DEBEVOISE & PLIMPTON LLP

Dodd-Frank Wall Street Reform and Consumer Protection Act

(as approved by the House-Senate Conference on H.R. 4173 on June 29, 2010 and subsequently approved by the U.S. House of Representatives on June 30, 2010)

Summary of Investment Adviser Registration Provisions

June 30, 2010

Introduction

The United States Department of the Treasury released a proposal for comprehensive federal financial regulatory reform in July 2009. The U.S. House of Representatives approved its version of this legislation, H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009" on December 11, 2009. The U.S. Senate approved its version of this legislation, the "Restoring American Financial Stability Act of 2010"on May 20, 2010. While the House and Senate approved versions similar in their broad contours, they also contained significant differences and thus had to be reconciled. A House-Senate Conference on H.R. 4173 (the "Conference Committee") met during the weeks of June 14 and June 21, 2010 and produced an agreed to a Conference Report (an agreed-to legislation reconciling the House and Senate bills) on June 25, 2010, named the "Dodd-Frank Wall Street Reform and Consumer Protection Act." The addition of "Dodd-Frank" to the bill title is for Senator Christopher Dodd, chair of the Senate Committee on Banking, Housing and Urban Affairs, and Representative Barney Frank, chair of the House Committee on Financial Services, who each shepherded this legislation through their respective committees and were the principal Conference Committee negotiators. The Conference Committee subsequently reconvened on June 29, 2010 and agreed to an amendment to the Conference Report. The House Conference Report was reported as Report 111-517, 111th Cong, 2nd Sess., dated June 29, 2010. The full House approved the Dodd-Frank Act on June 30, 2010. This is a summary of key provisions of the Dodd-Frank Act relating to the registration of investment advisers under the Investment Advisers Act of 1940. ***This summary reflects the version of the Dodd-Frank Act posted on the House Committee on Financial Services website as of June 29, 2010, which reflects the amended version approved by the Conference Committee on June 29, 2010.***

A Guide to the Use of Abbreviations in the Summary

CFTC – Commodities Future Trading Commission
SEC – Securities and Exchange Commission

Title IV - Regulation of Advisers to Hedge Funds and Others	**Private Fund Investment Advisers Registration Act of 2010**
A - ***Registration of Private Fund Advisers***	
1 - General	General. As a general matter, Title IV rescinds the exemption from registration under the Investment Advisers Act of 1940 (the "Investment Advisers Act") currently relied upon by many hedge fund and private equity fund advisers, but also by certain foreign institutions with a small number of U.S. clients. Certain advisers continue to be eligible for exemptions but may be subject to recordkeeping and reporting requirements. Private Fund. Title IV adds a new definition to Investment Advisers Act §202(a) for the term "private fund". The term "private fund" is defined to mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (the "Investment Company Act") §3, but for §3(c)(1) (i.e., privately-offered funds with fewer than 100 investors) or §3(c)(7) (i.e., privately-offered funds where all investors are qualified purchasers) of that Act. (15 U.S.C. §80b–2(a), *as amended by* §402) Title IV Effective Date. In general, except as otherwise provided, the provisions of Title IV will become effective one year after the Date of Enactment (the "Title IV Effective Date"). (§419) Unless otherwise noted, the SEC rulemaking requirements below have no required date for completion.
2 - Changes to Exemptions from Registration under the Investment Advisers Act for Private Fund Advisers	Removal of Fewer than 15 Client Exemption. The exemption provided by Investment Advisers Act §203(b)(3), which provides an exemption from SEC registration for an investment adviser who had fewer than 15 clients and who did not hold itself out to the public as investment adviser, will no longer be available after the Title IV Effective Date. The amended §203(b)(3) will provide an exemption for "foreign private advisers" (described below). (15 U.S.C. §80b–3(b), *as amended by* §403) Limitation on Intrastate Exemption. The exemption provided by Investment Advisers Act §203(b)(1), which provides an exemption from SEC registration for certain intrastate advisers, will no longer be available to investment advisers to private funds after the Title IV Effective Date. (15 U.S.C. §80b–3(b), *as amended by* §403) Limitation on CFTC-Registered Exemption. The exemption provided by Investment Advisers Act §203(b)(6), which provides an exemption from SEC registration for certain advisers registered with the CFTC, will no longer be available to an investment adviser to a private fund if, after the Date of Enactment, the business of the adviser should become predominantly the provision of securities-related advice. (15 U.S.C. §80b–3(b), *as amended by* §403)

