ROUNDTABLE

In Search of Safe Harbor: Suggestions for the New Rule 506(c)

*Usha Rodrigues**

INTRODUCTION 29
I. WHERE WE ARE NOW 31
II. THE RISKS 33
III. THE PRACTICAL QUESTION: WHAT IS AN ACCREDITED INVESTOR? 34
IV. ADVICE TO THE SEC: WHAT SHOULD THE SAFE HARBORS BE? 35
A. Self-Certification 36
B. Third-Party Verifier 37
C. Issuer Verification 38
D. Minimum Investment Threshold 39
V. A FINAL, ACROSS-THE-BOARD REQUIREMENT: PRE-OFFERING FILING WITH THE SEC 40
CONCLUSION 40

INTRODUCTION

Watch enough late night television and you'll see advertisements for weight-loss elixirs, hair restoratives, and cures for ailments you never dreamed existed. Imagine, if you will, yet another huckster, this one touting PrivateDeal, a "never-before-available investment opportunity, the chance of a lifetime! Get in on the ground floor of a start-up boasting triple-digit growth!" The PrivateDeal hawker goes on to declare: "This investment was previously only

* Associate Professor of Law, University of Georgia School of Law. Thanks to Joan MacCleod Heminway and Dan T. Coenen for their help on this piece. Mistakes are my own.

available to the ultrarich, but now, thanks to recent developments in the law, it can be yours!"

Jim, an intrigued investor, calls the 800 number on the bottom of his screen, expecting to encounter an operator ready to take his credit card information. Instead, he gets an agent who starts peppering him with questions about his income and net worth. Gradually it dawns on Jim that he may not be able to invest in PrivateDeal after all. Indeed, five minutes into the conversation, the agent confirms that he is not qualified to invest.

"But. . .why. . ." Jim begins to splutter.

"Sir," the agent explains patiently—Jim senses she has started this speech many times already tonight—"The fine print in the ad specifies that only accredited investors are eligible to buy shares in PrivateDeal."

To which Jim responds: "Well, what's an accredited investor?"

Welcome to post-JOBS Act private investing.[1] The JOBS Act revolutionized many aspects of securities law, and this piece will focus on one of them: the changes section 201 has wrought in the advertisement and sale of private securities. Before diving into the finer points of securities law, it is helpful to keep in mind the bottom-line effect of those changes: companies once tightly constrained in terms of how they could seek money will soon be free to solicit funds from the general public. This development could mean that start-ups, large private companies, and hedge funds may soon be able to advertise on television, the Internet, and even billboards.

The catch is that only those investors the companies reasonably believe to be "accredited" can actually *buy* shares. There are several categories of investors who qualify as accredited, but the one on which I'll focus is the "natural person" category. This category includes individuals with an income of over $200,000 a year or a net worth of over $1 million.[2]

I devote most of this essay to exploring how, exactly, the Securities and Exchange Commission ("SEC") should go about providing guidelines to implement the statutory requirement that issuers have a *reasonable belief* that a purchaser is accredited. The SEC has proposed rules, but these rules merely restate what Congress has already required, thus sidestepping Congress's direction that the agency itself articulate some verification methods. Taking the SEC's decidedly amorphous proposal to task, I recommend that the SEC offer two nonexclusive safe harbors for issuers to guide them in

1. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306.
2. 17 C.F.R. § 230.501(a)(5), (6) (2013).

determining whether a natural person is an accredited investor. The paragraphs below will discuss the whys and wherefores of these safe harbors.

I focus on the natural persons category because my hunch is that it is the most politically salient and controversial. Here is why: even if the SEC heeds my suggestion and identifies safe harbors, it will ignore the elephant in the room. The problem is that the JOBS Act gave companies a newfound ability to trumpet their investments to the world but simultaneously limited actual purchases to accredited investors. Hopeful investors like our hypothetical Jim will now hear about tantalizing investments they cannot make.[3] As I have argued elsewhere, this difficulty may be grave enough to trigger a rethinking of the public/private distinction that currently underpins our securities laws.[4]

I. WHERE WE ARE NOW

Securities law requires companies to register the offer or sale of their shares with the SEC prior to sale, unless they can find an exemption from registration. Pre-JOBS Act, in order to qualify for an exemption under Rule 506 of Regulation D, issuers could not conduct a general solicitation or engage in general advertising when seeking to sell their shares. That meant they could not promote securities offerings by way of newspapers, magazines, TV or radio broadcast, or the Internet unless the website was password protected.[5]

Under the old Rule 506, offerings in practice were generally limited to accredited investors,[6] and an issuer needed a reasonable belief that a purchaser qualified as an accredited investor.[7] Standards seemed lax. The watchword was "self-certification"—a prospective purchaser would merely sign a paper indicating that she qualified as

---

3. A separate concern is that Jim might qualify as an accredited investor but lack the actual sophistication needed to evaluate private investment. By law, the SEC cannot revisit the actual definition of accredited investor status until 2014. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 413, 124 Stat. 1376, 1577–78 (2010).

