

One Minute Memo®



SEC Advisory Committee Recommends No Immediate Changes to Accredited Investor Income and Net Worth Thresholds

By Michael Dunn

On March 4, 2015, the Securities and Exchange Commission's (the "Commission") Advisory Committee on Small and Emerging Companies (the "Committee") voted to approve the Committee's recommendations to the Commission regarding the definition of "accredited investor" under Rule 501 of Regulation D of the Securities Act of 1933.

The Committee had been considering a variety of possible changes to the accredited investor standards, including inflationary adjustments to the income and net worth standards for individuals and the exclusion of retirement assets from the calculation of net worth. Currently, an individual may qualify as an accredited investor if he or she has annual income of at least \$200,000 alone or \$300,000 combined with one's spouse, or a net worth of at least \$1 million (excluding the value and mortgage debt of his or her primary residence). Statistical data gathered by the Committee indicated that inflationary adjustments to these thresholds, which had not changed since adoption in 1982, would have increased the income thresholds to approximately \$500,000 and \$628,000 and the net worth threshold to approximately \$2.5 million. These inflationary adjustments would have reduced the number of U.S. households that qualify as accredited investors from 12.4% to approximately 4.4%. Excluding retirement assets from the calculation of net worth would have further reduced the pool of qualifying households to approximately 3.8%.

Finding that there was "little to no evidence" that the existing definition of accredited investor has led to widespread fraud or other harm to investors, the Committee determined that the current private offering system is critical to the support of smaller and emerging companies, and that a significant increase to the income or net worth thresholds to account for over 30 years of inflation would materially decrease the current pool of capital available to small business and have a significantly negative effect on the market.

In making its recommendations to the Commission, the Committee observed that in considering whether changes to these thresholds were needed, "the primary goal should be to 'do no harm' to the private offering ecosystem." Moreover, the Committee's recommendation states that any changes to the income or net worth standards "should have the effect of expanding, not contracting, the pool of accredited investors." Accordingly, the Committee recommended that the Commission:

- Develop a sophistication test that would enable an investor to qualify as an accredited investor regardless of income or net worth;

- Make no changes to the current income and net worth standards nor exclude any assets classes from the calculation of net worth;
- Adjust the income and net worth standards on a going forward basis according to the consumer price index;
- Focus on enhanced enforcement and education; and
- Continue to gather data going forward.

A copy of the Committee's full report and recommendations is available at: <http://www.sec.gov/info/smallbus/acsec/acsec-accredited-investor-recommendation-draft-030415.pdf>.

If you have any questions, please contact your Seyfarth attorney or Michael Dunn at mdunn@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP One Minute Memo® | March 5, 2015

©2015 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.