to qualify as accredited investors. Moreover, these purchases are also based upon specific market indicators that reflect an individual's belief that the home will increase in value over time. Similarly, the annual income threshold includes individuals who have not yet had the time to accumulate an investment portfolio, but who in most cases are sophisticated as demonstrated by their ability to earn a large income.

Proposed Definition of "Joint Investments"

We do not support the Proposal's new definition of "joint investments" in that it would limit an individual to only 50 percent of investments owned jointly with a spouse when determining whether the individual meets the investments-owned standard unless both spouses are bound by the investment documentation. The 50 percent limitation is a recognition that the combined sophistication of spouses may be greater than the sophistication attributable to either individually and thus the total value of joint investments may not be a good measure of either spouse's sophistication individually. However, the 50 percent limitation does not, in many cases, accurately take into account the individual's actual input into the accumulation of joint investments and thus is not a good way of allocating joint investments between spouses. For example, many individuals transfer investments accumulated individually into living trusts co-owned by both spouses for estate planning purposes. Requiring such an individual to count only 50

[4] Comment letter from Schulte Roth & Zabel LLP to the Securities and Exchange Commission, 5 (Mar. 9, 2007).

percent of such investments might unnecessarily exclude that individual from qualifying as an accredited investor or a large accredited investor if the total worth of the investments, which should be attributed to the individual based on effort, would be enough to qualify that individual. Because the circumstances of each couple will differ, we can think of no practical method for accurately determining the amount that should be allocated to each spouse. Thus, instead of attempting to allocate joint investments between spouses, we believe individuals should be able to count 100 percent of joint investments towards meeting the investments-owned standard. This would be consistent with the allocation of joint investments between spouses in other areas of the law. For example, under debtor/creditor laws, creditors can seize 100 percent of joint investments in the case of default under an agreement to which only one spouse is a party. It would be unfair to expose the spouses to such liability without also allowing them to count 100 percent of such joint investments when it would be beneficial to do so such as for the purpose of qualifying as an accredited investor or a large accredited investor.

Proposed Revisions to Regulation D Integration Safe Harbor

We appreciate and welcome the interpretative guidance on the integration of public and private offering. We also support reducing the integration safe harbor from six months to 90 days. We believe that such a period is sufficient to differentiate offerings.

Proposed Increased Applicability of Disqualification Provisions

While we agree with the Commission's proposal to expand the disqualification provisions, we believe that proposed Rule 502(e) needs to be drafted in a manner that eliminates any of the ambiguities and technical violations contained in current disqualifications provisions under Regulation D and in Rule 262 under Regulation A. We appreciate that proposed Rule 502(e) would bar issuers from relying upon any rule in Regulation D, including Rules 506 and proposed Rule 507, if certain individuals associated with the issuer ("covered persons") are disqualified. However, the list of covered persons is hard to apply and is overly broad, capturing individuals who have no say in management. For example, even if an individual has beneficial ownership of 20 percent or more of any class of the issuer's equity securities, such individual does not necessarily have control or authority with respect to the issuer. The list of disqualifying events is also overly broad and imprecise. For example, cease and desist orders referenced within proposed Rule 502(e)(1)(v) could be entered for mere technical violations, such as an inadvertent failure to file a Form D. Therefore, we believe that the Proposal will capture technical violators contrary to its intent. Furthermore, the Proposal may not even capture the serious securities law violators at which it is aimed but may instead encourage them to rely on Section 4(2), depriving the Commission of any filing and, therefore, of knowledge of the existence of such an offering.

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Thus, we generally favor the Proposal, subject to the above-mentioned caveats, and we appreciate the opportunity to comment. Thank you for your consideration of these comments. If you have any questions or wish to discuss them further, please do not hesitate to contact me at (404)-881-4417.

Very Truly Yours,

/s/ Rosemarie A. Thurston

Rosemarie A. Thurston, Chair
Legal and Regulatory Affairs Committee