



## Corporate News Alert

September 8, 2010

### Changes to the Accredited Investor Definition

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) became law on July 21, 2010. One important impact of the Dodd-Frank Act is an immediate change to the definition of "accredited investor" under the Securities Act of 1933 and Rule 501 of Regulation D. Those companies and individuals involved in private placements of securities should pay particular attention to the change.

Companies raising capital by issuing securities often rely on the federal Rule 506 exemption under Regulation D and limit the offering to "accredited investors." The exemption allows companies to avoid heightened state regulation as well as the burden of providing more detailed written disclosure to non-accredited investors as a condition to a registration exemption. Although there are several standards to determine whether an investor is accredited, many individuals rely on the \$1,000,000 minimum net worth category to establish their status as accredited investors. Prior to the Dodd-Frank Act, the net worth calculation could include the value of his or her primary residence. The Dodd-Frank Act modified the definition of accredited investor (as it relates to natural persons) to exclude the value of the investor's primary residence from the \$1,000,000 net worth calculation.

What about the liability of a corresponding mortgage? According to recent guidance from the Securities and Exchange Commission (SEC), the amount of any mortgage or other debt secured by the primary residence (up to its fair market value) may also be excluded from the net worth calculation. If, however, the indebtedness secured by the residence exceeds the value of the home, the excess should be considered a liability and deducted in determining the investor's net worth.

The change to the accredited investor definition effectively increased the net worth requirement for many investors, effective July 21, 2010. Issuers and investors should pay close attention to the accredited investor provisions in their offering and subscription documents and may need to modify them to reflect this change.

Further changes to the accredited investor definition may be on the horizon. The Dodd-Frank Act directs the SEC, beginning in 2014, to adjust the net worth standard to "more than \$1,000,000," leaving the specific amount to the discretion of the SEC. The SEC also must undertake a review of the entire definition of accredited investor (as it applies to natural persons) at least once every four years thereafter, and is directed to make adjustments as it deems appropriate for the protection of investors, in the public interest, and in light of the economy.

Should you have any questions about the application of the Dodd-Frank Act to your business, or any other corporate-related matter, please do not hesitate to contact us.

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