Accredited Investor Standard Adjusted — Effective Immediately

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). Included among the many provisions of the Act is an adjustment to the net worth standard for an individual to qualify as an "accredited investor" for purposes of Regulation D under the Securities Act of 1933, as amended, which is effective immediately. As modified by the Act, in order to qualify as an accredited investor based solely on net worth, an individual must have, alone or together with his or her spouse, a net worth above $1 million, ***excluding the value of his or her primary residence***. Previously, the value of a primary residence could be included in net worth in determining whether an individual was an accredited investor.

A member of the Staff of the Securities and Exchange Commission (the "SEC") has informally indicated that the amount of any mortgage or other debt secured by the individual's primary residence, up to the fair market value of the residence, may be excluded from the calculation of net worth. Any such debt in excess of the fair market value of the residence for which the lender has personal recourse to the investor will need to be deducted in calculating the investor's net worth. Although this interpretation is sensible, it is not authoritative (and certainly not binding on the courts) and it is possible that the text of the Act could be construed to require exclusion of the value of the residence but inclusion of the debt.

The Act does not provide for any transition period or exception for offerings in process. As a result, in connection with any Regulation D offering that did not close prior to the enactment of the Act, on July 21, 2010, issuers will need to review any subscriptions and investor questionnaires that they have already received from individuals who are required to qualify as accredited investors, and re-examine whether any such individuals who indicated that they qualify as accredited investors based on their net worth will continue to qualify based on the revised standard. In addition, going forward, issuers should revise their subscription documents and accredited investor questionnaires to reflect the new net worth standard.

The SEC is authorized to review the definition of accredited investor as it applies to natural persons in order to determine whether the requirements of the definition other than the net worth standard should be adjusted, and may make such adjustments as the SEC deems appropriate for the protection of investors, in the public interest and in light of the economy. This could result in changes to the income requirements, among others. Currently, any natural person who had an individual income in excess of $200,000 in each of the two most recent years, or joint income with a spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year, qualifies as an accredited investor.

In addition, four years after enactment of the Act and at least once every four years thereafter, the SEC is required to undertake a review of the entire accredited investor definition as it applies to natural persons, including the net worth standard, in order to determine whether the definition should be adjusted. At the end of the first four-year period following enactment of the Act, the SEC is required to adjust the net worth standard for individuals to be more than $1 million, excluding the value of the investor's primary residence.

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