

**SEC PROPOSES RULES TO CLARIFY  
ACCREDITED INVESTOR NET WORTH STANDARD**

The accredited investor standard in Regulation D under the Securities Act of 1933 was amended last year by the Dodd-Frank Act to exclude the value of a person's primary residence in calculating whether a natural person meets the standard's \$1 million net worth test.<sup>1</sup> Prior to the Dodd-Frank Act, a person was permitted to include the value of her primary residence in calculating her net worth. The requirement to exclude the value of a primary residence for this purpose became effective on July 21, 2010, the day the Dodd-Frank Act was signed into law.

The same provision that modified the accredited investor standard also requires the Securities and Exchange Commission to implement the revised standard by rule. On January 25, 2011, the SEC proposed rules designed to meet this requirement by clarifying how the modified \$1 million net worth standard for natural persons is to be calculated. The proposed rules, if adopted, would, when excluding the value of the primary residence as an asset, also disregard as a liability from the calculation the amount of debt secured by the property, up to the estimated fair market value of the property.<sup>2</sup> The category of accredited investor would read as follows (the new clarifying language is in bold):

Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of purchase, exceeds \$1,000,000, excluding the value of the primary residence of such natural person, **calculated by subtracting from the estimated fair market value of the property the amount of debt secured by the property, up to the estimated fair market value of the property.**

No immediate action is required for an issuer that is engaging, or proposes to engage, in an offering of securities in accordance with Regulation D. But once the SEC adopts final rules to implement the standard, an issuer could consider revising its standard forms of subscription documents to reflect the modified net worth test.

Comments on the proposed rules are due by March 11, 2011.

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<sup>1</sup> For more details on the change to the accredited investor standard made by the Dodd-Frank Act and the implications for private fund managers, please see our previous client alert, *Immediate Change in Accredited Investor Requirements in Dodd-Frank Act*, July 21, 2010, available [here](#).

<sup>2</sup> Securities and Exchange Commission, Net Worth Standard for Accredited Investors, Securities Act Rel. No. 9177 (Jan. 25, 2011) (proposing release). The staff of the SEC's Division of Corporation Finance previously set out this calculation method in an interpretation in its website. See Securities Act Compliance & Disclosure Interpretation, Question 255.47, available at <http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

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