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## U.S. Financial Reform Legislation — Primary Residence Excluded From Accredited Investor Test

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This alert focuses on one provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Bill”) that appears to take effect as soon as the President signs the Bill into law. ***It is prudent for private funds and other issuers relying on the Regulation D exemption from the registration requirements of the U.S. Securities Act of 1933 to consider revising their subscription and offering documents to reflect this change.***

The definition of “accredited investor” in Regulation D includes, among others, individual investors with a net worth, or joint net worth with their spouse, that exceeds \$1 million. Under the current Regulation D, individuals may include the value of their primary residence in determining whether or not they meet this test. Once the Bill becomes law, it appears that individuals will not be permitted to include the value of their primary residence in determining whether they have sufficient net worth, or joint net worth with their spouse, to meet this test.

In order to comply with this apparent change, we recommend that private funds and other issuers relying on Regulation D to offer securities to high net worth individuals review their subscription documents and investor questionnaires and consider whether they need to be modified to require individual investors to exclude the value of their primary residence in calculating whether they have net worth, or joint net worth with their spouse, in excess of \$1 million. Corresponding revisions may also be required in private placement memoranda and other offering documents for issuers relying on Regulation D, particularly in those parts of these documents that address investor eligibility or suitability standards.

**This change does not apply retroactively. As a result, it is not necessary to ask individual investors who purchased securities prior to the date the Bill becomes law to confirm that they are still accredited investors after taking this change into account. However, individual investors who purchased securities prior to the date the Bill becomes law will need to confirm that they are accredited investors under the new test for any future purchases of securities after the Bill becomes law.**

This change does not apply to real property other than an individual investor’s primary residence. For example, an individual may still count the value of investment properties or a vacation home towards the \$1 million net worth test.

Nor does this change apply to investors that are legal entities. They are still permitted to take into account the value of all their real estate holdings in determining whether they qualify as accredited investors under Regulation D.

The Bill does not provide for immediate changes to the income test for individual accredited investors. For the moment, subject to possible change in the future, individual investors are accredited if they have an individual income of \$200,000 in each of the two most recent years or joint income with their spouse in

excess of \$300,000 in each of those years and a reasonable expectation of reaching the same income level in the current year.

In the future, the Bill may result in other changes to the Regulation D “accredited investor” standards. We will discuss these and other provisions of the Bill in future alerts.

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