



# SHARTSIS FRIESE LLP

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January 18, 2012

**VIA E-MAIL**

To Our Investment Adviser Clients and Other Friends

**Re: New “Accredited Investor” Net Worth Calculation**

On December 21, 2011, the SEC adopted a rule (the “Final Rule”)<sup>1</sup> amending the “accredited investor” definition in Rule 501(a)(5) of Regulation D under the Securities Act of 1933. The Final Rule will become effective on February 27, 2012.

Rule 501(a)(5) provides that a natural person is considered to be an “accredited investor” if his or her individual net worth, or joint net worth with his or her spouse, exceeds \$1,000,000. The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) mandates excluding the value of the investor’s primary residence in calculating the investor’s net worth for this purpose. The Final Rule implements and expands on this mandate, and will require that, in calculating a natural person’s net worth, he or she must:

- Exclude the value of his or her primary residence,
- Exclude debt secured by the residence, up to the fair market value of the residence at the time he or she purchases the securities (except as noted below),
- Include debt secured by the residence that exceeds the fair market value of the residence, and
- Include the amount of any increase in debt secured by the residence (other than debt incurred to buy the residence) within sixty days before his or her purchase of the securities.

The Final Rule generally does not include a so-called “grandfather” provision, so if an individual who invested before enactment of Dodd-Frank invests additional funds, the investor must meet the new net worth standard. The Final Rule provides an exception from the new calculation requirements, however, if the additional purchase of securities involves

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<sup>1</sup> SEC Release Nos. 33-9287, IA-3341 and IC-29891, File No. S7-04-11, *available at* <http://www.sec.gov/rules/final/2011/33-9287.pdf>.

exercising a pre-existing legal right (such as a statutory right, a right arising under the issuer's constituent documents, and a contractual right), if the investor:

- Held the legal right on July 20, 2010,
- Held the same issuer's securities, in addition to the legal right, on July 20, 2010, and
- Qualified as an accredited investor on the basis of net worth at the time he or she acquired the legal right.

If you manage a hedge fund or other private fund, you should promptly revise your offering documents to reflect the new calculation requirements. Please contact us if you need assistance revising your offering documents or if have questions regarding the Final Rule.

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This letter only generally summarizes the new accredited investor standard in the Final Rule, is not intended as specific or complete advice, and is subject to change if and when the SEC issues interpretations. If you need assistance in determining the effects of these developments on your business, or preparing to comply with them, please contact Doug Hammer, John Broadhurst, Geoff Haynes, Chris Rupright, Carolyn Reiser, Neil Koren, Jim Frolik, Joan Grant, Ellyn Roberts, Anthony Caldwell, Christina Hamilton or Charles Clinger.

**SHARTSIS FRIESE LLP**