

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services, Division of Finance & Corporate Securities		441
Agency and Division		Administrative Rules Chapter Number
Shelley Greiner	350 Winter St. NE, Rm 410, Salem OR 97301	503-947-7484
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Amend the "Accredited Investor" rule definition to conform to recent changes in federal law.

**Not more than 15 words that reasonably identify the subject matter of the agency's intended action.**

January 21, 2011	9:00 am	350 Winter St. NE; Salem, Oregon (Conference Room F)	Lauren E. Winters
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:** OAR 441-035-0010 (5)

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 59.285

Other Auth.: Section 413 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Effective July 21, 2010

Stats. Implemented: ORS 59.035 (5)

**RULE SUMMARY**

The definition of an "accredited investor" under OAR 441-035-0010(5) is amended to exclude the value of a natural person's primary residence from the \$1 million net worth calculation. The amended definition reflects the modification of the federal "accredited investor" definition under the Dodd-Frank Act.

The Agency requests public comment on whether Oregon should conform its definition of an "accredited investor" to federal law.

Written comments must be received by 5:00 PM on January 28, 2011.

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

	David C. Tatman	
Signature	Printed name	Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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OAR 441

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**RULE CAPTION**

Amend the "Accredited Investor" rule definition to conform to recent changes in federal law.

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

**In the Matter of:** Amending OAR 441-035-0010(5)

Statutory Authority: ORS 59.285

Other Authority: Section 413 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Effective July 21, 2010

Stats. Implemented: ORS 59.035(5)

**Need for the Rule(s):**

Oregon's "accredited investor" definition utilizes, in part, the definition of "accredited investor" under federal securities law. However, the definition of an "accredited investor" under federal law changed effective July 21, 2010 with the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Like the former federal "accredited investor" definition, the Oregon definition of "accredited investor" allows individual Oregonians to invest in private offerings if they have a net worth of \$1 million, either individually or jointly with the investor's spouse. The Dodd-Frank Act requires issuers to exclude the value of an investor's primary residence from the net worth calculation. Accordingly, Oregon's definition, referenced in ORS 59.035(5) and OAR 441-035-0010(5), no longer reflects the federal definition, and may allow disparate treatment of investors or securities issuers who engage in private offerings solely to Oregon residents, and are therefore not subject to federal regulation. Oregon seeks to match the higher threshold of the new federal requirement, to better protect the investing public and reduce potential uncertainty in the securities industry caused by differing state and federal "accredited investor" definitions.

**Documents relied upon, and where they are available:**

Section 413, p. 542, Dodd-Frank Wall Street Reform and Consumer Protection Act.

**Fiscal and Economic Impact:**

The proposed rule imposes no regulatory obligations. No fiscal or economic impact is expected.

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): There is no cost of compliance to state agencies, local government, or members of the general public.
2. Cost of compliance effect on small business (ORS 183.336):
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The Department does not know how many small businesses employ exemptions to securities registration requirements, as these exemptions are self-executing, pursuant to OAR 441-035-0005. Small business issuing securities to certain natural persons in non-public offerings in exchange for capital may be subject to the amended rule.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The proposed rule imposes no reporting, recordkeeping, or other administrative activities not already borne by issuers seeking to raise funds through the sale of private placement offerings.
  - c. Equipment, supplies, labor and increased administration required for compliance: None.

**How were small businesses involved in the development of this rule?** The Department is seeking input from an advisory committee that includes representatives of the securities industry and consumers.

David C. Tatman

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2005

## 441-035-0010

### Accredited Investor

For purposes of ORS 59.035(5) accredited investor includes:

(1) Any bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the "Act"), or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934; any insurance company as defined in Section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940; any small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title 1 of the Employee Retirement Income Security Act of 1974 ("ERISA"), if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

(3) Any organization described in **Section 501(c)(3)** of the **Internal Revenue Code**, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000.

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold or any director, executive officer, or general partner of a general partner of that issuer.

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the purchase exceeds \$1,000,000, excluding the value of the primary investor's primary residence.

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in **17 CFR 230.506(b)(2)(ii)**.

(8) Any entity in which all of the equity owners are accredited investors.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(5)

Hist.: CC 12-1985(Temp), f. & ef. 11-25-85; CC 1-1987, f. & ef. 2-4-87; FCS 8-1988(Temp), f. & cert. ef. 4-11-88; Renumbered from 815-030-0042; FCS 14-1988, f. & ef. 10-10-88; FCS 5-1990, f. & cert. ef. 8-21-90