original cause was assigned to the national aviation system, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the original scheduled flight number and the original scheduled origin and destination airport codes. Carriers are not required to report causal information for diverted flights.

* * * * *

(g) Reporting carriers should use the following codes to identify causes for cancelled flights:

CODE
1—Air Carrier
2—Extreme Weather
3—National Aviation System (NAS).

(1) Air Carrier cancellations are due to circumstances that were within the control of the air carrier (*e.g.,* lack of flight crew, maintenance, etc.).

(2) Extreme weather cancellations are caused by weather conditions (e.g., significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS cancellations are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of condition: weather-non extreme, airport operations, heavy traffic volume, air traffic control, etc.

(h) Reporting carriers should use the following causes to identify the reasons for delayed flights:

CAUSE
A—Air Carrier
B—Extreme weather
C—NAS
D—Late arriving aircraft
DA—Late arriving aircraft—air carrier
DB—Late arriving aircraft—extreme weather
DC—Late arriving aircraft—NAS.

(1) Air carrier delays are due to circumstances within the control of the air carrier.

(2) Extreme weather delays are caused by weather conditions (e.g., significant meteorological conditions, actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS delays are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: Weather—non extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Late arriving aircraft delays are the result of a late incoming aircraft from the previous flights. Reporting carriers should use this code only when they are unable to identify the root cause of the initial delay.

(5) Late arriving aircraft—carrier caused delays are the result of a late incoming aircraft from the previous flight, in which the root cause of the late arriving aircraft was within the air carrier's control.

(6) Late arriving aircraft—extreme weather delays are the result of a late incoming aircraft from the previous flight, in which the root cause of the late arriving aircraft was extreme weather.

(7) Late arriving aircraft—NAS caused delays are the result of a late incoming aircraft from the previous flight, in which the root cause of the late arriving aircraft was a NAS problem.

(i) When reporting causal codes in paragraph (a), reporting carriers are required to code delays only when the arrival delay is 15 minutes or greater; and reporting carriers must report each causal component of the reportable delay when the causal component is 5 minutes or greater.

3. Section 234.5 would be revised to read as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Information in a format specified in accounting and reporting directives issued by the Assistant Director for Airline Information.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 01–31725 Filed 12–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–8041; File No. S7–23–01]

RIN 3235–AI25

Defining the Term ''Qualified Purchaser'' Under the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission today proposes a definition for the term ''qualified purchaser'' under the Securities Act of 1933 to implement a provision of the National Securities Markets Improvement Act of 1996. The proposed definition mirrors the definition of accredited investor under Regulation D of the Securities Act. Thus, the new qualified purchaser definition identifies well-established categories of persons we have previously determined to be financially sophisticated and therefore not in need of the protection of state registration when they are offered or sold securities. This proposal should facilitate capital formation, especially for small businesses. It will implement the Congressional intent, impose uniformity in the regulation of transactions to these financially sophisticated persons and reduce burdens on capital formation.

DATES: Public comments are due February 25, 2002.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, and 450 Fifth Street, NW, Washington DC 20549–0609. You may send comment letters electronically to the following e-mail address: Rule-comments@sec.gov. Comment letters should refer to File No. S7–23–01; if you use e-mail, please include the file number on the subject line. We will make all comments available for public inspection and copying in our public reference room at the same address. Comment letters (submitted electronically) will be posted on our Internet site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, at (202) 942–2950, Division of Corporation Finance, U.S. Securities and Exchange Commission,

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

450 Fifth St., NW., Washington, DC 20549–0310.

SUPPLEMENTARY INFORMATION: The National Securities Markets Improvement Act of 1996 (''NSMIA'') [2] preempts the state registration and review of transactions involving ''covered securities.'' It amended Section 18 [3] of the Securities Act of 1933 (''Securities Act'') [4] to establish seven classes of ''covered securities.'' All but one of these classes is self-executing. The one that is not—securities offered or sold to qualified purchasers—requires Commission rulemaking to adopt a definition of the term ''qualified purchaser.'' [5] We are proposing for comment a definition to be contained in Rule 146 [6] of the Securities Act.

I. Background

A. NSMIA

In NSMIA, Congress realigned the federal and state regulatory partnership governing registration of securities offerings, thus changing the dual system of securities offering registration that has prevailed in this country since the 1930s. While the Commission retains authority to require that securities offerings be registered, the states may not require registration of offerings involving ''covered securities.'' [7] Section 18 of the Securities Act now specifies the classes of covered securities:

- Securities that are listed on the New York Stock Exchange (''NYSE''), American Stock Exchange (''Amex'') or Nasdaq National Market System (''Nasdaq NMS''); [8]
- Securities issued by an investment company registered under the Investment Company Act of 1940 [9] (the ''1940 Act'');
- Most exempt securities listed in Section 3(a) of the Securities Act; [10]
- Securities issued in exempt transactions under Section 4(1) or (3) of the Securities Act [11] where the issuer files reports under the Securities Exchange Act of 1934 (''Exchange Act''); [12]
- Securities issued in exempt transactions under Section 4(4) of the Securities Act; [13]
- Securities issued in exempt offerings under Rule 506 of Regulation D; [14] and
- Any security offered or sold to a ''qualified purchaser.'' [15]

The states retain authority to require the registration of other types of securities offerings, including certain offerings registered with us.[16] They also retain authority to regulate, through registration or exemption, securities offerings made under certain federal exemptions from registration,[17] except to the extent offers or sales are made to qualified purchasers.

Congress authorized us to define the term ''qualified purchaser'' under the Securities Act to include ''sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary,'' [18] thus preempting securities transactions with these persons from state ''blue sky'' law. Although the states may not require registration of offers and sales of securities to qualified purchasers, offers and sales to those persons must be registered with us under the Securities Act, unless a federal registration exemption is available.

Our proposal is to define ''qualified purchaser'' to mean an accredited investor as defined in Rule 501(a) of Regulation D.[19] We believe that it is appropriate to equate qualified purchasers with accredited investors because the regulatory and legislative history of both terms are based upon similar notions of the financial sophistication of investors,[20] and accredited investor is a long-standing concept familiar to the small business community and other industry participants. Thus, unifying the definition for financially sophisticated investors simplifies the regulatory structure for issuers and should facilitate the capital formation process. Moreover, our considerable regulatory experience with the use of the term ''accredited investor'' leads us to believe it strikes the appropriate balance between the necessity for investor protection and meaningful relief for issuers offering securities, especially small businesses.

