

FAIR INVESTMENT OPPORTUNITIES FOR PROFESSIONAL  
EXPERTS ACT

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FEBRUARY 1, 2016.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. HENSARLING, from the Committee on Financial Services,  
submitted the following

R E P O R T

[To accompany H.R. 2187]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2187) to direct the Securities and Exchange Commission to revise its regulations regarding the qualifications of natural persons as accredited investors, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fair Investment Opportunities for Professional Experts Act”.

**SEC. 2. DEFINITION OF ACCREDITED INVESTOR.**

Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15) is amended—

(1) by redesignating clauses (i) and (ii) as subparagraphs (A) and (F), respectively;

(2) in subparagraph (A) (as so redesignated), by striking “; or” and inserting a semicolon, and inserting after such subparagraph the following:

“(B) any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every five years to the nearest \$10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—

“(i) the person’s primary residence shall not be included as an asset;

“(ii) indebtedness that is secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale

of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

“(iii) indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

“(C) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

“(D) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, the Financial Industry Regulatory Authority, or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State or the equivalent State division responsible for licensing or registration of individuals in connection with securities activities;

“(E) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or”.

#### PURPOSE AND SUMMARY

Introduced by Representative Schweikert on April 30, 2015, H.R. 2187, the Fair Investment Opportunities for Professional Experts Act, amends the definition of accredited investor under the Securities Act of 1933 (Securities Act). H.R. 2187 modifies the definition to include: (1) persons whose individual net worth, including their spouse’s, exceeds \$1,000,000, excluding the value of their primary residence (which amount, together with the individual income amounts described below, shall be adjusted for inflation every five years); (2) persons with an individual income greater than \$200,000 or \$300,000 for joint income; (3) persons who are licensed in the securities industry (such as a registered broker or investment adviser) with the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) or the State; and (4) persons whom the SEC determines by regulation to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment. For the latter category, the FINRA would verify the person’s education or job experience.

#### BACKGROUND AND NEED FOR LEGISLATION

Smaller companies and emerging companies play a significant role as drivers of U.S. economic activity, innovation and job creation. According to the SEC Advisory Committee on Small and Emerging Companies, the majority of net new jobs in the United States are generated by companies less than five years old, with these companies continuing to add jobs as they mature. Their ability to raise capital in the private markets is critical to the economic well-being of the United States.

Under existing law, companies can raise funds through public and private offerings. The Securities Act requires companies that are publicly offering securities for investment to register the offering of the securities with the SEC and provide investors with all material information necessary to make an investment decision. Consequently, the statute prohibits a company from selling securi-

ties unless the company has the government's authorization, or is subject to an exemption.

The Securities Act does contain exemptions from registration and authorizes the SEC to provide by rule additional exemptions in order for companies to raise capital through private offerings. Regulation D, which provides such exemptions, is based on a Securities Act provision that states that the obligation to register with the government will not apply to any "transactions by an issuer not involving any public offering." The Supreme Court addressed the definition of a public offering in 1953. The Court stated that the exemption—when an offering would be considered private—should turn on whether "the particular class of persons affected needs the protection" of the securities laws and should be utilized only by persons who can "fend for themselves."

Consequently, to codify the concept that only persons who can "fend for themselves" may participate in a private offering, the SEC adopted the term "accredited investor" in 1982. Under the SEC's standards, an investor's financial status is a proxy for his ability to fend for himself. Thus, a natural person is accredited if that person: (1) earned income that exceeded \$200,000 (or \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or (2) has a net worth over \$1 million, either alone or together with a spouse (excluding the value of the person's primary residence).

#### *The Importance of the Regulation D Markets*

Generally, small companies face significant obstacles when raising funds in the U.S. public capital markets. These obstacles are often attributable to the proportionately larger burden that securities regulations—written for large public companies—place on small companies when they seek to go public. Beyond the costs directly impacting smaller companies in accessing capital, the stifling regulatory environment has restricted bank and other traditional financing for these companies.

