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Client Alert

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SEC Amends $1 Million Net Worth Standard for Accredited Investors in Accordance with the Dodd-Frank Act

On December 21, 2011, the Securities and Exchange Commission (the "SEC") amended its rules to exclude the value of an individual's primary residence from net worth calculations used to determine whether an individual may invest in certain unregistered securities offerings, such as private placements. The changes were made to conform the SEC's definition of "accredited investor" to the net worth standard that became effective upon passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") on July 21, 2010. The amendments will become effective in February 2012.

SEC rules permit certain private and limited offerings to be made without registration, and without requiring specified disclosures, if sales are made only to "accredited investors." One way individuals may qualify as accredited investors is by having a net worth, alone or together with their spouse, of at least $1 million.

When the Dodd-Frank Act was enacted on July 21, 2010, the value of an individual's primary residence could no longer be counted as an asset when calculating net worth for the purpose of determining an individual's accredited investor status. The amended rules conform to this standard. Accordingly, debt secured by a primary residence (up to the estimated fair market value of such residence) is not treated as a liability. However, any indebtedness secured by an individual's primary residence in excess of the property's estimated fair market value, *i.e.*, an "underwater" mortgage, is treated as a liability. Any additional debt secured by the primary residence that is incurred within 60 days prior to the sale of securities for which an exemption from registration is being sought also will be treated as a liability in order to prevent artificial inflation of an individual's net worth prior to such sale. The estimate of fair market value of an individual's primary residence does not require a third party opinion on valuation.

The SEC also adopted a grandfather provision to enable individuals who qualified as accredited investors under the net worth standard that was in effect on July 20, 2010 to make follow-on investments in limited circumstances.

Beginning in 2014, and every four years thereafter, the Dodd-Frank Act requires the SEC to review the "accredited investor" definition in its entirety and to engage in further rulemaking to the extent it deems appropriate.

For more information on the SEC's recent rulemaking please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below.

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