B. The Development of the Accredited Investor Concept

Transactions that do not involve any public offering are exempt from federal registration under Section 4(2) of the Securities Act.[21] Because the Securities Act does not define these transactions, the Courts and the Commission have interpreted this exemption. Long ago, the U.S. Supreme Court set the basic criteria for the Section 4(2) exemption in *SEC* v. *Ralston Purina Co.*[22] The Court indicated that the application of the non-public offering exemption depended on whether the offerees were able to fend for themselves and had access to the same kind of information that would be disclosed in registration. The Court noted that such persons, by virtue of their knowledge, would not need to rely on the protections afforded by registration.

After the *Ralston Purina* decision, we provided guidance on the Section 4(2)

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[2] Pub. L. 104–290, 11 Stat. 3416 (Oct. 11, 1996).

[3] 15 U.S.C. 77r.

[4] 15 U.S.C. 77a *et seq.*

[5] Section 18(b)(3) [15 U.S.C. 77c(b)(3)].

[6] 17 CFR 230.146.

[7] See the House-Senate Conference Report, H.R. Rep. No. 864, 104th Cong. 2d Sess. at 40 (1996) (the ''Conference Report''). In these cases, the states may not prohibit, limit or impose any conditions on the use of any offering document. In addition, they may not prohibit, limit, or impose any conditions on the offer or sale of a covered security based on the merits of the offering or the issuer. See Section 18(a)(2) and (3) of the Securities Act [15 U.S.C. 77r(a)(2) and (3)]. The states retain limited authority over offerings of some covered securities: they may require notice filings and fees. Also, they continue to be able to investigate and bring fraud cases involving securities and securities transactions. See Section 18(c)(1) and (2) of the Securities Act [15 U.S.C. 77r(c)(1) and (2)].

[8] This category also includes securities that are senior, or equal in seniority, to those listed securities. Companies that offer securities listed on these national markets need not register with the states. We have expanded this category to include securities listed on Tier 1 of the Pacific Exchange, Tier I of the Philadelphia Stock Exchange, and the Chicago Board Options Exchange. See Securities Act Rule 146(b) [17 CFR 230.146(b)].

[9] 15 U.S.C. 89a–1 *et seq.*

[10] 15 U.S.C. 77c(a).

[11] 15 U.S.C. 77d(1) and (3).

[12] 15 U.S.C. 78a *et seq.*

[13] 15 U.S.C. 77d(4).

[14] 17 CFR 230.506.

[15] See Section 18(b)(3) [15 U.S.C. 77r(b)(3)].

[16] They may require registration of offerings of securities listed on markets other than the national markets, such as the regional exchanges, the Nasdaq SmallCap market, the NASD's over-the-counter (''OTC'') Electronic Bulletin Board and the OTC ''pink sheets.'' The pink sheets are published by the National Quotation Bureau, Inc.

[17] For instance, the states may regulate exempt offerings under Section 3(b) of the Securities Act [15 U.S.C. 77c(b)], including Rule 504 and 505 offerings [17 CFR 230.504 and 230.505] and Regulation A offerings [17 CFR 230.251–263], offerings under Section 4(6) of the Securities Act [17 U.S.C. 77d(6)], and offerings under Section 4(2) of the Securities Act [15 U.S.C. 77d(2)] that do not satisfy the Rule 506 safe harbor requirements.

[18] H.R. Rep. No. 622, 104th Cong. 2d Sess. at 31 (1996) (''House Report''). See also S. Rep. No. 293, 104th Cong. 2d Sess. at 15 (1996) (''Senate Report''). These committee reports relate to bills that were eventually enacted as NSMIA.

[19] 17 CFR 230.501(a). Rule 215 [17 CFR 230.215], along with Section 2(a)(15) of the Securities Act [15 U.S.C. 77b(a)(15)(i)], provides the same definition for accredited investors as Rule 501(a), but for purposes of Section 4(6) of the Securities Act.

[20] See note 18 above. Congress deemed accredited persons as sophisticated and able to protect their financial interests without regulatory assistance. See also the Small Business Investment Incentive Act of 1980, Pub.L. 96–477 (Oct. 21, 1980), and Senate Report at 15 (''based on their level of wealth and sophistication, investors who come within the definition of qualified purchaser do not require the protection of registration.'')

[21] 15 U.S.C. 77d(2).

[22] *SEC* v. *Ralston Purina Co.,* 346 U.S. 119 (1953). At the time of the *Ralston Purina* decision, Section 4(1) contained the non-public offering exemption.

criteria in our rules and interpretations. For instance, former Rule 146, which was rescinded in 1982, provided a test for determining whether persons were financially sophisticated enough to be offered or purchase securities in non-public offerings.[23] That test, however, still required issuers to make a subjective determination concerning the sophistication of each offeree and purchaser. Further, it created uncertainty about whether the exemption was available and thus posed problems for issuers, primarily small issuers, about potential rescission liability should the exemption turn out to be unavailable. In response to these concerns, the accredited investor concept was created in 1979 as a part of former Rule 242.[24] There, specific classes of investors were designated as accredited investors based on their ability to obtain information upon which to make an informed investment decision.[25]

Shortly after we adopted Rule 242, Congress added the accredited investor concept to the Securities Act.[26] The statutory definition was similar to Rule 242, although not identical.[27] It defines types of purchasers that, based on objective criteria indicating financial sophistication and ability to fend for themselves, do not require the protections of registration under the federal securities laws.[28] Congress determined that companies offering and selling securities in non-public transactions solely to these investors should be exempt from Securities Act registration.[29]

Congress itself established several categories of accredited investors in Section 2(a)(15)(i) of the Securities Act and in Section 2(a)(15)(ii) authorized us to adopt additional categories based on ''such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management.'' [30] This authority has been used to expand the variety and number of persons classified as accredited investors.[31]

The definitions accredit some investors based on their income, net worth, and assets. Natural persons qualify as accredited investors if they meet certain income or net worth tests. Accredited investors, for instance, include natural persons with individual incomes in excess of $200,000 (or joint spousal incomes of $300,000) for the two most recent years, if they reasonably expect to earn at least the same amount in the current year. Natural persons with individual (or joint, with a spouse) net worths over $1 million also are considered to be accredited investors.[32]