Indeed, the increasing costs of going public in the U.S. have impacted the competitiveness of the U.S. capital markets. Concerns about the competitiveness of these markets have been expressed since before the financial crisis. In 2007, a report issued by a bipartisan U.S. Chamber of Commerce committee noted that the United States was steadily losing market share to other international financial centers. Additionally, in 2006, the Committee on Capital Markets Regulation, an independent and non-partisan research organization led by Harvard Law School Professor Hal Scott, issued a pair of reports calling attention to the declining competitiveness of the U.S. securities markets. The group cited a significant decline in the U.S. share of equity raised in global public markets, a precipitous drop in the U.S. share of the twenty largest global Initial Public Offerings (IPOs), and a raft of statistics indicating that foreign and domestic issuers were taking steps to raise capital either privately or in overseas markets *rather* than in the U.S. public equity markets. Recently, the Committee on Capital Markets Regulation stated that the competitiveness of the U.S. capital markets is at a historic low.

Robust private markets have helped pick up the slack for an IPO process that has grown too burdensome. Today, the private securi-

ties markets rival the public markets in size, and the vast majority of private offerings are conducted in reliance on Rule 506 of Regulation D. The SEC's Division of Economic and Risk Analysis (DERA) noted that "amounts raised through unregistered securities offerings have outpaced the level of capital formation through registered securities offerings during recent years, and totaled more than \$2 trillion during 2014." Furthermore, DERA has noted that "the importance of the Regulation D market is magnified when considering that approximately two-thirds of Reg D offerings represent new equity capital . . . which is a more permanent source of capital than debt, and thus more likely to reflect new investment as opposed to the refinancing of existing investment."

Small and emerging companies rely on private placements to raise capital in a cost-effective manner without being subject to SEC rules and regulations that are increasing in burden and scope, and which are reducing U.S. competitiveness globally. H.R. 2187 recognizes that a robust and enhanced set of private offering exemptions under Regulation D is crucial to allow a company to access the U.S. capital markets while still remaining private as long as it so desires. Accordingly, H.R. 2187 ensures that the private capital markets will remain a cost-effective alternative to the public markets.

#### *The Need To Amend the Definition of Accredited Investor*

Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the SEC to adjust the net worth standard for an accredited investor who is a natural person by excluding the value of the investor's primary residence from his net worth calculation. This directive narrowed the pool of accredited investors by making it more difficult for investors to satisfy the net worth test. In addition, the Dodd-Frank Act required the SEC to review the accredited investor definition every four years and directed the Government Accountability Office to conduct a study on the appropriate criteria for determining which individuals should qualify for accredited investor status. The Dodd-Frank Act also established a new Investor Advisor Committee to advise the SEC on a number of issues, including a set of recommendations related to the accredited investor definition.

In the fall of 2015, the Investor Advisor Committee recommended changes to the definition of accredited investor to allow investors to participate in private offerings even though they do not satisfy the net worth test. The Committee suggested that individuals could be accredited investors if they had adequate financial sophistication, education or professional credentials, or expertise as demonstrated by the successful completion of an exam demonstrating their investment knowledge.

The SEC Advisory Committee on Small and Emerging Companies provided its own set of recommendations regarding the definition of accredited investor. The Committee on Small and Emerging Companies noted that some have argued that the accredited investor financial thresholds should be increased to prevent fraud against investors who may be unable to fend for themselves. However, the Committee on Small and Emerging Companies strongly disagreed with that notion and noted that there is no "substantial evidence suggesting that the current definition of accredited inves-

tor has contributed to the ability of fraudsters to commit fraud or has resulted in greater exposure for potential victims.” Indeed, the Committee on Small and Emerging Companies noted that the connection between fraud and the current accredited investor threshold is “tenuous at best.”

The SEC has failed to act on capital formation initiatives in a timely manner, including to ensure that individuals with the risk appetite and ability to understand private offerings may be permitted to invest. Accordingly, H.R. 2187 amends the definition of accredited investor to account for educational or professional expertise.

