

Corporate Governance Group

Client Alert

BEIJING FRANKFURT HONG KONG LONDON LOS ANGELES MUNICH NEW YORK SÃO PAULO SINGAPORE TOKYO WASHINGTON, DC

“ACCREDITED INVESTOR” STANDARD FOR REG D OFFERINGS TIGHTENED BY WALL STREET REFORM ACT

Value of primary residence excluded from calculation of an individual’s net worth

As discussed in a previous Client Alert,¹ the recently-enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Wall Street Reform Act”) is a far-reaching piece of legislation that, in many respects, goes beyond regulation of the financial services industry and its products. Included under Title IV (denominated “Regulation of Advisers to Hedge Funds and Others”) is Section 413, which tightens the “accredited investor” standard set forth in Section 501(a)(5) of Regulation D (“Regulation D”) promulgated by the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). This modification obviously arises out of the recent financial crisis and reflects the resulting skepticism over the value of individual residences.

Regulation D is a safe harbor for the issuance of securities in a private placement exempt from registration under the Securities Act. Regulation D sets forth several categories of “accredited investors” who, based on their financial standing and/or sophistication, are deemed not to need the protections afforded by Securities Act registration. Included among the accredited investors is “[a]ny natural person whose individual net worth, or joint net worth with that person’s spouse, ... exceeds \$1,000,000.”

Section 413 of the Wall Street Reform Act provides that the calculation of an individual’s net worth for purposes of Section 501(a)(5) of Regulation D shall, effective immediately, exclude “the value of the primary residence of such natural person.” Section 413 also calls upon the Commission to periodically review Regulation D’s net worth standard and consider modifications “appropriate for the protection of investors, in the public interest, and in light of the economy.” Thus, going forward, issuers conducting private placements to individual investors will not be able to include the

Please feel free to discuss any aspect of this Client Alert with your regular Milbank contacts or with any of the members of our Corporate Governance Group, whose names and contact information are provided at the end of this alert.

In addition, if you would like copies of our other Client Alerts, please visit our website at www.milbank.com and choose the “Client Alerts & Newsletters” link under “Newsroom/Events.”

This Client Alert is a source of general information for clients and friends of Milbank, Tweed, Hadley & McCloy LLP. Its content should not be construed as legal advice, and readers should not act upon the information in this Client Alert without consulting counsel. © 2010 Milbank, Tweed, Hadley & McCloy LLP. All rights reserved. Attorney Advertising, prior results do not guarantee a similar outcome.

¹ See our Client Alert entitled “Corporate Governance Highlights of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,” dated July 21, 2010.

value of a potential investor's primary residence when calculating whether such investor has sufficient net worth to qualify as an accredited investor.

Late last month, the Staff of the Commission offered interpretive guidance with respect to the application of Section 413 of the Wall Street Reform Act. In particular, the Staff noted that Section 413 does not take into account mortgages and other indebtedness that may be secured by an investor's primary residence. Pending the issuance of amendments to Regulation D to reflect the new accredited investor standard, the Staff indicated that any such secured indebtedness, in an amount up to the "fair market value" of the residence, should be excluded in calculating an individual's net worth. However, any such secured indebtedness in excess of "fair market value" of the residence should be "considered a liability and deducted from the investor's net worth."

We will discuss the actual amendments to Regulation D (as well as other Commission rulemaking in response to the Wall Street Reform Act) when they are made public by the Commission.

Please feel free to discuss any aspect of this Client Alert with your regular Milbank contacts or with any of the members of our Corporate Governance Group, whose names and contact information are provided below.

Beijing

Units 05-06, 15th Floor, Tower 2
China Central Place, 79 Jianguo Road, Chaoyang District
Beijing 100025, China

Anthony Root	+86-10-5969-2777	aroot@milbank.com
Edward Sun	+86-10-5969-2772	esun@milbank.com

Frankfurt

Taunusanlage 15
60325 Frankfurt am Main, Germany

Norbert Rieger	+49-89-25559-3620	nrieger@milbank.com
----------------	-------------------	---------------------

Hong Kong

3007 Alexandra House, 18 Chater Road
Central, Hong Kong

Anthony Root	+852-2971-4842	aroot@milbank.com
Joshua Zimmerman	+852-2971-4811	jzimmerman@milbank.com

London

10 Gresham Street
London EC2V 7JD, England

Stuart Harray	+44-20-7615-3083	sharray@milbank.com
Thomas Siebens	+44-20-7615-3034	tsiebens@milbank.com

Los Angeles

601 South Figueroa Street
Los Angeles, CA 90017

Ken Baronsky	+1-213-892-4333	kbaronsky@milbank.com
Neil Wertlieb	+1-213-892-4410	nwertlieb@milbank.com

Munich

Maximilianstrasse 15 (Maximilianhoeft)
80539 Munich, Germany

Peter Nussbaum	+49-89-25559-3636	pnussbaum@milbank.com
----------------	-------------------	-----------------------

New York

One Chase Manhattan Plaza
New York, NY 10005

Scott Edelman	+1-212-530-5149	sedelman@milbank.com
Roland Hlawaty	+1-212-530-5735	rhlawaty@milbank.com
Thomas Janson	+1-212-530-5921	tjanson@milbank.com
Robert Reder	+1-212-530-5680	rreder@milbank.com
Alan Stone	+1-212-530-5285	astone@milbank.com
Douglas Tanner	+1-212-530-5505	dtanner@milbank.com

São Paulo

Av. Paulista 1079, 8th Floor
São Paulo, SP
Brazil

Andrew Janszky	+55-11-2787-6282	ajanszky@milbank.com
----------------	------------------	----------------------

Singapore

30 Raffles Place, #14-00 Chevron House
Singapore 048622

David Zemans	+65-6428-2555	dzemans@milbank.com
Naomi Ishikawa	+65-6428-2525	nishikawa@milbank.com

Tokyo

21F Midtown Tower, 9-7-1 Akasaka, Minato-ku
Tokyo 107-6221 Japan

Darrel Holstein	+813-5410-2841	dholstein@milbank.com
-----------------	----------------	-----------------------

Washington, DC

International Square Building, 1850 K Street, NW
Suite 1100

Washington, DC 20006		
Glenn Gerstell	+1-202-835-7585	gerstell@milbank.com