4. *See* Usha Rodrigues, *Securities Law's Dirty Little Secret*, 81 FORDHAM L. REV. 3389 (2013) (arguing that a disparity in investment access exists in which wealthy investors are allowed to choose between public and private investment markets, whereas less affluent investors are limited by securities regulations to the purchase of public securities).

5. 17 C.F.R. § 230.502(c). They also could not hold seminars if the attendees were invited by general solicitation.

6. Although sales could be made to a limited number of unaccredited investors, most issuers did not do so in practice. Rutheford B. Campbell, Jr., *The Wreck of Regulation D: The Unintended (and Bad) Outcomes for the SEC's Crown Jewel Exemptions*, 66 BUS. LAW. 919, 931–32 (2011).

7. 17 C.F.R. § 230.501(a).

an accredited investor. Importantly, however, in order to get a password to a website or to get on a list for solicitation in the first place, an offeree needed a preexisting substantive relationship with the issuer or broker establishing accredited investor status.[8] In short, prior practice was for issuers to offer shares to a prescreened group, and then to take their word for it that they were in fact accredited.

JOBS Act section 201 directs the SEC to lift the prohibition against general solicitation or general advertising, provided that "all purchasers of the securities are accredited investors."[9] In other words, issuers can market their securities broadly, so long as they target actual sales only at accredited investors. Of particular importance here, Congress directed the SEC to promulgate rules that "require the issuer to take reasonable steps to verify" that purchasers are indeed accredited, "using such methods as determined by the Commission."[10]

On August 29, 2012, the SEC proposed rules to implement section 201 of the JOBS Act.[11] It basically punted on all of the big issues, proposing rules that satisfied almost no one. It introduced a new Rule 506(c), but preserved the old rule in Rule 506(b),[12] thus allowing offerings without general solicitation, a move I think is all to the good. But the SEC did little else. It merely required (1) that the issuer take reasonable steps to verify that purchasers are accredited, (2) that they actually be accredited or that the issuer reasonably believe that are accredited, and (3) that the terms and conditions of Rule 501 and Rules 502 (a) and (d) are satisfied.[13]

To be sure, the SEC proposed that whether the steps are reasonable would be an "objective determination, based on the particular facts and circumstances of each transaction."[14] It also described a number of factors relevant in the reasonableness determination, including (1) the nature of the purchaser, (2) the amount and type of information that the issuer has about the

---

8. *See* E.F. Hutton & Co. Inc., SEC No-Action Letter, 1985 WL 55680 (Dec. 3, 1985).

9. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 201(a)(1), 126 Stat. 306, 313–14 (2012).

10. *Id.*

11. Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, 77 Fed. Reg. 54464 (proposed Aug. 29, 2012) (to be codified at 17 C.F.R. pts. 230, 239).

12. *Id.* at 54466–67. Accordingly, issuers who do not wish to engage in general solicitation and its concomitant requirement for verification of accredited investor status before purchase can continue to conduct private offerings as before.

13. *Id.* at 54467. These rules detail the specific categories of accredited investor, how to determine whether offerings are integrated, and procedures for restricting resale. 17 C.F.R. § 230.501(a), § 230.502(a), (d).

14. 77 Fed. Reg. at 54467.

purchaser, and (3) the nature of the offering, including the manner of solicitation, its terms, and minimum investment amount.[15]

I agree with the SEC that, given the range of categories of accredited investors,[16] consideration of each transaction's particular facts and circumstances is essential. Nevertheless, the SEC's facts-and-circumstances approach leaves much to be desired. The SEC should detail some nonexclusive safe harbors for issuers. As drafted, the rule creates pernicious uncertainty. Without any safe harbor in which to take shelter, well-meaning issuers must guess as to whether the Commission will later judge the steps they take to be "reasonable." Lacking any guidance, the most prudent issuers may not undertake general solicitation, while only the most adventurous issuers will embark on the general advertising schemes that Congress envisioned as a new feature of private securities offerings.

