Section 413 of Dodd-Frank Effective Upon Enactment - Requires Immediate Attention to Private Placement Disclosure and Subscription Documents

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Section 413 of the Dodd-Frank Act excludes a primary residence from an investor's net worth for purposes of determining "accredited investor" status under Rule 501(a)(5) of the SEC's private placement safe harbor in Regulation D.

This exclusion, immediately effective upon enactment of the bill, without any further action by the SEC, will make it more difficult for natural persons to qualify as accredited investors. It has been reported that the staff of the SEC is expressing informally its view that in determining an individual's net worth for these purposes, the amount of mortgage or other indebtedness secured by the investor's primary residence to the extent such indebtedness does not exceed the value of the residence, need not be considered as a liability. Where the indebtedness secured by the primary residence exceeds the value of the residence and the lender has other recourse against the investor, the excess should be deducted from the investor's net worth.

Issuers and other participants in private placement transactions should review their disclosure and subscription documents immediately and make necessary changes to conform to the new standard.

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