

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on August 2, 2010 by the
Date prior to or same as filing date

Department of Consumer & Business Services, Division of Finance & Corporate Securities 441
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective August 3, 2010 through January 30, 2011.
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

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

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: OAR 441-035-0010(5)

SUSPEND:

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 "accredited investor" definition under OAR 441-035-0010(5) is amended to exclude the value of an investor'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.

/s/ David Tatman David C. Tatman 8/2/10
Authorized Signer Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Consumer & Business Services, Division of Finance & Corporate Securities	OAR 441
Agency and Division	Administrative Rules Chapter Number

In the Matter of: **Amending “Accredited Investor” Definition under Rule 441-035-0010**

Rule Caption: **Amend the “Accredited Investor” rule definition to conform to recent federal law changes.**

Statutory Authority: **ORS 59.285**

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

Stats. Implemented: **ORS 59.035(5)**

Need for the Temporary Rule(s):

Oregon’s current “accredited investor” definition relied upon the definition of “accredited investor” under federal securities law; however, the federal definition of “accredited investor” 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 the investor’s primary residence from the net worth calculation. Accordingly, Oregon’s definition referenced in ORS 59.035(5) and related rule OAR 441-035-0010(5) no longer reflects the federal definition, and may allow disparate treatment of investors or securities issuers who only make Oregon private offerings that are not subject to federal regulations. Oregon must take immediate affirmative action to change the Oregon definition of “accredited investor” to match the higher threshold of the new federal requirement to protect Oregonians and reduce any uncertainty in the securities industry potentially caused by different 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.

Justification of Temporary Rule(s):

Oregon must take immediate affirmative action to change the Oregon definition of “accredited investor” to match the higher threshold of the new federal requirement to protect Oregonians and reduce any uncertainty for issuers conducting private offerings under the securities laws.

/s/ David Tatman	David C. Tatman	8/2/10
Authorized Signer	Printed name	Date

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