Additionally, H.R. 2187 codifies the existing monetary thresholds established by the SEC—both with respect to net worth and income—and thereby prevents the SEC from increasing the financial requirements for the purpose of limiting the pool of potential investors that would satisfy the definition of an accredited investor. Nevertheless, H.R. 2187 contemplates modest adjustments over time to the current thresholds because it requires the SEC to adjust such thresholds for inflation every five years to the nearest \$10,000. If H.R. 2187 is enacted into law, the Committee will closely monitor its implementation to ensure that, as the SEC adjusts the monetary thresholds, persons who previously qualified as accredited investors shall not lose such status as a result of any inflation adjustment.

#### HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 2187 on June 16, 2015.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 8, 2015 and December 9, 2015, and ordered H.R. 2187 to be reported favorably to the House as amended by a recorded vote of 54 yeas to 2 nays (recorded vote no. FC–82), a quorum being present. The Committee adopted an amendment in the nature of a substitute offered by Representative Schweikert, as amended as set forth immediately below, by a voice vote. The Committee adopted an amendment to the amendment in the nature of a substitute offered by Representative Waters by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote was a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 54 yeas to 2 nays (recorded vote no. FC–82), a quorum being present.

## Record vote no. FC-82

| Representative          | Yea | Nay | Present | Representative             | Yea | Nay | Present |
|-------------------------|-----|-----|---------|----------------------------|-----|-----|---------|
| Mr. Hensarling .....    | X   |     |         | Ms. Waters (CA) .....      | X   |     |         |
| Mr. King (NY) .....     | X   |     |         | Mrs. Maloney (NY) .....    | X   |     |         |
| Mr. Royce .....         | X   |     |         | Ms. Velázquez .....        | X   |     |         |
| Mr. Lucas .....         | X   |     |         | Mr. Sherman .....          | X   |     |         |
| Mr. Garrett .....       | X   |     |         | Mr. Meeks .....            | X   |     |         |
| Mr. Neugebauer .....    | X   |     |         | Mr. Capuano .....          |     | X   |         |
| Mr. McHenry .....       |     |     |         | Mr. Hinojosa .....         |     |     |         |
| Mr. Pearce .....        | X   |     |         | Mr. Clay .....             |     |     |         |
| Mr. Posey .....         | X   |     |         | Mr. Lynch .....            |     | X   |         |
| Mr. Fitzpatrick .....   | X   |     |         | Mr. David Scott (GA) ..... | X   |     |         |
| Mr. Westmoreland .....  | X   |     |         | Mr. Al Green (TX) .....    | X   |     |         |
| Mr. Luetkemeyer .....   | X   |     |         | Mr. Cleaver .....          | X   |     |         |
| Mr. Huizenga (MI) ..... | X   |     |         | Ms. Moore .....            | X   |     |         |
| Mr. Duffy .....         | X   |     |         | Mr. Ellison .....          | X   |     |         |
| Mr. Hurt (VA) .....     | X   |     |         | Mr. Perlmutter .....       |     |     |         |
| Mr. Stivers .....       | X   |     |         | Mr. Himes .....            | X   |     |         |
| Mr. Fincher .....       | X   |     |         | Mr. Carney .....           | X   |     |         |
| Mr. Stutzman .....      | X   |     |         | Ms. Sewell (AL) .....      | X   |     |         |
| Mr. Mulvaney .....      | X   |     |         | Mr. Foster .....           | X   |     |         |
| Mr. Hultgren .....      | X   |     |         | Mr. Kildee .....           | X   |     |         |
| Mr. Ross .....          | X   |     |         | Mr. Murphy (FL) .....      | X   |     |         |
| Mr. Pittenger .....     | X   |     |         | Mr. Delaney .....          | X   |     |         |
| Mrs. Wagner .....       | X   |     |         | Ms. Sinema .....           | X   |     |         |
| Mr. Barr .....          | X   |     |         | Mrs. Beatty .....          | X   |     |         |
| Mr. Rothfus .....       | X   |     |         | Mr. Heck (WA) .....        | X   |     |         |
| Mr. Messer .....        | X   |     |         | Mr. Vargas .....           | X   |     |         |
| Mr. Schweikert .....    | X   |     |         |                            |     |     |         |
| Mr. Guinta .....        | X   |     |         |                            |     |     |         |
| Mr. Tipton .....        | X   |     |         |                            |     |     |         |
| Mr. Williams .....      | X   |     |         |                            |     |     |         |
| Mr. Poliquin .....      | X   |     |         |                            |     |     |         |
| Mrs. Love .....         | X   |     |         |                            |     |     |         |
| Mr. Hill .....          | X   |     |         |                            |     |     |         |
| Mr. Emmer .....         | X   |     |         |                            |     |     |         |

