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March 10, 2011

Via E-mail: rule-comments@sec.gov

Elizabeth M. Murphy,
Secretary,
Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090.

Re: Net Worth Standard for Accredited Investors
(Release Nos. 33-9177; IA-3144; IC-29572;
File No. S-7-04-11)

Dear Ms. Murphy:

We are pleased to respond to the above-referenced Release (the “Proposing Release”) in which the Securities and Exchange Commission (the “Commission”) solicited comments on proposed rule changes implementing the requirements of Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the definition of “accredited investor”.

We agree with the proposed rules’ basic approach for calculating a person’s net worth excluding the value of his primary residence. For the reasons set forth in the proposing release, it makes sense to us, and seems most consistent with the language of Section 413(a), to exclude from net worth only the investor’s net equity in the primary residence, and to exclude mortgage debt from the calculation only to the extent of the value of the primary residence.

We also agree that there is no need to define “primary residence” in the rules, as this term is generally well understood. Further definitional provisions would add complexity to the rules – and thus to compliance with the rules – for no apparent good reason. In a similar vein, we would urge the Commission not to adopt the change proposed by the North American Securities Administrators Association, to include in the net worth calculation debt secured by the primary residence if the proceeds of the debt were used to invest in securities. Such a change would add substantial complexity to the compliance process. And while we do not wish to minimize concerns about the activities of unscrupulous brokers, we believe those concerns are better, and more effectively, addressed through enforcement of existing FINRA and Commission rules, rather than by adding a new layer of complexity to substantially all private placements. For similar reasons, we would also urge the Commission not to adopt a timing provision that required calculation of net worth as of a time prior to the investment. The benefits of such an addition seem very marginal – any such provision could be structured around, but compliance in all private placements would be made more complex. We also believe that “net worth” is a well understood concept, and that further definitional rules would not add much other than complexity.

Finally, we believe that the Commission should adopt transitional provisions that would permit investors who would otherwise lose “accredited investor” status by reason of the rule changes to participate in subsequent “follow-on” offerings by issuers whose securities they purchased in earlier private placements. We think that this is an important investor protection point, and thus easily reconciled with the purposes underlying Section 413(a). Without such transitional provisions, there will be investors who suffer dilution by reason of being excluded from subsequent “down round” investments or rights offerings. Particularly where investors have a contractual right to participate in the follow-on offering, the rules changes can and should be tailored to allow them to do so.

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We appreciate this opportunity to comment on the proposed rules, and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to Robert E. Buckholz (212-558-3878) or David B. Harms (212-558-3882) in our New York office.

Very truly yours,

/s/ SULLIVAN & CROMWELL LLP