

Anchin Financial Services Industry News



Information and Insights for
Financial Services Industry Executives

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Client Alert: SEC Issues Final Rule on Net Worth Standard for Accredited Investors

In order to conform to the requirements of the Dodd-Frank Act ("Dodd-Frank"), the Securities and Exchange Commission ("SEC") recently published its final rule amending the definition of an "accredited investor".

The new rule excludes the value of a person's primary residence when computing the net worth which is used to determine whether an individual is considered an "accredited investor" and, therefore, able to invest in certain unregistered securities offerings. The revised standard is expected to take effect before the end of February 2012.

Many investors in investment partnerships, hedge funds, private equity funds, real estate funds and the like have relied on one of the "private placement" exemptions found in Regulation D under the Securities Act of 1933. One way an individual investor qualifies as an accredited investor is by having a net worth of at least \$1 million which previously included the value of their primary residence.

While The SEC has not defined the terms "net worth" or "primary residence," there is no reason to believe the common definitions of those terms would not apply.

Since the new rules exclude the value of a primary residence from the net assets test, the SEC, in fairness, generally allows the liabilities secured by that residence to be excluded as well. However, certain limitations apply. The liability cannot exceed the fair value of the residence. The liability cannot be incurred within 60 days of the purchase of the securities (partnership interest) unless it relates to the acquisition of the residence. These provisions are intended to minimize the incentive to borrow against a principal residence to invest in securities.

Grandfathering Provision

In order to avoid forcing investors to divest interests and certain rights to acquire investments under prior rules, the new rule grandfathers those rights and interests which existed prior to July 20, 2010; the date of enactment of Dodd-Frank.

Action Required

Investment companies should revisit their private offering memoranda, subscription documents, investor questionnaires and the like to reflect the revised definition of accredited investor.

Please contact your Anchin Financial Services engagement partner for further information.

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