
Financial Reform Bill Passes: Immediate Change to Accredited Investor Definition

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The Financial Reform Bill (H.R. 4173) passed Congress on Thursday, July 15, 2010, and is expected to be signed into law by President Obama during the week of July 19, 2010. Section 412 of the Bill directs the SEC to make an important change to the definition of "Accredited Investor" under Rule 501 of Regulation D that will be effective immediately upon the President's signature. The change is significant in the context of private placement offerings, given that most of these offerings are restricted to Accredited Investors in order to qualify for certain exemptions from registration of those offerings with the SEC and state securities regulators, and in order to be exempted from requirements to provide certain types of information to investors in connection with the offering.

Prior to the Financial Reform Bill, an individual met the definition of an "Accredited Investor" if they had a net worth exceeding \$1 million, inclusive of the value of their primary residence. After the Financial Reform Bill, the net worth test remains \$1 million, but must be calculated excluding the value of the investor's primary residence.

The net worth test is not the only way an investor can meet the definition of an "Accredited Investor." The Financial Reform Bill does not immediately change the income test for individuals, which remains \$200,000 (or \$300,000 jointly with spouse) in each of the last two years, with a reasonable expectation of reaching the same income level in the current year. The criteria for investors that are not natural persons, such as corporations and other entities, are also unchanged by the Bill. However, the Bill requires the SEC to reevaluate the definition of "Accredited Investor" at least every four years.

Please contact Darryl Steinhouse, Amy Giannamore or Kurt Oreshack to discuss the impact of these changes on your current and future private placement offerings.