Other investors are accredited if they have more than $5 million of assets. These generally include state or ERISA employee benefit plans, charitable organizations or business entities if they were not formed for the specific purpose of investing in the securities offered, and trusts if they were not formed for the specific purpose of acquiring the securities offered and their purchase is directed by a sophisticated person.[33]

The current accredited investor definition also includes investors that are financially sophisticated by their nature. These include various institutional investors and employee benefit plans where sophisticated fiduciaries make investment decisions.[34] Directors, executive officers, and general partners of securities issuers also are accredited, due to their relationship with the issuer, and any entity where all of its equity owners are accredited investors.[35]

C. Possible Alternative Definitions for Securities Act Qualified Purchasers

NSMIA's legislative history indicates that qualified purchasers for purposes of the Securities Act preemption of state regulation should include investors that, by virtue of their financial sophistication and ability to fend for themselves, do not require the protections of registration under the state securities laws.[36] As set forth below, there are a number of existing definitions in the federal securities regulatory framework, other than ''accredited investor,'' concerning financially sophisticated investors that could be used to implement the qualified purchaser concept under the Securities Act. Of course, a wholly new definition could be crafted. Given the legislative intent which looks to simplification, conforming different state standards governing sophisticated investors, eliminating redundancy and working a meaningful preemption in the area of disparate securities registration systems to reduce unnecessary costs to issuers, we believe using ''accredited investor'' is more appropriate than any of the alternatives. We solicit comment on whether any of the other definitions would be appropriate for purposes of Section 18(b)(3).

1. Qualified Institutional Buyers

In April 1990, as part of Rule 144A under the Securities Act,[37] the Commission created another category of financially sophisticated investors—qualified institutional buyers or QIBs. Rule 144A provides a safe harbor exemption from federal registration requirements for resales of restricted securities to QIBs. QIBs generally are institutions or other entities owning and investing large amounts of securities, ranging from $10 million up to $100 million depending on the type of QIB. These investors would undoubtedly fall within the definition of accredited

[23] Rule 506 of Regulation D replaced former Rule 146. See the adopting release for Regulation D, note 31 below.

[24] Rule 505 of Regulation D replaced Rule 242. See the adopting release for Regulation D, note 31 below.

[25] See Release No. 33–6180 (Jan. 17, 1980) [45 FR 6362].

[26] Congress added the accredited investor concept and Section 4(6) to the Securities Act as part of the Small Business Investment Incentive Act of 1980, Pub. L. 96–477 (Oct. 21, 1980).

[27] Rule 242 defined ''accredited person'' as any bank as defined in Section 3(a)(2) of the Securities Act whether acting individually or as a fiduciary; an insurance company as defined in Section 2(a)(13) of the Securities Act; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002] where the plan fiduciary is a bank, insurance company, registered investment company or investment advisor or a licensed small business investment company; any person purchasing $100,000 or more; and any director or executive officer of the issuer. Release No. 33–6180 (Jan. 17, 1980) [45 FR 6362].

[28] Release No. 33–6683 (Jan. 16, 1987) [52 FR 3015].

[29] Section 4(6) of the Securities Act provides issuers an exemption for offers and sales of securities to accredited investors if they offer no more than $5 million of securities and do not engage in general solicitation. The exemption provides for no reasonable belief standard as to investors accreditation. Building on this legislative construction, the Commission created Rules 505 and 506 of Regulation D, which limit the number of unaccredited investors in offerings under these rules to no more than 35. Accredited investors, however, are excluded from the 35-purchaser limit in these exempt offerings. Issuers relying on Rules 505 and 506 also must provide specific disclosure to unaccredited investors. The rules do not require issuers to provide that disclosure to accredited investors.

[30] 15 U.S.C. 77b(a)(15)(i) and (ii).

[31] Regulation D, initially adopted in 1982, contains a definition of accredited investor that includes the statutory categories of accredited investors plus the additional categories the Commission created. See Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251]. The Regulation D definition applies to offerings under Rules 505 and 506 of Regulation D. The definition for purposes of Section 4(6) is contained partly in Section 2(a)(15)(i) of the Securities Act and partly in Securities Act Rule 215. Rule 215 contains the categories of accredited investors adopted by the Commission. Taken together, the accredited investor categories under Section 4(6) are the same as under Regulation D.

[32] Securities Act Rule 501(a)(5) and (6) [17 CFR 230.501(a)(5) and (6)].

[33] Securities Act Rule 501(a)(1), (3) and (7) [17 CFR 230.501(a)(1), (3) and (7)].

[34] Securities Act Rule 501(a)(1), (2) and (3) [17 CFR 230.501(a)(1), (2) and (3)].

[35] Securities Act Rule 501(a)(1), (4) and (8) [17 CFR 230.501(a)(1), (4) and (8)].

[36] See Senate Report at 15 and House Report at 31.

[37] 17 CFR 230.144A. See Release No. 33–6862 (Apr. 23, 1990) [55 FR 17933].

investor and transactions with them would be with qualified purchasers under our proposed definition. Defining qualified purchaser as a QIB would significantly reduce the number of transactions preempted by Section 18(b)(3). Such a high threshold might make this Section 18 preemption less meaningful and thus not consistent with what we see as Congress' intent.

2. 1940 Act Qualified Purchasers

NSMIA also uses the term ''qualified purchaser'' under Section 3(c)(7) of the 1940 Act.[38] There, the concept is tied to a person owning a certain dollar amount of investments.[39] Congress determined that the level of a person's investments should be used to measure the person's financial sophistication in the context of the 1940 Act. The levels were Congressionally set at $5 million for individuals and $25 million for entities and are consistent with the 1940 Act objective of addressing special risks associated with investments in pooled vehicles. Because of the high dollar levels established in the statute, the specific purpose for the provision and the Congressional reluctance to use them for the securities registration preemption, this alternative is not as appropriate as accredited investor.

3. Investment Advisers Act of 1940 Qualified Clients

Rule 205–3[40] under the Investment Advisers Act of 1940[41] provides a limited exemption from that statute's prohibition on charging performance fees to clients. Such a person is one who has at least $750,000 under management with the adviser or in excess of $1.5 million net worth; or is a ''qualified purchaser'' as defined for purposes of the 1940 Act or is a highly knowledgeable employee of the adviser. This relief from general prohibitions in the Advisers Act regarding the linking of adviser compensation to the gains or appreciation of the assets under management recognizes that certain clients may want to use performance fees as a technique of dealing with an adviser and that they are sufficiently sophisticated that the prohibitions in the Advisers Act can be modified. We think that these purposes are quite different from those sought to be addressed in our proposed definition of a covered security.

