

The International Association of Small Broker Dealers and Advisors
1620 Eye Street, NW, Suite 210 Washington, DC 20006
202-785-8940 ext. 108 pchepucavage@plexusconsulting.com, www.iasbda.com

The International Association of Small broker-Dealers and Advisers, www.iasbda.com submits the following comments on the proposed revisions to the definition of accredited investor. We believe that the investments owned test (\$750,000) is inappropriate if it does not specify how the investments were acquired and it excludes real estate investments. We noted previously in response to the "Private Pooled Investment Vehicle" release that inherited investments or those acquired as a result of employment would not be good indicators of investment expertise. We also noted that individuals who had significant home equity may well be as investment savvy as those with inherited portfolios. We believe that the continuing assumption that the possession of investments equals knowledge of investments is a dangerous theory especially with respect to senior citizens. If the staff believes there is a need to upgrade the qualifications of investors then the most important requirement would be insuring that these products are sold by registered representatives or investment advisers who assure suitability. A discussion of how suitability relates to these tests would be useful in this regard, as would a discussion of how these investments are sold through a broker-dealer intermediary. The comments on the Pooled Investment release strongly objected to any effort to make these investments exclusive to the very wealthy. When you exclude real estate and require \$750,000 of investment securities you are limiting the universe to a very narrow class and prohibiting any amount of such investment to those with less. Thus a finance professor who has invested his entire life to reach \$740,000 is excluded even if he is extremely sophisticated in financial matters. We previously noted that:

"A person with a 5 million dollar house with equity that can be monetized through a reverse mortgage might be easily capable of diversifying his assets by investing \$100,000 into a private investment vehicle. The release is unclear as to how to treat personal real estate that has been monetized into investment securities. Is the debt counted against the house or against the securities? From the other side, eliminating from consideration a large debt on a personal residence with no equity skews the meaningfulness of investment assets. If your housing debt is \$2,000,000 and you have securities worth \$2,500,000, are you suitable for hedge fund investing? In today's world one's personal residence is very much an investment. The release states that "personal or business property has little or no relationship to knowledge and financial sophistication" Surely this assumption requires some evidence but is made without any

citation. Can it mean that all residential real estate investments are unsophisticated but stock purchases are.? It appears that a real estate investment in residential housing is counted as an investment but an identical house used for a personal residence is not but can be if it is monetized. Is there a bias here towards inherited stock and against real estate.?"

- A person who has been investing in equities for 30 years might be considerably more sophisticated than a person with inherited wealth.
- A person with the required assets and investments arguably should not be allowed to invest an unlimited amount of funds into a private investment vehicle.
- A person with an investment portfolio of one stock resulting from his/her founding of a company would not necessarily be a sophisticated investor in other companies.

The subjectivity of these judgments does not allow for easy rulemaking. However it does seem that a small limited exception might be allowed for investors with education or experience or a residence or a business that suggests sophistication. That exception could be limited to \$100,000 which is usually the smallest amount allowed for such funds. Such an exception might be particularly useful to small hedge funds."

More importantly there is a need to rethink the definition of sophistication in today's world. It does not only come from ownership of securities investments and surely does not come from inherited investments. The best test for investments is the overall suitability test applied to broker sold investments and the fiduciary test for advisors. FINRA NOTICE TO MEMBERS 07-43 at p.4 reiterates previous guidance that accredited investor eligibility does not equal suitability. Therefore the best thing that can be done to protect investors is to require that all investments over \$100,000 require that a registered investment advisor or broker be involved in a suitability analysis of the transaction regardless of whether it is solicited. The Commission staff has recently indicated that they are drafting a document that defines suitability as it relates to the sale of securities. "The document is an extensive and comprehensive view of securities and case law in this area," including some useful examples, Erik Sirri, director of market regulation, said at the SEC's second annual Seniors Summit. The aim of the document is to ensure that investment and compliance professionals understand their duties and obligations under the law.

In a related move, SEC officials are also codifying sales-practice principles to govern the way brokers deal with their customers. The principles are intended to explain how firms should deal with their customers.. The Commission

should therefore await the results of these suitability and sales practice initiatives before changing the accredited investor standard and then explain how they relate to each other especially with respect to sales to older individuals. Sophistication is not proven by ownership of wealth. Its more likely to be proven in how that wealth was accumulated and/or maintained over time..

Peter J. Chepucavage
General Counsel
Plexus Consulting
202-785-8940 ext 108.

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