



Immediate Effectiveness of Change in "Accredited Investor" Definition

July 22 2010-As we reported in a recent Bulletin,[\[1\]](#) the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank")[\[2\]](#) mandates certain changes in the definitions of "accredited investor" that appear in rules under the Securities Act of 1933.

It is now apparent that the SEC staff is taking the position that Dodd-Frank (which the President signed into law yesterday) changes the definition of accredited investor *immediately*, without any delay in effectiveness or other grace period. This is important, for example, because of the heightened disclosure requirements that are applicable to private offerings under Regulation D that include unaccredited investors. The change would apply not only to new offerings under Regulation D, but also to offerings that are already ongoing, including new investments by previous purchasers.

Under the staff's interpretation, for purposes of the definitions of accredited investor that appear in Rules 501(a)(5) and 215(f) under the Securities Act, the value of a person's primary residence must now for the first time be excluded from calculating whether that person meets the \$1,000,000 net worth test. On the other hand, it is not clear whether the staff's interpretation concerning immediate effectiveness is correct. The operative provision of Dodd-Frank (Section 413) is contained in a title of the Act that by its terms does not take effect until July 21, 2011. Moreover, the language of Section 413 itself could be read to provide that the revised net worth test would take effect only upon the SEC's amendment of its rules to incorporate the new test.

Nevertheless, in view of the staff's position, issuers and distributors in Regulation D offerings should immediately review their offering and subscription procedures and materials to evaluate what, if any, changes are necessary or appropriate in view of this development.

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For additional information:

Jordan Burt has formed a special Task Force to monitor Dodd-Frank and other developments relating to reform of financial services regulation. To obtain

additional information about particular developments that might have an impact on the insurance or reinsurance industries, you may contact Roland Goss (rcg@jordenusa.com or (202) 965-8148). To obtain additional information about particular developments that might have an impact on the investment adviser and fund industries, you may contact Tom Lauerman (tcl@jordenusa.com or (202) 965-8156). Or you may contact any of Jordan Burt's other regulatory attorneys.

[1] Our Bulletin is [available here](#).

[2] The text of Dodd-Frank is [available here](#).

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