

**IMMEDIATE CHANGE IN ACCREDITED INVESTOR
REQUIREMENTS IN DODD-FRANK ACT**

The president has now signed into law the financial services reform legislation, titled the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).¹

Many provisions of the Dodd-Frank Act are to take effect one year after enactment² and/or require the Securities and Exchange Commission (the “SEC”) or other regulatory bodies to adopt rules and regulations to implement the requirements of the new statute. However, one significant provision of the Dodd-Frank Act has been interpreted by the SEC staff to be effective upon enactment. This provision would exclude for the first time the value of a person’s primary residence when calculating whether a natural person meets the \$1 million net worth test for being an “accredited investor” under Federal Regulation D, and therefore necessitate the immediate revision of subscription documents or other investor representations relating to any ongoing Regulation D offering.³

Regulation D provides a safe harbor exemption from registration under the Securities Act of 1933, as amended, for private placements. Many issuers, including hedge funds and private equity funds rely on Regulation D in their offerings. Typically Regulation D offerings are made only to investors that qualify as accredited investors in order to be exempt from specific disclosure requirements that apply when offerings include unaccredited investors. Because Regulation D requires that accredited investor status be determined at the time of investment, investors that wish to qualify to make a new investment under the net worth category will now need to confirm that their net worth is calculated without inclusion of the value of their primary residence.

Accordingly, the issuer of any Regulation D offering currently in process should determine which, if any, potential investors (and any existing investors that elect to make additional investments) are relying exclusively upon the \$1 million net worth test and have such investors confirm that their net worth exceeds \$1 million without including the value of their primary residence. Going forward, issuers should also revise their standard forms of subscription documents to reflect the modified net worth test.

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act is available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf

² For instance, Title IV of the Dodd-Frank Act, which amends a number of provisions concerning the registration of investment advisers, at Section 419 provides: “Except as otherwise provided in this title, this title and amendments made by this title shall become effective one year after the date of enactment of this Act...”

³ Section 413(a) of the Dodd-Frank Act requires the SEC to adjust upward any net worth standard for an accredited investor, except that during the four-year period that begins on the date of enactment of the Act, that section provides that any net worth standard shall be \$1 million excluding the value of the primary residence.

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