4. Exchange Act Qualified Investors

Recently, the Congress adopted amendments to the Exchange Act[42] definitions of broker[43] and dealer[44] to include a list of specific exceptions from these definitions for banks. Included in this amendment is a new concept of ''qualified investor.''[45] When a bank participates in the issuance or sale of certain ''identified banking products'' to qualified investors, the bank is excepted from both the new broker and dealer definitions.[46] Because of the high dollar levels in the provision and the special purpose for the provision, this alternative is not as appropriate as accredited investor.

We solicit comment on these existing standards in our regulations which we use to measure financial sophistication and whether concepts used there might be transposed or modified for purposes of Section 18(b)(3). In particular, we ask whether the value of a person's investments would serve as a basis for who is a ''qualified purchaser.'' If so, what are the appropriate amounts? Are there assets that should be included or excluded from this definition if we were to use this model? For example, how should personal residences, automobiles, and retirement accounts be treated?

II. Proposed Definition

The new qualified purchaser definition would have the same meaning as accredited investor. Offers and sales to these persons would not be subject to state registration.[47] Proposed Rule 146(c) under the Securities Act would refer to Rule 501(a) of Regulation D.[48] We believe that the harmonization

[38] 15 U.S.C. 80a–3(c)(7). This section creates an exclusion from the definition of an investment company for privately offered investment companies, such as ''hedge funds,'' owned solely by qualified purchasers.

[39] Section 3(a)(51) of the 1940 Act [15 U.S.C. 80a–3(a)(51)]. The Division of Investment Management has developed a detailed definitional scheme in Commission regulations under the 1940 Act in Rule 2a51–1 [17 CFR 270.2a51–1].

[40] 17 CFR 275.205–3.

[41] 15 U.S.C. 80b–1 et seq.

[42] Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (Nov.12, 1999).

[43] 15 U.S.C. 78c(a)(4).

[44] 15 U.S.C. 78c(a)(5).

[45] The definition includes 1940 Act registered investment companies, banks, savings and loan associations, brokers, dealers, business development companies, licensed small business investment companies, certain employee benefit plans, related trusts, certain market intermediaries, associated persons of a broker or dealer other than a natural person, foreign banks, foreign governments, companies or individuals owning and investing on a discretionary basis at least $25 million ($10 million for asset-backed securities), governments or political subdivisions owning or investing on a discretionary basis at least $50 million, and multinational entities. The Commission also was given authority to define ''qualified investor'' as any other person based upon such factors as the individual's financial sophistication, net worth, knowledge and experience in financial matters. Section 3(a)(54) of the Exchange Act [15 U.S.C. 78c(a)(54)].

[46] Additionally, certain asset-backed securities transactions between the bank and a qualified investor do not make the bank a ''dealer.'' The Commission has adopted interim final regulations. Release No. 34–44291 (May 11, 2001) [66 FR 27760]. The comment period for the interim final regulations was extended from July 17, 2001 until September 4, 2001. The effective date of the statutory amendments, originally set for May 12, 2001, has been extended until May 12, 2002. Release No. 34–44569; 34–44570 (July 18, 2001) [66 FR 38370].

[47] We stress, however, that persons making these offers and sales, or otherwise participating in effecting securities transactions, must continue to consider whether their activities require them to register with the Commission as broker-dealers. Broker-dealer registration generally is required to effect transactions in securities, even if those transactions are exempt from registration under the Securities Act. Release No. 34–42728 (April 28, 2000) [65 FR 25843]. The ''exempted securities'' for which broker-dealer registration is not required are strictly limited and do not include securities issued under Regulations A, D, or S or privately placed securities that would be ''restricted'' securities under Securities Act Rule 144. *Id.*

Broker-dealer registration under the Exchange Act provides protections to investors and the securities markets that are not present under the Securities Act. Release No. 34–27017 (July 18, 1989) [54 FR 30013]; see also Release No. 34–30608 (April 20, 1992) [57 FR 18004]. For example, regulations promulgated under the Exchange Act require registered broker-dealers to comply with extensive net capital, recordkeeping, and reporting obligations. In addition, registered broker-dealers must be members of a self-regulatory organization and the Securities Investor Protection Corporation. They are also subject to fiduciary duties and special antifraud rules, as well as the Commission's broad enforcement authority over broker-dealers. Release No. 34–27017.

[48] The eight categories of accredited investors under Rule 501(a) include:

(1) Banks, insurance companies, registered investment companies; business development companies; savings and loan associations and similar institutions; registered broker-dealers purchasing for their own accounts; employee plans subject to ERISA advised by a bank, savings and loan association, insurance company or registered investment advisor; any employee plan subject to ERISA with total assets in excess of $5 million; any self-directed plan where investment decisions are made solely by accredited investors; employee plans established and maintained by governments of the states or their political subdivisions, as well as their agencies and instrumentalities, if they have total assets in excess of $5 million.

(2) Private business development companies meeting the definition in Section 202(a)(22) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(22)].

(3) Any organization described as exempt in Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], corporation, Massachusetts or similar business trust, limited partnership, if not formed for the purpose of the offered investment and having total assets in excess of $5 million.

(4) Directors, executive officers and general partners of general partners.

(5) Natural persons whose individual or joint net worth with a spouse exceeds $1 million.

(6) Natural persons with individual income in excess of $200,000 in each of the past two years, or joint income with his or her spouse in excess of $300,000 in each of those years, with the expectation for the same income levels in the current year.

(7) Any trust with total assets in excess of $5 million, if not formed for the offered investment, where a sophisticated person directs the purchase.

of the terms qualified purchaser and accredited investor will simplify the regulation of securities offerings. This uniformity would reduce burdens and costs on the capital formation process, given that state regulation of these transactions would be greatly reduced.[49]

The qualified purchaser definition should reduce the regulatory burdens on companies that seek to raise capital, without compromising investor protection. First, the definition should increase issuers' ability to offer and sell securities without state registration. Second, a nationwide, uniform definition of qualified purchaser would override diverse state exemptions for financially sophisticated investors. The federal definition permits issuers to conduct offerings in several states without having to comply with different state exemptions. This uniformity would simplify the securities registration and offering process, and possibly cause more companies to sell their securities to accredited investors because of the smaller burdens upon and costs of capital formation. It also promotes capital formation by permitting issuers to conduct offerings in more states.