3 - New Exemptions from Registration under the Investment Advisers Act for Private Fund Advisers	Addition of Foreign Private Adviser Exemption. Investment Advisers Act §203(b)(3) is amended to provide an exemption for a “foreign private adviser.” (15 U.S.C. §80b–3(b)(3), *as amended by* §403) A “foreign private adviser” is defined as any investment adviser who (A) has no place of business in the U.S.; (B) has, in total, fewer than 15 clients and investors in the U.S. in private funds advised by the investment adviser; (C) has aggregate assets under management attributable to clients in the U.S. and investors in the U.S. in private funds advised by the investment adviser of less than $25 million (or such higher amount set by the SEC by rule); and (D) neither (i) holds itself generally to the U.S. public as an investment adviser; nor (ii) acts as (I) an investment adviser to any investment company registered under the Investment Company Act or (II) a company that has elected to be a business development company pursuant to Investment Company of 1940 §54 and has not withdrawn its election (a “BDC”). (15 U.S.C. §80b–2(a), *as amended by* §402) Addition of SBIC Adviser Exemption. Investment Advisers Act §203(b)(7) is added to provide an exemption for an investment adviser who is not a BDC and who solely advises (i) small business investment companies that are licensees under the Small Business Investment Act of 1958 (the “Small Business Investment Act”); (ii) entities that have received a notice to proceed to qualify as a small business investment company and (iii) affiliates of the entities described in (i) who have a pending application to be licensed under the Small Business Investment Act. (15 U.S.C. §80b–3(b)(7), *as added by* §403) Addition of Venture Capital Fund Adviser Exemption. Investment Advisers Act §203(l) is added to provide an exemption from registration for an investment adviser that acts as an investment adviser solely to one or more “venture capital funds” with respect to the provision of investment advice relating to a “venture capital fund.” The SEC is required to define the term “venture capital fund” within one year of the Date of Enactment. Exempt venture capital fund advisers will be required to maintain such records and provide such annual or other reports to the SEC as the SEC determines necessary or appropriate in the public interest or for the protection of investors. (15 U.S.C. §80b–3(l), *as added by* §407) Addition of Small Private Fund Adviser Exemption. Investment Advisers Act §203(m) is added to direct the SEC to promulgate a rule providing an exemption from registration for any investment adviser that (i) acts solely as an adviser to private funds and (ii) has assets under management in the U.S. of less than $150 million. An exempt “small” investment adviser will be required to maintain such records and provide such annual or other reports to the SEC as the SEC determines necessary or appropriate in the public interest or for the protection of investors. (15 U.S.C. §80b–3(m), *as added by* §408)

4 - Other Changes to Registration under the Investment Advisers Act	Change in State/Federal Registration Line. Prior to the Dodd-Frank Act, as a general matter, investment advisers not otherwise exempt from registration were prohibited from registering with the SEC if they had less than $25 million of assets under management (or such higher amount as may be set by the SEC – currently $30 million). Under Title IV, an adviser with assets under management of up to $100 million (or such higher amount as the SEC determines) will be required to register with the state (and not the SEC) where the adviser maintains its principal office and place of business if the adviser is subject to both state registration and examination in that state. Advisers who would be required to register in 15 or more states may register with the SEC instead. (15 U.S.C. §80b–3a(a), *as amended by* §410) Addition of Family Office Exclusion. Investment Advisers Act §202(a)(11)(G) is added to exclude "family offices" from the definition of "investment adviser." The requirements of the "family office" exclusion are to be set by SEC rulemaking to be consistent with prior exemptive relief and to recognize the range of organizational, management and employment structures and arrangement employed by family offices. There is a grandfather provision for certain advisers who were providing advice before Jan. 1, 2010 to (i) officers, directors or employees of a family office have invested in the family office and are "accredited investors" as defined by Regulation D under the Securities Act of 1933 (the "Securities Act"); (ii) any company owned exclusively and controlled by members of the family of the family office (or as the SEC may prescribe); or (iii) any registered investment adviser who identifies (and invests on substantially the same terms in) investment opportunities for the family office unless the adviser invests in other funds advised by the family office and the adviser's assets as to which the family office provides investment advice represent more than 5% of the family office's total assets under management. A grandfathered entity will be deemed to be an investment adviser for purpose of the general anti-fraud provisions of the Investment Advisers Act (§§ 206(1), (2) and (4)). (15 U.S.C. §80b–2(a)(11), *as added by* §409)

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