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Securities & Exchange Commission issues a new "Accredited Investor'' Compliance and Disclosure Interpretation (CDI 179.01)

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There is probably very little doubt that the "Dodd-Frank Wall Street Reform and Consumer Protection Act" will find its way into the history books as the most extensive legislative reform of the U.S. financial system since the 1930s.

While the bill, which by the way spans more than 2,200 pages, is currently implemented by the Securities & Exchange Commission (SEC), Financial Regulatory Authority (FINRA), and Department of Labor (DOL), there are already signs that the way of doing business in the financial field will change sooner rather than later.

For example, on July 23rd, 2010, a mere two days after President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, the SEC issued a new Compliance and Disclosure Interpretation (CDI 179.01) for the definition "Accredited Investor".

While Rules 215 and 501 of the United States Securities Act of 1933, previously enabled individuals to include their primary residence in their calculation of their net worth to qualify as an Accredited Investor, upon enactment of "Dodd-Frank", this will no longer be the case. On the upside, candidates can now also exclude the amount of indebtedness that is secured by their primary residence up to its fair market value. However, any debt exceeding that benchmark still needs to be reflected as a liability in the net worth test. This is for as long as the SEC hasn't implemented changes to the definition in their rules and regulations.

At this point the only official indicator that wealth requirements to qualify as an Accredited Investor under SEC guidelines have changed is the Q&A section of the SEC's website, which is available at http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#179.01. The agency however did confirm that the new standard became effective upon the enactment of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" on July 21st, 2010.

The change to the definition of "Accredited Investor" pursuant to SEC CDI 179.01 will likely affect many issuers who historically relied on Regulation D, Rule 506 (a.k.a. Safe Harbor Rule) when conducting a private placement of unregistered or restricted securities because their focus on Accredited Investors would not only afford them an exemption from registration under the Securities Act of 1933, but also impose fewer disclosure requirements than if they would market their offering to non-accredited investors as well. In any event, issuers of private placements relying on an exemption from registration under Regulation D, Rule 504, 505, and 506 will be required to update their private placement memoranda and subscription documents to conform with this new standard and preserve their compliance with U.S. security laws.

Updated suitability standards and subscription documents along with corresponding purchaser questionnaires for private placements under Regulation D, Rule 504, 505, and 506 are available at: http://publications.jacksonsteiner.com/subscription-documents-for-regulation-d-offerings-compliant-with-sec-cdi-17901.

We will continue to monitor any new developments in connection with the "Dodd-Frank Wall Street Reform and Consumer Protection Act" and publish our comments accordingly here on JacksonSteiner.com.

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