II. THE RISKS

There are three basic concerns about lifting the ban on general solicitation. First, there is the risk that fraudulent issuers will take investors' money and run. The second danger is that some purported issuers may not even be looking for investment dollars at all. Personal information is valuable, financial information more valuable, and financial information of millionaires and high-wage earners more valuable still. Finally, some investment schemes are legitimate but foolhardy, helmed by honest but misguided managers and doomed to fail.

Only the first two concerns matter for our purposes. As to the last, separating fraudulent investment schemes from foolish ones is the age-old problem of investing, and the SEC will not find a mechanism to solve it. Requiring additional disclosure of issuers might make sense, but the Act does not authorize this approach and indeed, given its emphasis on eliminating barriers to private-firm capital raising, it is questionable whether such requirements are permissible.

In contrast, fraud and privacy concerns are real. Unscrupulous individuals have always preyed on the financial hopes of Americans, and allowing private companies to advertise to the general public will only magnify the potential sphere of fraud. There is no perfect solution

---

15. *Id.*

16. This includes everyone from brokers or dealers registered under the Securities Exchange Act of 1934, to Internal Revenue Code 501(c)(3) companies, to sufficiently wealthy natural persons. 17 C.F.R. § 230.501(a)(1), (3).

to this problem, but adding a simple registration requirement to a well-constructed safe-harbor regime would reduce the chances that fraudulent programs will succeed. As to the second danger, privacy concerns militate against requiring issuers to collect personal information up front. Any specific safe harbors we contemplate must address these twin risks.

III. THE PRACTICAL QUESTION: WHAT IS AN ACCREDITED INVESTOR?

There are two ways for an individual who is not affiliated with the issuer to qualify as an accredited investor: income and net worth.[17] Income is the more straightforward benchmark, although the SEC has proposed a questionable metric for gauging it. Net worth, in contrast, is inherently slippery and poses real problems in measurement.

The income path to accredited investor status—more than $200,000 in annual income for an individual or $300,000 for a married couple (in each case, for each of the last two years)[18]—seems easy to verify. The key question concerns who should obtain this proof and how, but the concept of ascertaining income level is relatively simple. W-2s or K-1s reporting income from the past two years, plus some type of assurance of the prospect for comparable income in the year of investment, should suffice.

The SEC has suggested in its proposed rules that "publicly available information in filings with a federal, state or local regulatory body," such as a named executive officer whose salary is disclosed in periodic Exchange Act filings, would also suffice.[19] For example, a company's 10-K might specify that its CEO made $400,000 last year and the year prior. The SEC is on firm ground here because this information pertains to specific, named individuals. Companies registering with the SEC affirm the truth of this information and face liability for false assertions.

The SEC ventured into more questionable territory when it further opined that there may be a reasonable belief that an individual purchaser has attained the annual-income thresholds where the purchaser "works in a field where industry or trade publications disclose average annual compensation for certain levels of employees or partners, and specific information about the average compensation earned at the purchaser's workplace by persons at the

17. 17 C.F.R. § 230.501(a)(5), (6).

18. 17 C.F.R. § 230.501(a)(6).

19. 77 Fed. Reg. at 54468.

level of the purchaser's seniority is publicly available."[20] This method is more questionable because it relies heavily on generalized information untethered to particular individuals. Firm practices can vary widely, and individuals of a given rank may have disparate salaries. In short, there is too much guesswork for there to be a reliable assessment of accredited investor status here.

The second path to accredited investor status, having a net worth in excess of $1 million (excluding the value of the primary residence),[21] is much trickier. The difficulty is that an investor can disclose assets but fail to disclose liabilities, thus painting a falsely rosy picture of her finances. Use of third-party verifiers cannot resolve this problem. For example, even if a financial advisor certifies that a prospective investor has $1 million in assets under management with him, that same investor may have $2 million in liabilities elsewhere of which the advisor is completely ignorant.

Companies that wrestled with the task of determining accredited statuses under the old regime struggled with this same problem. As the general counsel of SecondMarket, Annemarie Tierney, observed, objects such as art or jewelry could legitimately count as assets, and yet are extremely hard to value.[22] Tierney's suggestion is to forge a proxy for net worth status by using a high minimum investment threshold. This cure, however, may prove worse than the disease, as I will discuss below.

