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Comments Due on SEC Proposed Amendments to Definition of Accredited Investor

By **Stephanie L. Chandler** and **Christian A. Alvarado**

On January 25, 2011, the Securities and Exchange Commission ("SEC") released for public comment its proposed amendments to the definition of "accredited investor," for purposes of certain private placement exemptions such as Regulation D, which align with the definition set forth by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Most significantly, the proposed amendments reflect the requirements of Section 413(a) of the Dodd-Frank Act which requires an investor to exclude the value of his or her primary residence when calculating net worth to determine whether the accredited investor standard has been satisfied.

It should be noted that these requirements came into effect upon enactment of the Dodd-Frank Act, and the SEC is proposing to amend its rules to reflect the new standard and clarify the treatment of indebtedness secured by the primary residence in the calculation of net worth. An investor is accredited when net worth, or joint net worth with an investor's spouse, exceeds \$1 million. The Dodd-Frank Act changes (please [click here](#) for a discussion of changes) and these new amendments to the rules have the impact of causing individuals who were formerly accredited to no longer meet the requirements. The SEC also proposes to exclude the value of debt secured by the primary residence in the net worth calculation.

Additionally, the proposed rules do not define "primary residence," but do say that, for the most part, the common meaning of "the home where a person lives most of the time" should be used. The rules also indicate that, in complex cases, the federal income tax rules should be consulted for guidance.

The proposal is seeking comments on issues such as whether the value of the residence should exclude debt secured by it (as proposed) or should be based solely on fair market value; whether the rule should include a definition of the term "primary residence," and if so, what it should be; whether the net worth calculation should be made on a specified date to prevent end-arounds by investors; and whether investors who are no longer Accredited Investors as a result of Dodd-Frank should still be able to make add-on investments.

We encourage companies and investors to review the **SEC Release** and the **SEC Proposed Rule** due to the impact that it may have on pending transactions. For example, Commissioner Paredes (in **his comments on January 25, 2011**) expressed concerns that investors could be disadvantaged because the investor's economic interest, for example, could be diluted if he or she cannot participate in a subsequent round of financing; issuers, too, could be disadvantaged as offerings could be more difficult and costly if certain current investors cannot invest in future offerings.

If you have any questions about the proposed amendments to the definition of accredited investor, would like to submit comments on the proposed net worth standard for accredited investors, or would like to speak with someone about your private offering, please contact **Stephanie Chandler** at 210.978.7704 or schandler@jw.com, **Christian Alvarado** at 210.978.7737 or calvarado@jw.com, or any of the **Jackson Walker Corporate & Securities attorneys**.

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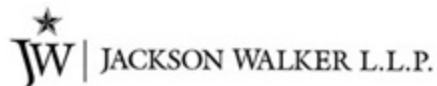
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