

PUBLICATION

Dodd-Frank Wall Street Reform And Consumer Protection Act, Part 1

July 27, 2010

Private Offerings and Regulation D

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). We will send a series of releases discussing key aspects of the Act. Several provisions in the Act govern private offerings and Regulation D of the Securities Act of 1933. A summary of the key provisions of the Act relating to private offerings and Regulation D are below.

Accredited Investor Standard. The Act revises the calculation of the \$1 million net worth standard for being an accredited investor to exclude from the calculation the value of a person's primary residence. This provision is effective immediately upon enactment of the Act. After four years, the SEC can adjust the net worth standard from the \$1 million amount, but the value of one's primary residence must still be excluded.

The SEC staff also published a Compliance and Disclosure Interpretation (C&DI) this week regarding the calculation of the value of one's primary residence for purposes of determining an investor's net worth. This C&DI clarifies that the mortgage on a person's home is also to be excluded from such person's net worth, up to the value of the home. However, any amount of indebtedness secured by the home that is in excess of the home's value is to be considered a liability and deducted from the investor's net worth accordingly.

Regulation D. The Act provides that within one year from the date of enactment, the SEC is to issue rules that would disqualify offerings and sales of securities by certain individuals. The disqualified individuals under such rules include persons subject to a final order within the last 10 years by:

- a state securities commission or similar agency;
- a state authority that supervises or examines banks, savings associations or credit unions;
- a state insurance commission;
- a federal banking agency or
- the National Credit Union Administration

The disqualification will bar the person from any of the following activities:

- association with an entity regulated by such commission, authority, agency or officer;
- engaging in the business of securities, insurance or banking; or
- engaging in savings association or credit union activities.

Individuals subject to an order by such agencies that constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale will also be disqualified.

Last, the SEC must put a bar in place to prevent individuals convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the SEC from participating in a Regulation D offering.

Baker Donelson is pleased to present a series of Alerts related to the Dodd-Frank Wall Street Reform and Consumer Protection Act. To read the complete series, [click here](#).