Your comments are invited on this proposed approach in defining qualified purchasers. Should the definitions of accredited investor and qualified purchaser under the Securities Act be the same? Are there reasons for us to develop different definitions? If so, what are they?

A. Effects of Proposed Qualified Purchaser Definition

1. State Preemption

With the objective of streamlining the registration process, Congress intended to preempt the states in offers and sales to qualified purchasers in securities offerings registered or exempt from registration under the Securities Act.[50] Accordingly, the qualified purchaser definition would apply in registered offerings and in all exempt offerings.

In April 1997, the North American Securities Administrators Association, Inc. (''NASAA'') adopted the Model Accredited Investor Exemption (''MAIE''). Offerings made exclusively to accredited investors, as defined by Rule 501 of Regulation D under limitations and specified conditions established in MAIE, are exempt from state registration.[51] Forty states have adopted the provision or some variation of it exempting accredited investor transactions.[52] As a result, the coordination of the qualified purchaser definition with accredited investor would have little effect on the registration programs of many states and would work to enforce uniformity here by eliminating variations in state provisions.[53] Further, it will implement Congress' intent that states cease the review of registration statements for transactions involving qualified purchasers.

We solicit comment on the potential impact of our proposal on state law. MAIE contains conditions and restrictions not included in our proposed definition. The preemption however would apply to all transactions involving accredited investors. Your comments should address any implications the preemption would have on the states' ability to regulate generally, for example, intrastate offerings and secondary transactions.

Under the proposed definition, issuers would be able to offer and sell securities to qualified purchasers without compliance with state registration requirements and, in the same offering, register with the states or rely on state exemptions in offers and sales to non-qualified purchasers.[54] For example, an issuer whose securities are quoted on the Nasdaq SmallCap market could conduct a private securities offering exempt from federal registration under Section 4(2) of the Securities Act, but not satisfying the Rule 506 safe harbor requirements.[55] At the state level, the issuer could offer and sell securities to qualified purchasers privately in any state it wishes without either registration or reliance upon any state exemption. Also, the issuer could offer and sell securities in the same offering to non-qualified purchasers in any state where the offering satisfies a state exemption, such as a limited offering exemption or isolated purchaser exemption.[56] If the same issuer desired to register a securities offering with the Commission, one not otherwise preempted from state regulation, it could offer and sell to qualified purchasers in any state without registration or exemption. At the same time, if the issuer desired to include non-qualified purchasers in the same offering, it could register or rely on an available state exemption for offers and sales to those purchasers.

Congress preserved the states' authority to investigate and bring enforcement actions for fraud or unlawful conduct by broker-dealers.[57] States also are permitted to require notice filings in certain instances and require filings of consent to service of process. States may also collect any associated fees with such filings.[58]

2. Interaction With Rule 504 Public Offering Exemption

Rule 504 of Regulation D provides an exemption from registration for securities offerings up to $1 million made by non-reporting companies.[59] An offering under Rule 504 may be either public or private in nature. An issuer doing an offering publicly under Rule 504 has two significant advantages: it may generally solicit and advertise in the offering, and the securities it issues are freely tradeable. A Rule 504 public offering depends upon state oversight. In order to enjoy the benefits of a public offering an issuer must register with the states where the offering is conducted, or, in the alternative, the issuer must rely on a state exemption that permits public offerings exclusively to accredited investors. If the issuer neither registers nor relies on the accredited investor exemption at the state level, its Rule 504 offering must be conducted privately. As a result, the issuer cannot generally advertise or

(8) Any entity where all of the equity owners are accredited investors.

The rule also covers persons the issuer reasonably believes come within any of the foregoing descriptions at the time of sale.

[49] In keeping with the legislative purpose cited in the Senate Report, the uniformity of these definitions would reduce the confusing and conflicting nature caused by the overlapping and costly federal and state registration processes. See Senate Report at 2.

[50] See Senate Report at 32.

[51] CCH NASAA Reporter Para 361. MAIE restricts subsequent resales for 12 months after issuance, except to other accredited investors. Also, written solicitations may consist of a 25-word description of the issuer's business, but is limited to a kind of ''tombstone ad.'' MAIE is a NASAA guideline; in order to establish a functional exemption, state legislative or regulatory action is necessary.

[52] Therefore, 10 states have no special exemptive provision related to accredited investor purchases.

[53] The Senate Report notes that the bill ''codifies another exemption existing in most states—the preemption from state 'blue sky' registration for offers and sales to qualified purchasers.'' Senate Report at 15.

[54] The House Report states, ''the qualified purchaser provision allows State preemption, State exemptions and State registrations to be tacked together to comply with State requirements. Thus, sales to qualified purchasers would qualify for preemption without regard to whether, in the same offering, offers and sales are also made to non-qualified purchasers.'' House Report at 32.

[55] If the issuer complies with the requirements of the Rule 506 safe harbor in the offering, the securities would be covered securities for that reason alone, and the states would be preempted from regulating the offering.

[56] Of course, to rely on the Section 4(2) exemption federally, the issuer cannot conduct a public offering in any state.

[57] 15 U.S.C. 77r(c)(1).

[58] 15 U.S.C. 77r(c)(2)(A). States may not, however, assess fees for any nationally traded securities. See Section 18(c)(2)(D) [15 U.S.C. 77r(c)(2)(D)].

[59] See Rule 504(A) of Regulation D [17 CFR 230.504(a)].

solicit in the offering and the securities issued in the offering are restricted and not freely tradeable.

We are concerned about one implication of preempting state regulation of transactions involving accredited investors: the accredited investor prong of the Rule 504 public offering exemption may no longer be usable. By preempting transactions with qualified purchasers from state registration requirements, we would make state accredited investor exemptions a nullity.[60] Accordingly, we propose as a first step to rescind Rule 504(b)(1)(iii) if the proposed definition of qualified purchaser is adopted. We ask whether the state accredited investor exemption prong can or should be retained because states use definitions different than the Commission's definition of accredited investor. If the provision should be retained, describe the transactions it would continue to cover.

