

## THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT

This Alert—the second in a series of Alerts that examine key aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), which was signed into law by President Obama on July 21, 2010—focuses on changes to the “accredited investor” definition under the Securities Exchange Act of 1933. The changes take effect **immediately** and potentially impact issuers currently engaging in private offerings.

In our first Alert, we examined the corporate governance and executive compensation related provisions of the Act. The first Alert can be found [here](#) on our website.

### *Accredited Investor Definition*

Rules 505 and 506 of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”) exempt certain offerings from the registration requirements of the Securities Act. These rules provide, in part, that issuers may sell securities to an unlimited number of “accredited investors” and up to 35 other sophisticated purchasers. The definition of accredited investor includes, among others, any natural person:

- who has individual net worth, or joint net worth with the person’s spouse, that exceeds \$1,000,000 at the time of the purchase; or
- a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.

The definition has not been changed by the Act. Prior to the enactment of the Act, however, the net value of an investor’s primary residence could be included in determining the investor’s net worth. Now, the value of an individual’s primary residence is excluded for purposes of calculating whether the \$1 million net worth requirement is met. This change effectively increases the net worth requirement for many investors.



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## Potential Future Changes

The Act includes several directives that may result in future changes to the accredited investor standards. The Act directs the SEC to periodically review the definition of “accredited investor” and modify it as appropriate for the protection of investors, in the public interest, and in light of the economy. Further, the Act directs the Comptroller General of the United States to conduct and submit a report to Congress within three years after the enactment of the Act regarding the appropriate criteria of accredited investor status and eligibility to invest in private funds.

While future changes to the definition of “accredited investor” are uncertain, the Act’s requirement that a natural person’s primary residence be excluded when determining a person’s net worth may affect those issuers currently relying on the Rule 505 or Rule 506 exemptions. Any issuer currently involved in a private placement in which individual investors may be participating should consider updating investor representations and review and update offering materials.

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