

ALERTS AND UPDATES

SEC Proposes Amendments per Dodd-Frank to Accredited Investor Standards

February 2, 2011

On January 25, 2011, the U.S. Securities and Exchange Commission (the "SEC") proposed amendments to the accredited investor standards in its rules under the Securities Act of 1933, as amended (the "Securities Act"), to reflect the requirements of Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").¹ The Dodd-Frank Act was signed into law on July 21, 2010, and among other things, changed certain legal requirements governing private and other limited offers and sales of securities without registration under the Securities Act. The Dodd-Frank Act requires the SEC to adopt conforming changes to its rules on private offerings and to consider certain other related matters, which are discussed below.

Accredited Investor

Section 413(a) of the Dodd-Frank Act revised the net worth threshold for accredited investors to \$1 million, excluding the equity value of the investor's primary residence. Where the primary residence is underwater (where the amount of debt secured by the property exceeds the estimated fair market value of the property), then the excess debt should be considered a liability and deducted from the net worth of the investor.

Proposed Amendments to Rule 501 and Rule 215

As proposed, the amendments would set the same standard under both Rule 501(a)(5) of Regulation D and Rule 215(e) for individuals to qualify as accredited investors on the basis of net worth, either individually or with their spouses, by defining an accredited investor as:

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.

The proposed amendments implement Section 413(a) of the Dodd-Frank Act by adding to the relevant rules the language from Section 413(a), "excluding the value of the primary residence of such natural person." To clarify that net worth is calculated by excluding only the investor's net equity in the primary residence, the SEC proposes adding the phrase "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."

Additionally, the SEC proposed technical amendments to Form D and a number of its rules to conform them to the language of Section 413(a) and to correct cross-references to Section 4(6) of the Securities Act, which was renumbered Section 4(5) by Section 944 of the Dodd-Frank Act.

Review

Section 413(b) of the Dodd-Frank Act provides that beginning four years after enactment and every four years thereafter, the SEC is required to review the accredited investor definition "in its entirety" and is authorized to engage in rulemaking to make adjustments to the definition after such review. Furthermore, three years after the enactment of the Dodd-Frank Act, the Comptroller General of the United States is required to conduct a study "examining the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor

status."

The SEC is soliciting comments, both specific and general, on the proposed amendments. In addition to comments respecting the terms and conditions of the proposed rule amendments, the SEC is specifically requesting comments on a potential transition provision that would permit a person, who was qualified as an accredited investor under the old rule and who made an investment, to continue to make investments in the same entity, even if the investor is no longer "accredited" under the revised rules. Comments should be received by the SEC on or before March 11, 2011.

About Duane Morris

Duane Morris has an online **Financial Services Reform Center**—www.duanemorris.com/FinancialReform—which includes the firm's comprehensive series of *Alerts* analyzing the provisions of the Dodd-Frank Act and emerging policies, as well as videos and links to relevant government websites. Duane Morris' attorneys are monitoring the rules and regulations released under the Dodd-Frank Act, as well as the regulatory agencies' interpretive guidance, and continuously update the [Financial Services Reform Center](#).

For Further Information

If you have any questions regarding the proposed amendments presented above, please contact any [member](#) of the [Broker-Dealer & Securities Regulation Practice Group](#), any [member](#) of the [Securities Law Practice Group](#) or the lawyer with whom you are regularly in contact.

Note

1. See SEC Release No. 33-9177, available at <http://www.sec.gov/rules/proposed/2011/33-9177.pdf>.

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