

Dodd-Frank and Private Fund Advisers

Private Fund Investment Advisers Registration Act of 2010 (Title IV of Dodd-Frank)

- ❖ Eliminates the “private adviser exemption” at 203 (b)(3)
- ❖ Requires SEC registration for advisers to “private funds” with AUM of at least \$150 million
- ❖ Requires SEC reporting for:
 - (1) advisers to “private funds” with AUM of less than \$150 million; *and*
 - (2) advisers to “venture capital funds”
- ❖ Defines “foreign private adviser” and exempts from SEC registration

Private Fund Defined

Private Fund:

An issuer that would be an investment company under the Investment Company Act, *but for* an exclusion provided from that definition for securities offered pursuant to sections 3(c)(1) or 3(c)(7) of that Act

Section 3(c)(1)

A fund whose securities are:

- ❖ not publically offered
- ❖ owned by not more than 100 persons
- ❖ typically offered pursuant to Reg D, Rule 506
- ❖ accredited investors

Section 3(c)(7)

A fund whose securities are:

- ❖ not publically offered
- ❖ generally not owned by more than 499 persons
- ❖ investors must be “qualified purchasers”
 - individuals with investments of \$5 million; or
 - institutions with investments of \$25 million

A Model Rule for States

- ❖ In December 2010, NASAA (North American Securities Administrators Association) published for comment, a proposed “Model Rule on Private Fund Adviser Registration and Exemption”
- ❖ 5 comments received, most directed at the model rule’s limited scope in including only an exemption for 3(c)(7) funds

A Model Rule for States (con't)

- ❖ NASAA revised its model rule to cover an exemption for advisers to venture capital funds
- ❖ NASAA agreed with commentators that there are legitimate reasons to include some (3)(c)(1) exemptions including: need for small business capital formation and economic development at local level

A Model Rule for States (con't)

- ❖ NASAA stopped short of including exemption for all 3(c)(1) funds, however, based on concerns for the level of investor protection provided by that section.
- ❖ NASAA agreed to exempt advisers to 3(c)(1) funds, but only if those funds are made up of investors who satisfy the new “qualified client” standard adopted by the SEC.

A Model Rule for States (con't)

- ❖ On September 19, 2011 the dollar amount thresholds in the AUM and Net Worth tests in SEC rule 205-3's definition of "qualified client" increased.
- ❖ A "qualified client" now requires:
 - ❖ \$1 million AUM (up from \$750k)
 - ❖ \$2 million Net Worth* (up from \$1.5 million)

*Now excludes value of the primary residence

A Model Rule for States (con't)

- ❖ NASAA has just begun discussions on this proposed model rule
- ❖ a vote of NASAA's full membership on the model rule may happen as early as December or the beginning of 2012

Maine and Private Fund Advisers

- ❖ Maine requires advisers to private funds to be licensed as investment advisers
- ❖ There are limited situations where a request for an exemption may be granted.
- ❖ Past orders granting exemptions have imposed conditions including requirement that adviser submit to periodic examination at the discretion of the Administrator.

Maine and Private Fund Advisers (con't)

- ❖ When the Model Rule is acted upon by NASAA, the Office of Securities will carefully review the final language and determine whether and how Maine should implement any part or all of the rule.
- ❖ Until then, if you are working with private funds and have questions regarding where you fall within this rubric, please call the Office of Securities at 624-8551 for individual assistance.