IV. Advice to the SEC: What Should the Safe Harbors Be?

The SEC has evinced an inexplicable reluctance to articulate safe harbors under section 201. It has indicated that requiring specific methods of verification would be "impractical and potentially ineffective in light of the numerous ways in which a purchaser can qualify as an accredited investor" as well as overly burdensome and ineffective.[23] So far so good—the SEC's reasoning makes sense with respect to avoiding rigid, one-size-fits-all requirements. Problematically, however, the SEC has refused to provide a "nonexclusive list of specified methods"—i.e., safe harbors—for establishing reasonable efforts to determine accredited status. It has

20. *Id.*

21. 17 C.F.R. § 230.501(a)(5).

22. Letter from Annemarie Tierney, SecondMarket, to Elizabeth M. Murphy, Sec'y, Sec. & Exch. Comm'n (May 25, 2012), *available at* http://www.sec.gov/comments/jobs-title-ii/jobstitleii-16.pdf.

23. 77 Fed. Reg. at 54470. This conclusion despite Congress's direction to determine methods for issuers to use in verifying accredited investor status.

explained this decision by reasoning that (1) in some instances the information might not actually verify accredited investor status and (2) the information might be viewed as necessary in all circumstances.[24]

These concerns are unfounded. As to the first, the SEC could limit its safe harbors to areas where accredited investor status is an all-but-sure thing—for example, by insisting on the use of W-2 forms and eschewing a safe harbor based only on average wages. As to the second, issuers are familiar with what a safe harbor means and have demonstrated the ability to understand and apply the rules in this very arena.[25]

Potential safe harbors include self-certification, use of a third-party verifier, having the issuer obtain documentation of accredited investor status, and having a minimum investment threshold. We will take each in turn.

A. Self-Certification

Self-certification—under which a potential investor would merely have to affirm her accredited status in a statement—would be a disaster. The subprime mortgage crisis is a painful reminder of how willing people are to fudge their finances in order to qualify for "can't-lose" investment opportunities and how problematic such behavior can prove for the larger economy.

Proponents of self-certification point to the fact that issuers currently use this method with relatively few problems.[26] But the current world of private investment is not one of general solicitation. Purchasers under today's Rule 506 need to be affirmatively and individually solicited, and such solicitation must take place via means such as a password-protected site. In a world where tightly controlled prescreening is a key comfort, relying on attestation of accredited status at a later stage makes sense.

General solicitation, however, is a brave new world–one where issuers will be free to advertise via radio and the Internet. At least

24. *Id.* at 54471.

25. Indeed, Rule 506 itself constitutes but one safe harbor under Section 4(2) of the Securities Act. 17 C.F.R. § 230.506(a). My proposals would thus create new safe harbors within an existing safe harbor.

26. *See, e.g.*, Letter from Marianne Hudson, Exec. Dir., Angel Capital Ass'n, to Elizabeth M. Murphy, Sec'y, Sec. & Exch. Comm'n (Dec. 11, 2012), *available at* http://www.sec.gov /comments/s7-07-12/s70712-198.pdf ("The existing form has worked well for a generation of startups funded by accredited investors using Rule 506(b), . . . a simple solution that involves adding a few questions to the existing accredited investor questionnaire to clearly meet the 'reasonable assurance' intent of the JOBS Act.").

some subset of gullible investors would be willing to swear to high heaven that they have the requisite means to get in on the "next big thing." The SEC has acknowledged the difference between soliciting a prescreened database of accredited investors and creating a website accessible to the general public.[27] It has—and wisely so—opined that in the latter case self-certification will not be enough. I would go even further and formally enshrine use of only a particular form of self-certification as a first safe harbor. In my view, when the issuer has a reasonable belief that a prescreening mechanism has effectively filtered out all but accredited investors, self-certification via questionnaire or a simple form should be enough to qualify. Otherwise, it should not.

B. Third-Party Verifier

The SEC should provide a second safe harbor built around the idea that issuers can often obtain reliable assurances of an investor's accredited status from a third-party verifier. One attraction of a method focused on the provision of information to third parties is that it would decrease the risk of identity theft. Rather than handing over sensitive information to dubious issuers, investors would submit documentation to third parties. Of course, nothing would prevent spurious third-party verifiers from cropping up, so the best course would be to grant verifying power only to individuals licensed by federal or state government or professional organizations. Obvious candidates for such a role include broker-dealers, lawyers, financial advisors, and CPAs.

