

SEC Issues Final Rule on Net Worth Standard For Accredited Investors

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Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) set forth, among other regulatory changes, a revised net worth test for a natural person to qualify as an “accredited investor” for purposes of Regulation D under the Securities Act of 1933, as amended (the primary private placement exemption relied on by investment advisers managing private investment funds). The revised standard, which came into effect on July 21, 2010, requires such individual’s net worth or joint net worth with the spouse of that person, at the time of investment to be \$1,000,000, excluding the value of the primary residence of such natural person. On December 21, 2011, the Securities and Exchange Commission (“SEC”) adopted a final rule which sets forth how to calculate an individual’s net worth under the new standard, as well as provides for a limited grandfathering provision.

Under the new rule, indebtedness secured by an individual’s primary residence, up to the estimated fair market value of such residence, is not included as a liability for purposes of determining such individual’s net worth, except that any indebtedness secured by an individual’s primary residence which is incurred in the 60 days before the sale of securities to the individual shall be included as a liability, unless such indebtedness was incurred as a result of the acquisition of the primary residence. In addition, indebtedness secured by an investor’s primary residence in excess of the estimated fair market value of the residence shall be included as a liability.

The rule also provides for a limited grandfathering provision, such that the new net worth calculation does not apply to an investor who: (1) had a right to purchase securities on July 20, 2010; (2) qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and (3) held securities of the same issuer, other than such right, on July 20, 2010.

The new rule will become effective 60 days after publication in the Federal Register.

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