IPA
Institute for Portfolio Alternatives

U.S. CAPITAL MARKETS REGULATION

Securities laws and regulations affecting the portfolio diversifying investments industry positively impact the U.S. capital markets by supporting diverse businesses and investment opportunities, both for institutional and Main Street investors. The IPA believes the following issues provide avenues for greater efficiency and growth while maintaining important investor protections.

ACCREDITED INVESTOR DEFINITION

The IPA supports legislation to improve and expand the definition of accredited investor.

- The “accredited investor” definition is intended to encompass those individuals and entities that have the financial sophistication or resources to evaluate and bear certain investment risk. Currently the U.S. Securities and Exchange Commission (SEC) defines accredited investor as an individual with $200,000 in income for ($300,000 for a couple) or $1 million in net worth, excluding the value of the investor’s primary residence.
- In 2020, the SEC finalized rulemaking, as part of its mandatory four year review of the definition, determining to retain the current net worth and income thresholds but expand the definition to include individuals with Series 7, Series 65, and Series 82 licenses.
- The SEC’s most recent regulatory agenda includes a planned proposal to amend Regulation D, including redefining accredited investor status, potentially restricting the pool of investors who can participate in certain types of private offerings.
- While income thresholds play an important role in determining financial sophistication and acumen, they are not the only way to ensure someone understands the risk of a private offering. Changes narrowing the definition may unintentionally limit investment opportunities for both sophisticated investors and underrepresented communities.
- The IPA recommends that Congress should retain the current net worth and income limits, but expand the definition to include: (i) additional licensing or certification credentials such as the Series 66, Series 3, Series 6, CPA and CFA designations, (ii) individuals or entities certified as an accredited investor through an examination established by the SEC, (iii) individuals or entities advised by a regulated financial professional such as a registered broker-dealer, investment adviser and their representatives or agents, and (iv) “knowledgeable employees” as defined by Rule 3c-5 of the Investment Company Act of 1940. Each of these recommendations appropriately expand the definition without compromising investor protection.

REGULATION A+

The IPA supports legislation to increase the amount that companies can offer under Regulation A+.

- Regulation A+ is an exemption from securities registration that allows both private and public reporting companies to raise money from investors subject to certain limitations and disclosure requirements.
- Companies can raise up to $20 million under Tier 1 and up to $75 million under Tier 2 in a 12 month period.
- The IPA supports an increase in the Tier 2 threshold to $150 million, along with an index to inflation on a going forward basis.
- This is a meaningful change for companies in industries where there are high up front, fixed costs such as real estate, which requires significant capital expenditures. Increasing the threshold also allows greater economies of scale in the time and money it takes to make an SEC filing and complete the required audit (which can be as high as $250,000 whether a company is raising $10 million or $50 million).

REGULATION BEST INTEREST

The IPA urges Congress to continue to support Regulation Best Interest and oppose additional federal or state standards of conduct.

- In 2019 the SEC adopted Regulation Best Interest (Reg BI). This heightened standard requires broker-dealers to act in the best interest of the retail customer without placing their financial or other interests first.
- Reg. BI aims to increase retail investor engagement, better address conflicts of interest, and strengthen disclosures. It has increased the quality of investment services, particularly in the advent of investor-owned investment and retirement accounts.
- The IPA supports uniform, harmonized federal and state standards of conduct to ensure that investors maintain access to all available financial products and services. A single, national standard of conduct ensures equal protection for all investors, provides the greatest variety of investment choices, and reflects the national nature of our modern market for financial products.
- The U.S. Department of Labor (DOL) is undertaking efforts to create a fiduciary standard that covers delivery of all investment advice to individual retirement accounts. The practical effect of this heightened standard may be to reduce or even eliminate transaction-based fee arrangements and detrimentally impact investors who may not have sufficient account minimums to maintain fee-based accounts or who will not receive personalized investment advice on self-directed accounts. Similar rulemaking efforts in 2016 led to two years of litigation and were ultimately struck down in 2018 by the Fifth Circuit.
- The IPA opposes any new federal or state standard of conduct. Experience demonstrates that conflicting and duplicative regulation leads to higher compliance and operational costs and limitations on both investor choice and the ability of financial professionals to serve them without any material increase in investor protection.

REGULATORY OVERREACH

The IPA urges Congress to vigorously exercise its oversight authority with federal agencies during the rulemaking process to ensure implementation of the law as Congress intended.

- The markets for capital and investment advice are national by nature. Consistent regulation of these critical functions should be done in a coordinated fashion by agencies that have both a national perspective and jurisdiction over all market participants.
- The breadth and speed of the SEC's far-ranging and aggressive rulemaking agenda will raise regulatory uncertainty and risk unintended, negative consequences for market participants. Unaccountable regulatory overreach can similarly undermine Congressional intent.
- The IPA is also concerned that overly burdensome state regulation of federally regulated alternative investments limits investor choice, the efficient allocation of capital, and the economic growth of certain sectors of the economy.
- Today, investors are also seeking to diversify their investment portfolios to address concerns with high inflation and stock market volatility. State regulators last year, through the North American Securities Administrators Association (NASAA), proposed model regulations known as "REIT Guidelines", restricting where and how much Americans can invest their money in private real estate.
- This could have a chilling effect on investment in federally regulated products and negatively impact the ability of ordinary investors to reduce their risk profile and properly diversify their investment portfolios into a stable asset class that is not tied to market volatility.
- This proposal will also hamper critical funding for small businesses and undermine the strength and stability of the U.S. real estate markets.
- The IPA opposes any efforts by state regulators or NASAA to limit investment opportunities through federally registered and regulated entities in critical market sectors such as commercial real estate or middle market businesses.

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