One downside to such a move is that it could create a cottage industry of verifiers, slowing down and increasing costs in private investment, and thus contravening the goals of the Act. Nevertheless, real costs might be minimal; indeed, broadly authorizing professionals to provide this service will, at least in theory, drive costs down. In addition, most accredited investors already use at least one of these professionals and may already submit personal financial information to them. Involving third-party verifiers might also provide benefits in some cases by allowing experts to steer vulnerable clients away from fraudulent or unduly risky ventures.

The type of information that a third-party verifier would need to review is another question. As observed above, determining an investor's income is usually simple. In many cases, however, net worth is difficult, since it entails "proving a negative"—that is, proving that

---

27. 77 Fed. Reg. at 54469.

the investor lacks undisclosed liabilities. The only solution I can come up with is a combination of third-party verification of $1 million in assets, coupled with the investor signing an attestation that all liabilities have been disclosed. That attestation should be made under penalty of perjury, with the investor waiving any claims to rescission or other recourse against the issuer should the assertions prove to be materially false.

C. Issuer Verification

At first blush, having issuers themselves obtain paperwork from would-be buyers might seem to be a logical way to provide a safe harbor. Upon reflection, I believe the risk of identity theft—especially in light of the sensitive nature of the financial information disclosed—is too great to encourage this form of information gathering. Investors need a way of separating legitimate issuers from scammers who merely want them for their W-2s.

Attempts to address this concern would likely stretch the SEC's scarce resources too thin. For example, the SEC could provide some type of preregistration to issuers, obtaining enough information to ascertain that they are not simply trolling for information. The idea would be that an investor would hear an advertisement, then call the SEC or visit a website to ensure that the investment is legitimate before handing over social security numbers and the like. But the SEC would not only have to devote countless hours to reviewing and assessing potential issuers, but also have to educate investors about their ability to investigate companies before revealing personal information. Providing effective education of this sort would present major difficulties, especially because the target audience by definition includes many unsophisticated or unwary would-be investors. There is another reason why the SEC might not want to get into the business of certifying issuers as "genuine." At best it could lend a false air of safety to inherently risky investments; at worst, it would set up the SEC to be a scapegoat whenever an agency-certified issuer goes south.

To be clear, I am not suggesting that an issuer might not obtain documentation from an investor and point to it as creating a reasonable belief that the investor was accredited. But I would not enshrine such a method in a safe harbor because of the above concerns.

D. Minimum Investment Threshold

SecondMarket's Annemarie Tierney suggests a minimum investment threshold as another safe harbor, and indeed several other commentators have echoed this idea, suggesting everything from $25,000[28] to $500,000.[29] The SEC has found merit in this view, stating that the ability to satisfy a "sufficiently high" minimum investment amount without financing by the issuer or a third party would be a positive factor in verifying accredited investor status.[30]

This approach, however, seems like a recipe for disaster because it would encourage movement away from just the sort of diversification strategy that is the key to sound investing. One problem is that it will be difficult to ascertain that a purchase is not being financed. Even more problematic is that hopeful investors who do not meet minimum thresholds will be motivated to, in essence, abandon all prudent investing strategy and, instead of diversifying, bet a significant portion of their net worth on a single investment.

Take, for example, a widow who is interested in an extremely risky hedge fund. Her husband's life insurance proceeds have netted her $400,000 in cash, she owns her house, and she lives on social security benefits. She is interested in a hedge fund that has a $250,000 minimum investment requirement. While she can scare up the requisite money without needing financing, few would believe that such an investment would be prudent. Relying on a high minimum threshold here seems to incentivize risky behavior without offering any real assurance of qualifying net worth.

The same problem exists for investors who just barely meet the $1 million net worth threshold. Creating a safe harbor based on a minimum investment amount would imply it is perfectly reasonable for these individuals to invest twenty percent or more of their net worth in inherently illiquid and risky assets. Worse yet, focusing regulatory attention on minimum investment levels may also cause issuers to create higher net worth thresholds than they otherwise would put in place—thus breeding inefficiencies and constricting the range of investment opportunities Congress wanted to create. For all of these reasons, the SEC should not endorse any investment-amount

28. Letter from Daniel R. Hansen, Partner, Montgomery & Hansen, LLP, to Elizabeth M. Murphy, Sec'y, Sec. & Exch. Comm'n (Oct. 15, 2012), *available at* http://www.sec.gov/comments/s7-07-12/s70712-136.pdf.

