FACT SHEET: The Accredited Investor Concept Provides Key Protections for Investors and It Should Be Strengthened, Not Weakened

Weakening the Accredited Investor test isn't democratizing access to wealth; it's making many more investors vulnerable to fraud, abuse, and financial loss.

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Overview

- Investor protections are key to the capital markets' success. The basic investor protection in the public securities markets is the requirement that companies seeking investors' money must make comprehensive disclosures to the public and to the SEC through their registration statements and prospectuses. That framework has proved enormously successful for almost a century, allowing our securities markets to become the envy of the world and fueling the most robust economy on the planet.

- Private offering exemptions are generally limited to investors who can understand risks with less disclosure and absorb potentially total losses. The law includes some exemptions to these requirements for so-called private offerings, but at the same time it has limited many of those offerings to investors who are able to understand the heightened risks involved with much less disclosure and are also able to absorb the losses that may result—the "Accredited Investors."

- Attempts to weaken the accredited investor test distort the reality. While some claim that the Accredited Investor definition should be eliminated or loosened under the misleading rubric of democratizing finance, the reality is just the opposite. The definition should be strengthened, as Congress intended in the Dodd-Frank Act, to limit the investor harm that the often high-risk, opaque, and illiquid private offerings can inflict.

The accredited investor test plays a critical role

- What are the Accredited Investor standards? An Accredited Investor is a person or institution that meets certain financial criteria set by the SEC, making them eligible to invest in generally more risky, opaque, and illiquid private offerings with much less disclosure and transparency and fewer investor protections.

- What are exempt offerings? Exempt or private offerings are attempts to raise capital from investors without going through the traditional initial public offering or "IPO" process. They are subject to far less regulatory oversight than public offerings and they can be dangerous for everyday investors because they carry higher levels of risk and less transparency than public offerings. They are also generally illiquid, difficult to sell or trade. Due to the lack of robust disclosure and regulatory oversight, it is much more difficult for individual investors to evaluate and understand the risks associated with these investments, and there is a greater chance of fraud, mismanagement, and investor losses.

- What does the Accredited Investor standard consist of? The Accredited Investor definition for individuals has been on the books for years, and in December 2011, the SEC strengthened the test in accordance with Section 413(a) of the Dodd-Frank Act. To be considered an Accredited Investor, an individual person must have a net worth of at least $1 million, excluding the value of their primary residence, or have an annual income of at least $200,000 ($300,000 for married couples) in each of the past two years with the expectation of earning the same or higher income in the current year. More recently, the SEC expanded the definition to include individuals with securities-related professional certifications.

- Why does it matter? A number of the private offering exemptions are limited to Accredited Investors. That helps ensure that those individuals putting their money at risk in a private offering have a better chance of evaluating the merits of the investment with limited information and fewer protections; it also helps ensure

that they have the financial resources to sustain substantial losses without catastrophic impacts on their lives.

We should strengthen, not weaken, the Accredited Investor definition.

- Inflation has already weakened the Accredited Investor definition. The income and net worth qualifications under the current Accredited Investor definition have remained the same in dollar amount since 1982—over 40 years. Meanwhile, inflation has substantially eroded the value of the dollar. Inflation over the past several decades has already dramatically expanded the number of people who qualify as Accredited Investors. Indeed, the number of Accredited Investors eligible to participate in the private markets today has increased 550% since 1983 and continues to rise. Rather than further erode this important investor protection, it's past time to update it.

- Congress clearly intended a strong, pro-investor definition of Accredited Investor. Section 413 of the Dodd-Frank Act demonstrates a clear congressional intent to protect investors, noting that subsequent adjustments to the definition of Accredited Investors must only be those deemed appropriate "for the protection of investors" and the public interest.

Removing or diluting the Accredited Investor standard would harm investors and the markets.

- Attempts to weaken the test are growing. Despite the SEC's clear pro-investor mandate that private offerings should be reserved for "those who are shown to be able to fend for themselves," many wish to diminish the Accredited Investor standard, opening private offerings up to countless retail investors unfamiliar with their potentially devastating risks. Proposals include allowing anyone to invest in private offerings up to a percentage of their income or assets, or even allowing anyone to "self-certify" that they are sophisticated and understand the risks of investing even without full disclosure and other safeguards.

- Claims for a weaker test are misleading and unsupported. Proponents claims that restricting high-risk investments like private offerings solely to high-net-worth individuals unfairly "discriminates" against lower-income Americans and deprives them of opportunities to cash in on private offerings. These claims are dangerous distortions, ignoring the historical purpose of the Accredited Investor standard, which has always been about protecting everyday investors from the devastating financial consequences of high-risk investments that are not as transparent or well-regulated as publicly-listed securities. All that weakening the test would do is democratize access to more risky, opaque, illiquid, and often fraudulent investments. The investor harm would be huge. And those who seek to dilute the test haven't made the case with credible data that it would enrich, not victimize, investors.

- Investors aren't asking for it. Despite calls to open private markets to large swaths of everyday investors, no evidence suggests that currently non-Accredited Investors actually demand or desire the opportunity to invest in private offerings.

- There is no shortage of capital for legitimate business enterprises. There is no need to further weaken the definition of Accredited Investors. Data show that companies already have ample access to capital. Moreover, even if there were a shortage of capital for some firms, it is reasonable to assume that the firms that can't attract capital from institutional or high-net-worth investors are likely the firms with the worst prospects, which are plainly inappropriate investments for retail investors.

- The public markets would suffer. Weakening the Accredited Investor definition would also undermine the public markets, by drawing investors away into riskier, illiquid private offerings. For years, the private offering markets have dominated the capital markets, to the detriment of the more transparent and safer public markets.

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