We are concerned, nonetheless, that if we adopt the proposed definition, issuers, especially small ones, might be disadvantaged in their ability to raise capital under Rule 504 because they would no longer be able to publicly offer securities to accredited investors by relying on the availability of a state exemption. It is not our intention to change the existing ability of issuers to reach investors under Rule 504. Would our proposed definition of qualified purchaser significantly restrict small businesses' access to capital since these issuers could not generally solicit and advertise to find accredited investors?

We are considering two alternative approaches to preserving the ability of issuers to offer and sell to accredited investors without the need to register the offerings—exclude accredited investors purchasing in public Rule 504 offerings from the definition of qualified purchaser, or create a new, uniform federal accredited investor exemption, either with or without conditions. We seek comment on these two approaches and any other approach that preserves this capital-raising mechanism without jeopardizing investor protection.

As a first approach, we ask whether offerees and purchasers in public Rule 504 offerings who fall within the accredited investor exemption(s) of the relevant state(s) should be excluded from the qualified purchaser definition and therefore from the preemption. If we do this, state registration of these offerings would not be preempted for the purpose of Rule 504 and Rule 504 offerings could continue to be made in reliance on the state accredited investor exemptions.[61] The benefits that inure to investors and states from state regulation of public Rule 504 offerings would be unchanged. We solicit comment on whether maintaining this benefit justifies the cost to those raising capital. Would there be new or additional costs and benefits through this approach?

We are also considering a second approach to the interaction between the qualified purchaser definition and public Rule 504 offerings. Under this second approach, the accredited investor prong of Rule 504 would be replaced with a uniform, federal exemption from Securities Act registration that substantially replicates the current state exemptions, as represented, for example, by MAIE.[62] Rule 504 therefore would continue to be available for public offerings and sales to accredited investors, but pursuant to federal rather than state regulation. We want to preserve the ability of small businesses to raise up to $1 million of capital in offerings to accredited investors. We solicit comment on how, in conjunction with defining qualified purchaser as proposed, we can be helpful to small businesses raising capital and not undermine investor protections.

We contemplate that if we adopted this second approach, the exemption could impose conditions similar to those found in MAIE and in typical state accredited investor exemptions. These would include limits on the extent to which general solicitation may be used, for example, not permitting written public communications except for tombstone ads containing a brief description of the issuer's business (25 words or less), name, address, telephone number, brief description of the securities to be sold, type, number and aggregate dollar amount of securities to be sold and the name, address and telephone number of a contact person. Do these conditions make sense for a federal exemption? Are there additional or alternative conditions we should impose? Would a legend indicating that the securities are being offered and sold solely to accredited investors pursuant to an exemption from federal registration requirements be needed? Are other cautionary legends necessary? Should certain types of issuers, in addition to those currently ineligible to use Rule 504, be excluded, such as those within the scope of disqualification provisions like Rule 262[63]? Is it necessary to be this restrictive? Should any free writing be permitted? MAIE also limits the extent to which securities may be resold, not permitting resales within a year except to other accredited investors. Is it necessary to impose resale restrictions, or should securities purchased under the exemption be freely tradeable?

Finally, we solicit comment on the interaction of the qualified purchaser definition with another aspect of Rule 504—the exemption for public offerings that are registered or qualified with the states.[64] The preemption of accredited investor transactions also reaches these offerings to the extent offers and sales involve such investors, raising the same concerns we have with state accredited investor exemptions. The states would no longer be permitted to register or review any accredited investor transactions. We believe, however, that if an issuer registers with a state an offering targeted to both accredited and non-accredited investors, the exemption under Rule 504 should continue to be available. Otherwise, issuers would be unduly restricted in their ability to raise capital in a state-registered offering including accredited investors. In order to make this clear, should the definition of qualified purchaser exclude purchasers in state-registered offerings? Should we also include these accredited investor transactions within any federal exemption we might develop, as suggested above? Would it be appropriate to permit both parts of the Rule 504 public exemption to work in tandem? For example, should a state-registered offering to non-qualified purchasers be permitted contemporaneously with a public tombstone ad solicitation to qualified purchasers?

B. The Proposed Definition and the Legislative History

The legislative history of NSMIA makes it clear that Congress intended to preempt state registration in offers and sales to financially sophisticated investors for the purpose of providing a nationwide, uniform definition, thereby eliminating the variations found among the states.[65]

[60] Where state accredited investor exemptions use definitions different from the one contained in Rule 501(a), states could continue to regulate transactions with such investors.

[61] Private Rule 504 offerings would not be affected by the proposed preemption because the availability of the exemption does not depend on state regulation. Therefore, isssuers could continue to make private Rule 504 offerings to accredited investors regardless of the approach adopted with respect to public Rule 504 offerings.

[62] See note 51 above.

[63] These are the so-called ''bad body'' disqualification provisions used under the Regulation A exemption. 17 CFR 230.262.

[64] Rule 504(b)(1)(i) and (ii).

[65] House Report at 31. (''First, many States currently exempt such securities from registration

The House Commerce Committee gave two other reasons for preempting offers and sales of securities to qualified purchasers from state registration requirements.[66] The Committee noted that certain securities are ''fundamentally national in character and generally (though not always) subject to regulation at the Federal level.'' [67] The Committee said it expected us to define qualified purchaser to include purchasers of these fundamentally national securities. The Committee listed mortgage-backed, asset-backed and other structured securities, and securities issued in connection with project financings as examples of fundamentally national securities. Other language in the House Report makes clear that the primary factor for our consideration in defining qualified purchaser must be the financial sophistication of these investors. The House Report states ''[i]n all cases, however, the Committee intends that the Commission's definition be rooted in the belief that ''qualified purchasers'' are sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary.'' [68]

Although Section 18 expressly permits us to define qualified purchaser differently with respect to different categories of securities, the proposal is to define qualified purchaser the same regardless of the nature of the security being offered or sold. For instance, there is no limitation in the proposed definition to only offerees and purchasers of ''fundamentally national'' securities. We believe that the nature of the investor rather than the investment is the critical feature in the determination of whether transactions with qualified purchasers should be exempt from state registration. Your views and comments are requested on this approach. Should the definition be restricted to include investors in certain securities only? How would a definition of ''fundamentally national'' securities be formulated, consistent with the direction to limit the definition to financially sophisticated persons? Should only certain kinds of securities be included, such as debt securities, or both debt and equity securities? Please describe the criteria that these securities should meet and explain why these criteria are necessary. Should certain types of securities be excluded? For example, should all securities that are considered ''penny stock'' under the Exchange Act be excluded? [69] Should securities issued in initial public offerings be excluded? Should certain types of securities registered with the Commission, such as asset-backed ones, and offered and sold pursuant to effective registration statements be deemed to be ''covered securities'' under the qualified purchaser rubric?