29. Letter from Stuart J. Kaswell, Exec. Vice President & Managing Dir., Gen. Counsel, Managed Funds Ass'n, to Elizabeth M. Murphy, Sec'y, Sec. & Exch. Comm'n (Sept. 28, 2012), *available at* http://www.sec.gov/comments/s7-07-12/s70712-79.pdf.

30. 77 Fed. Reg. at 54469, n.54.

safe harbor. Indeed, the risks in this area are sufficiently great that the SEC should abandon its consideration of minimum investment amounts as a relevant factor entirely.

V. A FINAL, ACROSS-THE-BOARD REQUIREMENT: PRE-OFFERING FILING WITH THE SEC

Some subset of issuers will always be out to fleece investors. General advertisement may not greatly increase the number of fraudulent issuers, but it will broaden the universe of potential fraud victims and include in that universe a new group of investors more susceptible to deception and more subject to harm than is the case under current law. The best the SEC can do is to require issuers in all cases to file with the SEC ahead of any general solicitation, ideally obtaining enough information from principals so that there is a way to track down wrongdoers.

The most effective mechanism would be to require an issuer to file a Form D as a precondition for exemption *and* to do so before it engages in any general advertising. Form D details basic information on the issuer's identity, principal place of business, contact information, and details of the offering.[31] Current rules require a Form D filing, but it need only be made after the first purchase.[32] Requiring a presolicitation filing would slow down quick-hitting, too-good-to-be-true offerings; deter some fraud; and make it easier for investors to track down wrongdoers. While it is true that the SEC would have to devote additional resources to this effort, the payoff should be worth it. Additionally, we would obtain far more data on private issuers' use of these exemptions, a goal worth pursuing in any event.

CONCLUSION

The SEC has yet to issue final rules governing how exactly, in a new era of general solicitation, issuers should go about obtaining a reasonable belief that purchasers are accredited. I urge it to establish some safe harbors for issuers: (1) self-certification coupled with a prescreening mechanism and (2) verification by a reputable third party such as a broker-dealer, lawyer, financial advisor, or CPA. I

---

31. *See* http://www.sec.gov/about/forms/formd.pdf.

32. 17 C.F.R. § 230.503(a)(1) (2013); Brian R. Buckham, *Private Placements of Securities in a New Era of Regulation and Enforcement – Traps for the Unwary*, ADVOCATE, Sept. 2011, at 34, 36, *available at* http://isb.idaho.gov/pdf/advocate/issues/adv11sep.pdf (explaining that Form D is required to be filed within fifteen days after the first sale of securities).

would take no account of the size of an investment in drawing conclusions about a purchaser's net worth, and I would require pre-offering filing with the SEC.

I will end with a suggestion borrowed from the crowdfunding portion of the JOBS Act. Crowdfunding allows average investors to invest up to five percent of their income or net worth in private investments.[33] We have already seen how slippery the concept of net worth can be. Perhaps, at least where investors are qualifying on the basis of net worth, the SEC can require issuers to limit individuals' investments in private offerings to no more than five percent of their net worth. So, for example, a widower with $1 million would be able to invest no more than $50,000 in private investments, and a third-party verifier would have to attest that he had been advised of such a limit and believed that he complied with it. To require such diversification, after all, would do nothing more than require a potentially non-sophisticated investor to act with basic prudence.

At the least, limits like these might help reduce the frustrations of Jim, our hypothetical late-night caller, by limiting the amount of special investments to which accredited investors have access. More generally, lifting the ban on general solicitation will inevitably cause greater awareness of the fact that we live in a world of investing haves and have-nots.[34] Perhaps in time a fuller recognition of the costs and inequalities brought about by our accredited-investor-based regulatory regime will lead to its rethinking. We must wait and see.

---

33. Jumpstart Our Business Startups Act § 302(a), 15 U.S.C.A. § 77d(6)(B)(i) (West Supp. 2012). Wealthier investors, or those with higher incomes are allowed to invest up to ten percent of their annual income or net worth. *Id.* § 77d(6)(B)(ii).

34. In a recent real world example, the private equity firm Carlyle Group recently opened a fund with a minimum investment of $50,000—an offering open only to accredited investors. Ryan Dezember, *Carlyle Group Lowers Velvet Rope*, WALL ST. J. (Mar. 12, 2013), http://online.wsj.com/article/SB10001424127887324096404578356700271878018.html.