Securities Regulation Daily Wrap Up, DODD-FRANK ACT—Advisory Committee meets to define accredited investors, (Dec. 17, 2014)

Click to open document in a browser

Securities (Federal) > News & Current Awareness > Securities Regulation Daily > Securities Regulation Daily Wrap Up > 2014 > December 2014 > December 17, 2014 > DODD-FRANK ACT—Advisory Committee meets to define accredited investors, (Dec. 17, 2014)

By Jacquelyn Lumb

Chair Mary Jo White welcomed members of the SEC's Advisory Committee on Small and Emerging Companies who met today to consider recommendations to the Commission for a revised definition of accredited investor. White provided updates on the JOBS Act rulemakings, the tick size pilot program, the Division of Corporation Finance disclosure effectiveness review, and the accredited investor definition. The Dodd-Frank Act requires the SEC to review the accredited definition, a process that is currently underway. White said the goal of the review is to determine whether the SEC is properly identifying the population of investors who should be able to purchase securities in offerings without the protection of Securities Act registration.

Commissioner Aguilar. Commissioner Luis Aguilar said the accredited investor definition is critical to the SEC's Regulation D exemption from the registration requirements of the Securities Act. Regulation D may be the most widely used exempted offering, he noted, and it is regularly used by small businesses to raise funds in the capital markets. Under the current definition, investors may qualify under the income and net worth tests, but have little financial sophistication or financial experience, according to Aguilar. Individuals may be smart and successful in their fields, he said, but also be confused about the basics of investing and managing money.

Aguilar noted that the SEC's Investor Advisory Committee suggested that the current definition of an accredited investor may be under-inclusive since it may not include a range of people who are financially sophisticated but do not meet the income and net worth tests. The IAC recommended that the SEC consider changes to the definition to take into account a person's work and investment experience and professional credentials.

Commissioner Gallagher. Commissioner Daniel Gallagher offered his view that the SEC should not be using its time to protect millionaires when it has so many other priorities to address. He said he is skeptical about expanding the pool of accredited investors to various professionals out of concern with the government's further involvement in defining who is sophisticated and who is not. Net asset and income tests are unobtrusive and value neutral ways to define who is accredited, he explained. He sees real-world experience as a better test than certain forms of education and training. If the SEC could change the definition of accredited investor by a means that does not result in a more intrusive role for government, or that does not cut back the current number of accredited investors or the quantity of investible assets, Gallagher said he is open to having the debate. Since he is skeptical about that possibility, he believes the SEC should focus its limited resources on more critical matters. The current definition is not perfect, but it is not broken, he advised.

AARP and Angel Capital. The committee heard presentations from David M. Certner, legislative counsel and legislative policy director for AARP, and Marianne Hudson, executive director of the Angel Capital Association. AARP recommended that the SEC consider limiting the percentage of assets one can invest in an unregistered offering. Angel Capital recommended that the SEC leave the financial thresholds as is, consider adding sophistication criteria to grow the base, and expand investor education.

Recommendation. The committee believes that the current thresholds for accredited investors work for the most part and emphasized the wish to do no harm in formulating a revised definition. The members supported the expansion of the definition to include financially savvy investors that may not meet the income and net worth thresholds and attaching a Consumer Price Index adjustment to the threshold going forward, subject to access to additional data to better understand that segment of the recommendation. The committee encourages the SEC to continue to find ways to address fraud, particularly that which is targeted at senior citizens, and to continue improve investor education on financial issues.

RegulatoryActivity: DoddFrankAct PrivatePlacements