Are there segments of offerings that are so essentially national that they should be construed in a way to preempt state regulation and registration, i.e., the offer but not the sale? For example, under Rule 254 of Regulation A,[70] an issuer is permitted to make a public solicitation to determine whether there would be any interest in a proposed securities offering before incurring the expense of developing the required offering materials. In this way, federal regulation provides an offer exemption pursuant to Regulation A, but regulates, in a different way, other later offers and sales. Could the offer pursuant to this Commission exemption be deemed to be made to qualified purchasers so that it would be preempted from state regulation, even though other later offers and the sale might have to be state qualified? Are there other situations where this approach might be appropriate? [71] Are there particular conditions that should be applicable to deregulate a particular offer but not the sale; or vice versa?

Should issuer requirements be imposed? For example, should the issuer be a reporting company under the Exchange Act that has filed its reports for a specified period of time on a timely basis? Should the issuer meet specified asset or revenue tests? Should certain issuers be disqualified, such as issuers that are ''blank check'' companies,[72] or that have past securities laws violations?

What criteria should be applied to ensure that investors in these securities are financially sophisticated? Is the nature of these securities such that no additional investor-specific criteria are needed? Should securities be classified in some other manner and then have qualified purchasers defined differently based on those classes? If so, what classifications should be made and why? How should qualified purchasers be defined differently based on those classes?

III. Request for Comment

We request your comments on the proposal and on the matters discussed in Sections IV through VII, including the application of the Paperwork Reduction Act, the preliminary analysis of costs and benefits and effects on competition, and the Initial Regulatory Flexibility Analysis. Comment is solicited from the point of view of both issuers and investors, as well as facilitators of capital formation, such as underwriters and placement agents, and other regulatory bodies, such as state securities regulators.

IV. Paperwork Reduction Act

We have not prepared a submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995 [73] because the proposed rule does not impose recordkeeping or information collection requirements, or other collections of information requiring the approval of the Office of

requirements, but the qualification standard can vary from State to State. This provision will result in uniform national rule for qualified purchasers, which should greatly facilitate the ability of issuers to use it.'')

In addition to the variations among accredited investor exemptions, many sates provide separate exemptions from registration for offers and sales to institutional investors, such as banks, savings institutions, trust companies, insurance companies, investment companies, pension or profit-sharing trust, and dealers, but the states have various exemptions for other types of financially sophisticated investors.

Most states have adopted the exemption included in the 1956 Uniform Securities Act (''1956 USA''). The 1956 USA is a model state securities law statute drafted by the National Conference of Commissioners on Uniform State Laws. About 37 states have adopted part or all of that Act. Section 402(b)(8) of the 1956 USA exempts offers or sales to ''a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.'' Some states have adopted a modified version of the 1956 exemption, some states use the exemption contained in the 1985 Revised Uniform Securities Act (''1985 USA''), and other states have unique institutional investor exemptions. The 1985 USA is a revised version of the model state securities law act drafted by the National Conference. It has been adopted in full or in part by nine jurisdictions.

[66] See House Report at 31.

[67] *Id.*

[68] *Id.* The House Report noted that trusts or other special purpose vehicles that offer asset-backed, mortgage-backed or other structured securities generally are unable to list on the national markets. Consequently, their securities would not qualify for state preemption as national market securities. By preempting offers and sales to qualified purchasers, Congress intended to provide these issuers with a way to avoid state securities registration.

[69] See Exchange Act Rule 3a51–1 [17 CFR 240.3a51–1].

[70] 17 CFR 230.254. A free writing is permitted, but it must identify the issuer's chief executive officer and the business and products of the company and must indicate that no money is being solicited and will not be accepted and that the offer involves no obligation or commitment of any kind. The material is subject to the Commission's anti-fraud provisions.

[71] See, e.g., Securities Act Rule 701 [17 CFR 230.701] where offers are exempt and only sales are subject to specified regulatory requirements.

[72] See Section 7(b) of the Securities Act [15 U.S.C 77g(b)]; Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)].

[73] 44 U.S.C. 3501 et seq.

Management and Budget. (We note that, if adopted, the definition would reduce the paperwork burden imposed by state registration requirements. We do not impose these requirements and they are not otherwise subject to the Paperwork Reduction Act.)

V. Cost-Benefit Analysis

Congress realigned the federal and state regulatory partnership to promote investment, eliminate duplicative regulation, decrease the cost of capital, and encourage competition, while protecting investors. Consistent with legislative intent and the protection of investors, the proposals would benefit companies and their investors in a number of ways.

We believe that the proposed qualified purchaser definition would reduce costs for issuers by expanding the number of investors to whom issuers may offer and sell securities without complying with state registration requirements. The proposal also would eliminate the need for issuers to comply with different state exemptions for financially sophisticated investors. This nationwide uniform definition would permit issuers to expand the geographic scope of their offerings. These effects should facilitate the capital formation process. These benefits are difficult to quantify.

It appears that a consequence of our proposed definition will be a reduction in state registration and other transaction-related fees. This result is a product of the Congressional directive to include as a ''covered security'' preempted from state registration, transactions with qualified purchasers.

There also may be a cost to investors through the loss of the benefits of state registration and oversight, although this cost is also difficult to quantify. In addition, we do not think this cost will be significant for the following reasons. The proposed qualified purchaser definition should not reduce investor protection. It is designed to encompass only those financially sophisticated investors who are considered to have access to information and fend for themselves. Transactions with these persons are currently exempt from federal registration under specified conditions as well as many state laws. We are not aware of any diminution in investor protection as a result of our current definition of accredited investor. They do not benefit from state regulation in a way that justifies the costs to the issuers subject to state registration requirements. To fully evaluate the benefits and costs associated with the proposed new qualified purchaser definition and the revised accredited investor definition, we request commenters to provide views and supporting information as to the costs and benefits associated with these proposals. We request comments on any potential costs to the states from adopting this particular definition (being mindful that Congress assumed there would be some cost from preempting transactions with qualified purchasers.)

