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**Summary of the June 22, 2011 SEC Release on the Adoption of the Dodd-Frank Act Provisions Affecting All Hedge Fund Managers**

On June 22, 2011, the SEC adopted rules that require advisers to hedge funds and other private funds to register with the SEC. The rules also establish new exemptions from SEC registration and reporting requirements for certain advisers, and reallocate regulatory responsibility for advisers between the SEC and the states by reallocating regulatory responsibility for certain mid-sized investment advisers to the state securities authorities. The rules adopted by the SEC implement the central provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) regarding investment advisers and expand disclosure by hedge fund managers, particularly about the private funds they manage.

The rules provide for a transitional exemption period so that advisers such as hedge fund and private equity fund advisers now required to register with the SEC do not have to do so until March 30, 2012. The rules regarding exemptions for venture capital fund and certain private fund advisers are effective July 21, 2011.

**I. The Dodd-Frank Act SEC Registration Amendments to the Investment Advisers Act of 1940**

For many years, advisers to private funds have been able to avoid registering with the SEC because of an exemption that applied to advisers with fewer than 15 clients (the “Private Adviser Exemption”) – an exemption that counted each fund as a client rather than counting each investor in a fund as a client. As a result, many advisers to hedge funds have remained outside of the SEC’s regulatory oversight. Title IV of the Dodd-Frank Act eliminated the Private Adviser Exemption. Consequently, many previously unregistered advisers, particularly those to hedge funds, will have to register with the SEC and be subject to its regulatory oversight, rules and examination.

To provide these advisers with sufficient time to meet their new filing and compliance obligations, the SEC adopted transition provisions that will not require these advisers to be registered with the SEC until March 30, 2012 (essentially a SEC registration filing date by February 14, 2012).

**II. Reporting Requirements for Hedge Funds**

When investment advisers register with the SEC, they provide information in their registration form (“Form ADV”) that presumably has been used by the SEC in its regulatory program to support its mission to protect investors. To enhance its ability to oversee investment advisers to private funds, the SEC is requiring advisers to provide additional information about the private funds they manage.

## ***Amended Registration Form***

Under the amended Form ADV, advisers to private funds will provide:

- Organizational and operational information about each fund they manage, such as the type of private fund that it is (e.g., hedge fund or a private equity fund), general information about the size and ownership of the fund, general fund data, and the adviser's services to the fund.
- Identification of five categories of "gatekeepers" that perform critical roles for advisers and the private funds they manage (i.e., auditors, prime brokers, custodians, administrators, and marketers).

In addition, the SEC is adopting other amendments to Form ADV. These amendments will require all registered advisers to provide more information about their advisory business, including information about: (i) the types of clients they advise, their employees, and their advisory activities; and (ii) their business practices that may present significant conflicts of interest (such as the use of affiliated brokers, soft dollar arrangements and compensation for client referrals). The rules also will require advisers to provide additional information about their non-advisory activities and their financial industry affiliations.

### **III. Reporting Requirements for Exempt Advisers**

While many private fund advisers will be required to register, some of those advisers may be exempt from so doing by fitting within the parameters of one of three new exemptions from registration under the Dodd-Frank Act, including exemptions for:

- Advisers solely to venture capital funds.
- Advisers solely to private funds with less than \$150 million in assets under management in the United States.
- Certain foreign advisers without a place of business in the United States.

The SEC will impose certain reporting requirements upon advisers relying upon either of the first two of these exemptions ("Exempt Reporting Advisers"). Under the new rules, Exempt Reporting Advisers will be required to file, and periodically update, reports with the SEC using the same registration form (Form ADV, Part 1) as registered advisers. Rather than completing all of the items on the Form ADV, Exempt Reporting Advisers will fill out a limited subset of items, including:

- Basic identifying information for the adviser and the identity of its owners and affiliates.
- Information about the private funds the adviser manages and about other business activities that the adviser and its affiliates are engaged in that present conflicts of interest that may suggest significant risk to clients.

- The disciplinary history (if any) of the adviser and its employees that may reflect on the integrity of the firm. Exempt Reporting Advisers will file reports on the SEC's investment adviser electronic filing system (IARD), and these reports will be publicly available on the SEC's website. These advisers will be required to file their first reports in the first quarter of 2012.

#### **IV. Reallocation of Regulatory Responsibility**

. Under existing law pre-Dodd-Frank, advisers generally could not register with the SEC unless they managed at least \$25 million for their clients. The Dodd-Frank Act raised the threshold for SEC registration to \$100 million by creating a new category of advisers called "mid-sized advisers." A mid-sized adviser, which generally may not register with the SEC and will be subject to state registration, is defined as an adviser that:

- Manages between \$25 million and \$100 million for its clients.
- Is required to be registered in the state where it maintains its principal office and place of business.
- Would be subject to examination by that state, if required to register.

The SEC is adopting amendments to several of its current rules and forms to, among other things, clarify when an adviser will be deemed a "mid-sized adviser". In order to facilitate the transition of advisers between federal and state registration in accordance with the new requirements, advisers registered with the SEC will have to declare that they are permitted to remain registered in a filing in the first quarter of 2012, and those no longer eligible for SEC registration will have until June 28, 2012 to complete the switch to state registration.

#### **V. Exemptions for Advisers to Private Fund Advisers With Less Than \$150 Million in Assets Under Management and Foreign Private Advisers**

As previously discussed, the Dodd-Frank Act eliminated the private adviser exemption and created new exemptions for:

- Advisers solely to private funds with less than \$150 million in assets under management in the United States.
- Certain foreign advisers without a place of business in the United States.

##### ***Note on Foreign Private Advisers:***

The Dodd-Frank Act also amended the Advisers Act to provide for an exemption from registration for foreign advisers that do not have a place of business in the United States, and which have:

- Less than \$25 million in aggregate assets under management from U.S. clients and private fund investors.
- Fewer than an aggregate of 15 U.S. clients and private fund investors.

Additionally, The SEC reaffirmed the validity of the *Unibanco* line of no-action letters. Accordingly, a non-U.S. adviser affiliated with an SEC registered adviser will not be required to register with the SEC if it follows the guidance provided by the SEC staff in those letters.