

Small Business Securities Bulletin - SEC Proposes Revision to Accredited Investor Definition

February 2011

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A periodic bulletin keeping small businesses informed about current developments in securities law and related matters

As we had discussed in our [June 29, 2010 Bulletin](#), the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) revised the definition of an “accredited investor” under Regulation D of the Securities Act of 1933 and directs the SEC to regularly review, and as appropriate, adjust, the standards of the accredited investor definition.

Issuers conducting a private offering under Rule 505 or 506 of Regulation D directed solely at accredited investors do not need to provide the expansive information otherwise required under Regulation D of the Securities Act, and such investors do not count towards the 35-person limit for such offerings. Under Dodd-Frank, the \$1 million net worth standard for determining “accredited investor” status was adjusted to exclude the value of a potential investor’s primary residence, effective July 21, 2011, the date Dodd-Frank was enacted. Subsequently, the SEC’s Division of Corporation Finance issued guidance clarifying that in calculating a potential investor’s net worth, any debt (such as a mortgage) on the residence, up to the fair market value of the residence, could also be excluded from the net worth calculation, but any debt over the fair market value had to be deducted from the net worth figure (in other words, included in the net worth calculation). On January 25, 2011, the SEC proposed a rule to amend the definition of “accredited investor” in Regulation D consistent with the Dodd-Frank revision to the net worth standard and the Division of Corporation Finance’s subsequent interpretation of this revision. Under its proposal, the SEC would amend its definition to define an accredited investor as any natural person whose individual net worth, or net worth with their spouse, exceeds \$1,000,000 “excluding the value of the primary residence of such natural person, calculated by subtracting from the fair market value of the property the amount of debt secured by the property, up to the estimated fair value of the property.” Basically, this would be determined by subtracting from the standard net worth calculation (assets minus liabilities) any positive equity the potential investor

has in his or her primary residence (in other words, the amount by which the residence's fair market value exceeds any mortgage or other debt secured by such residence).

The proposing release for the proposed rule is available at www.sec.gov/rules/proposed/2011/33-9177.pdf.

About Me. I am a former SEC attorney who also has prior "big firm" experience. I assist public as well as private companies with compliance with federal and state securities laws, including assisting public companies with their reporting obligations under the Securities Exchange Act of 1934, at competitive billing rates. Please contact me if you would like more information about my practice or to discuss how I can be of assistance to you. Visit my bio at www.ober.com/attorneys/penny-somer-greif.

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