VI. Initial Regulatory Flexibility Analysis

We have prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. § 603 concerning the rule proposed today.

A. Reasons for and Objectives of the Proposed Action

The proposed rule would comply with the mandate of NSMIA to preempt from state securities registration and regulation transactions involving qualified purchasers. That Act makes these transactions ''covered securities,'' which are not subject to certain state ''blue sky'' law provisions. We were delegated the responsibility to determine the meaning of the term ''qualified purchaser.'' In accordance with legislative direction, the proposed definition needs to be based upon the financial sophistication of the investors who should not need the protections offered by state registration and review. We have therefore proposed, for purposes of defining qualified purchasers, our existing definition of accredited investor contained in Rule 501(a), which uses an objective standard and has been in operation for about 20 years.

B. Small Entities Subject to the Rule

The proposed rule addition would exempt small entities from complying with state registration and review requirements in offering securities to qualified purchasers. The proposal would affect small entities that are offering securities under the Securities Act and small entities that invest in securities.

For purposes of the Regulatory Flexibility Act, the Securities Act defines a ''small business'' issuer, other than an investment company as one that on the last day of its most recent fiscal year had total assets of $5 million or less and is engaged in or proposes to engage in an offering of securities of $5 million or less. When used with respect to an investment company, the term is defined as one with any related investment company having aggregate net assets of $50 million or less at the end of its most recent fiscal year.

We are currently aware of approximately 2,500 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 400 investment companies that satisfy the ''small entity'' definition. This proposal would only affect these small entities that offer securities in states that do not currently exempt offerings to accredit investors from state registration requirements. We have no reliable way to determine how many businesses may become subject to our reporting obligations in the future, or may otherwise be impacted by the change in state oversight of financing transactions.

''Accredited Investor'' also includes broker/dealers, investment advisors and investment companies as investors. Many of them are small. These entities would be accredited investors and would be able to be offered and sold offerings without state registration. We do not know how many of these entities would purchase securities in these transactions.

C. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would not impose any new reporting, recordkeeping or compliance requirements. In fact, the proposed rule would, pursuant to Congressional directive, remove state law requirements for the registration of offers and sales to certain entities.

D. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rule, we considered several alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

The proposed rule would reduce the burden of complying with state securities laws for both large and small businesses. Because the proposal reduces burdens on securities issuers, we believe it is advantageous to small issuers to include them, rather than exclude them. Further, we are not aware of any alternative that would increase

the benefit of this proposal for small entities.

The Securities Act prohibits the states from requiring the registration of securities transactions with qualified purchasers. Consequently, the states may not review or comment on the disclosure provided to qualified purchasers, nor apply standards with respect to the merits of the offering or impose conditions on offerings to qualified purchasers. Removing these costs should facilitate capital raising.

We believe that preempting state regulation of transactions involving qualified purchasers who we define the same as accredited investors may make state accredited investor exemptions a nullity. In this case, the accredited investor prong of the Rule 504 public offering exemption may no longer be usable. We are concerned, however, that as a result, issuers, especially small ones, might be disadvantaged in their ability to raise capital by publicly offering their securities to accredited investors. Consequently, we have invited comment on the issue and to see if it would be better to provide limited relief from our proposed preemption for these public Rule 504 transactions. We also have solicited comment on an alternative approach that would replace the accredited investor prong with a new exemption for offerings to qualified purchasers.

We believe that design standards of objectively defining qualified purchasers add certainty and promote the purposes of the rule. We therefore do not propose performance standards to specify different requirements for small entities. We do not believe that it is feasible to further clarify, consolidate or simplify the proposed rule for small entities.

E. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rule we propose to amend.

F. Solicitation of Comments

We encourage the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule amendment is adopted. Persons wishing to submit written comments should follow the instructions contained in the beginning of this release. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rule;
- The expected impact of the proposal;
- How to quantify the number of small entities that would be affected by, and how to quantify the impact of the proposed rule.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VII. Promotion of Efficiency, Competition, and Capital Formation

We request your comment on whether the proposed amendment would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We request comments on whether the proposed amendment is likely to have a $100 million or greater annual effect on the economy. Your comments should provide empirical data to support your views.

We are required to define qualified purchaser consistent with the public interest and the protection of investors. When the public interest is considered, we must determine whether the definition selected would promote efficiency, competition and capital formation, in addition to investor protection.[74] As described in this release, we believe the proposal fosters each of these important goals. We request your comments on how our proposals would affect each of these objectives.

VIII. Statutory Basis

We propose an amendment to Rule 146 under the authority set forth in Sections 2(b), 18(b) and 19 of the Securities Act.

IX. Text of the Amendments

List of Subjects in 17 CFR Part 230

Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.146 is amended by adding paragraph (c) to read as follows:

§ 230.146 Rules under section 18 of the Act.

* * * * *

(c) *Qualified Purchaser.* A ''qualified purchaser'' as used in Section 18(b)(3) of the Act (15 U.S.C. 77r(b)(3)) means any accredited investor as defined in § 230.501(a).

3. Section 230.504 is amended by:

a. Adding ''or'' at the end of paragraph (b)(1)(i);

b. Removing ''; or'' at the end of paragraph (b)(1)(ii) and adding in its place a period; and

c. Removing paragraph (b)(1)(iii).

By the Commission.

Dated: December 19, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31742 Filed 12–26–01; 8:45 am]

BILLING CODE 8010–01–U

[74] See Section 2(b) of the Securities Act (15 U.S.C. 77b(b)).

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 292

RIN 1076–AD93

Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule: reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed rule that was published in the **Federal Register** on September 14, 2000.

EFFECTIVE DATE: Comments must be received on or before February 25, 2002.

ADDRESSES: Mail comments to George Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070–MIB, Washington, DC 20240. Comments may be hand delivered to the same address from 9 a.m. to 4 p.m., Monday through Friday or sent by facsimile to 202–273–3153.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Office of Indian Gaming Management, 202–219–4066.

SUPPLEMENTARY INFORMATION: On September 14, 2000, the Bureau of Indian Affairs published a proposed rule (65 FR 55471) concerning Gaming on Trust Lands Acquired After October 17, 1988. The deadline for receipt of comments was November 13, 2000. Six comments were received after