SEC IMPLEMENTS (AND DELAYS) PRIVATE FUND REGISTRATION AND NEW EXEMPTIONS UNDER DODD-FRANK

June 23, 2011

To Our Clients and Friends:

At a public meeting yesterday the Securities and Exchange Commission (the "SEC") approved an exemption that will permit investment advisers currently relying on Section 203(b)(3) of the Investment Advisers Act of 1940 (the "Advisers Act") (including most private fund advisers) to defer registration until March 30, 2012. The exemption also will permit "exempt reporting advisers" (discussed below) to defer filing Part 1A of Form ADV until March 30, 2012.

Significantly, the SEC approved the publication of three final releases relating to (i) the registration of private fund advisers under the Advisers Act, (ii) the new Advisers Act exemptions for venture capital fund advisers, certain small private fund advisers and foreign private advisers and (iii) the new exception from the definition of investment adviser applicable to "family offices."[1]

The adopting releases became available yesterday (at http://www.sec.gov/rules/final.shtml) and we are still reviewing them. We will provide more detail in a client update shortly. However, several remarks made during the course of the SEC's open meeting are worth noting:

- The definition of "venture capital fund" in Rule 203(l)-1 has been adjusted. Investment advisers that advise only venture capital funds as defined in the new rule are exempt from registration under the Advisers Act. The revised definition provides additional flexibility by allowing venture capital funds to hold "nonqualifying" investments of up to 20% of capital commitments. The other new exemptions to Advisers Act registration appear to have been adopted largely as proposed. The SEC did, however, approve a change to the small private

[1] *For more information on the proposing releases, please see our Client Update: SEC Proposes Rules to Implement the Dodd-Frank Act's Advisers Act Provisions (Dec. 22, 2010), available at http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=046b5b00-2e17-4c3a-89b7-75fc4b9793ec*

fund adviser exemption to allow such advisers to determine their eligibility to rely on the exemption annually rather than quarterly.

- Amendments to Part 1A of Form ADV will require more detailed information than is currently required concerning private funds managed by registered investment advisers and by "exempt reporting advisers," *i.e.*, those investment advisers relying on the venture capital fund adviser exemption or the small private fund adviser exemption. However, the SEC staff indicated that certain of the reporting requirements have been modified from the proposal in part to address concerns relating to the disclosure of proprietary information. Chairman Schapiro also stated that the proposed Form PF (the systemic risk reporting form for private funds) is still under consideration.

- Chairman Schapiro indicated that exempt reporting advisers will not be subject to routine SEC examinations, although, the SEC has the authority to examine such advisers if it determines that it has cause to do so. The releases confirm this.

- As proposed, exempt reporting advisers will be required to file Part 1A of Form ADV, but respond only to specified items; however, the SEC instructed the staff to reassess the reporting by these advisers after the first year. Commissioners Casey and Paredes objected to the adoption of certain of the disclosure requirements that will be applicable to venture capital fund advisers.

- The SEC staff will not withdraw its no-action letters relating to the substantive obligations of registered investment advisers that have their principal place of business outside of the United States or the means by which non-U.S. affiliates of registered investment advisers may assist their registered affiliates in providing investment advisory services without registering (the *Unibanco* line of letters).

- The SEC approved an amendment to Rule 206(4)-5 of the Advisers Act (the "Pay-to-Play Rule") to allow advisers to use a registered municipal adviser to solicit state and local governments. As is the case under the current rule, an adviser may also retain a registered broker-dealer or registered investment adviser for such solicitations. Broker-dealers and municipal advisers must be subject to pay-to-play rules that are equivalent to the SEC's

Pay-to-Play Rule, which applies to investment advisers. As the Municipal Securities Rulemaking Board and Financial Industry Regulatory Authority have not yet adopted such rules, the SEC delayed the compliance deadline with respect to this provision of the Pay-to-Play Rule from September 13, 2011 to June 13, 2012.

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We will provide additional analysis of the new rules in the near future. Please call us if you have any questions.

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