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2187 will promote capital formation and increase investment opportunities for more Americans by expanding the accredited investor definition that exists under current law.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 15, 2016.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2187, a bill to direct the Securities and Exchange Commission to revise its regulations regarding the qualifications of natural persons as accredited investors.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

ROBERT A. SUNSHINE,  
(For Keith Hall, *Director*).

Enclosure.

*H.R. 2187—A bill to direct the Securities and Exchange Commission to revise its regulations regarding the qualifications of natural persons as accredited investors*

Current law provides a number of exemptions from the requirement that securities be registered with the Securities and Exchange Commission (SEC) prior to being sold to the public. Central to those exemptions is the accredited investor, a person with sufficient financial sophistication and ability to sustain the risk of loss so as to render the protections from the registration process unnecessary. Accredited investors may participate in investment opportunities not available to non-accredited investors.

H.R. 2187 would broaden the definition of the accredited investor to include licensed brokers or investment advisors and individuals with professional knowledge related to a particular investment that is verified by certain regulatory authorities.

Based on information from the SEC, CBO estimates that implementing H.R. 2187 would cost less than \$500,000 over the 2016–2020 period for rulemaking activities related to the change in definition. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, we estimate that implementing H.R. 2187 would have a negligible effect on net discretionary costs, assuming appropriation actions consistent with that authority.

Enacting H.R. 2187 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 2187 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 2187 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.



## EARMARK IDENTIFICATION

H.R. 2187 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 2187 establishes or re-authorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 2187 contains no directed rulemaking.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section cites H.R. 2187 as the “Fair Investment Opportunities for Professional Experts Act.”

*Section 2. Definition of accredited investor*

This section amends the definition of accredited investor in Section 2 of the Securities Act of 1933 by inserting four additional methods in which a person can be qualified as an accredited investor. First, any natural person whose individual net worth, or joint net worth with their spouse, exceeds \$1,000,000 satisfies the definition; however the value of the person’s primary residence owed individually or jointly with his or her spouse is excluded from the net worth calculation. Second, a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000, and has a reasonable expectation of reaching the same income level in the current year, can be an accredited investor. The SEC must adjust the net worth and income amounts for inflation every five years. Third, any natural person who generally holds a current financial services related license registered with the SEC, FINRA, or issued by a State, also can be an accredited investor. Finally, any natural person that the SEC determines by regulation to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a given investment can be an accredited investor. However, FINRA must verify the related education or job experience.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic,

and existing law in which no change is proposed is shown in roman):

## SECTION 2 OF THE SECURITIES ACT OF 1933

### DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term “trust” shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person,

which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term “insurance company” means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term “separate account” means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term “accredited investor” shall mean—

**[(i)]** (A) a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser**;** or**;**

(B) any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every five years to the nearest \$10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—

(i) the person’s primary residence shall not be included as an asset;

(ii) indebtedness that is secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(iii) indebtedness that is secured by the person’s primary residence in excess of the estimated fair market

*value of the primary residence at the time of the sale of securities shall be included as a liability;*

*(C) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;*

*(D) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, the Financial Industry Regulatory Authority, or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State or the equivalent State division responsible for licensing or registration of individuals in connection with securities activities;*

*(E) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or*

**[(ii)]** *(F) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.*

(16) The terms “security future”, “narrow-based security index”, and “security futures product” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(17) The terms “swap” and “security-based swap” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bu-

reau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a “large accelerated filer”, as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

