

July 18, 2012

*Practice Group(s):*  
*Corporate/M&A*  
*Tax*

## Washington State Changes “Accredited Investor” Definition

*By Charlie Carter, Charles Purcell, and Jaclyne Badal*

Washington’s definition of “accredited investor” was updated on July 14, 2012 to be consistent with the definition used by the Securities and Exchange Commission (“SEC”).

The state’s Department of Financial Institutions filed permanent rules last month to amend the Washington Administrative Code (“WAC”), rules 460-44A-501 and 460-80-108.<sup>1</sup> The definition of accredited investor in those rules was updated to track changes that the SEC made to its rules, effective February 27, 2012, to satisfy the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

A person with a net worth, or joint net worth with his or her spouse, exceeding \$1 million qualifies as an accredited investor. Under the past rules, the value of a person’s primary residence is excluded as an asset (and the mortgage on the residence is not treated as a liability) when making the net worth calculation.

The recent changes further define what qualifies as a liability in determining net worth: If the mortgage on a person’s primary residence exceeds the estimated fair market value of the primary residence, the excess debt will be counted as a liability.

In addition, under the new rules, if an investor has increased the debt on his or her primary residence within 60 days of the purchase by such investor of securities or a franchise (for instance, by taking out a second mortgage or home equity loan) the increased debt is also counted as a liability. This change, which prevents an investor from cashing out home equity to qualify as an accredited investor, does not apply if the debt increase is merely the result of the home purchase.

The most recent changes to the WAC are subject to a grandfathering rule and will not apply if the investor was holding securities of an issuer, or operating a franchise of a franchisor, and had a right to purchase securities in the same issuer or franchises from the same franchisor on July 20, 2010, and was qualified as an accredited investor under the old rules when he or she acquired the right.

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If you have any questions about the updates to the WAC, or about how you can update your subscription documents in light of the new definition, please contact your lawyer at K&L Gates LLP or one of the authors, Charles Purcell or Charlie Carter.

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<sup>1</sup> Rule 460-44A-501 contains the definition of “accredited investor” for purposes of the exemption from the requirement to register the offer and sale of securities. Rule 460-80-108 contains the definition of “accredited investor” for purposes of the exemption from the requirement to register the offer, sale or transfer of a franchise.

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