

## ADVISORY | Dodd-Frank Act

July 21, 2010

### ADVISERS TO PRIVATE INVESTMENT FUNDS

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). The Act imposes new restrictions and an expanded framework of regulatory oversight for many financial institutions, not just banks.

The Act will subject advisers to private equity and hedge funds to new regulation and oversight. This advisory describes new SEC registration and reporting requirements for private fund advisers. Because of their potential relevance, the advisory also addresses the possibility of Federal Reserve supervision of private funds, new restrictions on banks' ability to invest in and sponsor hedge funds and private equity funds, the ability of federal regulators to restrict certain compensation arrangements at a wide variety of financial firms, and the potential new requirement for annual stress tests.

The new SEC registration and reporting requirements described below will be effective one year after the date of the Act's enactment.

#### Key Highlights of the Act for Advisers to Private Investment Funds

- Creates a new category of investment fund called a *private fund* – any fund that would be required to register under the Investment Company Act of 1940 but for the exemptions provided by Sections 3(c)(1) or 3(c)(7) thereof.
- Subjects registered advisers to private funds to a variety of new recordkeeping and reporting requirements regarding the funds they manage.
- Eliminates exemption from registration under the Investment Advisers Act of 1940 for advisers with fewer than 15 clients, and raises dollar threshold for SEC registration from \$25 million of assets under management to \$100 million, subject to various exceptions. As a result, advisers to most hedge funds and private equity funds will be required to register with the SEC.
- Exempts advisers to *venture capital funds* (to be defined by SEC) and advisers to private funds with less than \$150 million in assets under management from SEC registration, but these advisers will be subject to new reporting and recordkeeping requirements.
- Permits new Financial Stability Oversight Council created by the Act to designate private funds for systemic risk regulation by the Federal Reserve.
- Imposes new restrictions on the ability of banks and related entities to sponsor or invest in private equity funds and hedge funds.
- Expands authority of federal regulators to regulate incentive-based compensation at a wide variety of financial firms, including investment advisers.

## New SEC Registration and Reporting Requirements

The Act creates a new category of investment fund called a “private fund,” which is any fund that would be an “investment company” under the Investment Company Act of 1940 (the Investment Company Act) *but for* the exemptions provided by Section 3(c)(1) (*i.e.*, funds owned by 100 or fewer investors) or Section 3(c)(7) (*i.e.*, funds owned solely by “qualified purchasers”). Advisers to private funds generally will be required to register under the Investment Advisers Act of 1940 (the Advisers Act), although there are several exceptions, including for advisers to venture capital funds and smaller private funds. In addition, registered private fund advisers will have to comply with new recordkeeping and reporting rules.

### Effective Date and SEC Rulemaking

The new registration, reporting and other requirements described below will be effective one year after the date of the Act’s enactment, which means that investment advisers not currently registered with the SEC but which are required to register as a result of the Act must do so within one year.<sup>1</sup> In addition, the SEC will be required to adopt rules to implement the new recordkeeping and reporting requirements for advisers to private funds, as well as to define the term “venture capital fund.” This rulemaking must be completed within one year of the Act’s enactment.

### SEC Registration

The law amends the Advisers Act in a number of respects, with the result that many advisers to private investment funds will, for the first time, be required to register with the SEC.

Most importantly, the current exemption from registration under the Advisers Act for advisers with fewer than 15 clients has been eliminated. Because a typical “blind pool” fund is treated as a single client (regardless of how many investors invest through the fund), fund managers that manage 14 or fewer funds have generally been exempt, under current law, from registration under the Advisers Act.

In addition, the dollar threshold that triggers the requirement to register under the Advisers Act has been raised from \$25 million (the current statutory threshold) to \$100 million of assets under management. Although the Act adds a number of exemptions from the registration requirement (including, as described below, an exemption for advisers solely to private funds with less than \$150 million of assets under management), generally speaking an adviser to any fund with at least \$100 million of assets under management will be required to register with the SEC under the Advisers Act.<sup>2</sup>

The Act will increase administrative/compliance burdens and expenses for a large class of previously unregistered investment advisers, *i.e.*, those that have been exempt from registration under the “fewer than 15 clients” exemption under the Advisers Act. The registration process itself, while not unduly cumbersome or time-consuming, subjects the adviser to a number of requirements. These include: (i) a requirement to file Form ADV with the SEC, as well as annual updates to such form, (ii) the need to provide a written brochure to the adviser’s clients, (iii) certain restrictions on performance-based client fees charged by the adviser, (iv) restrictions on fees that can be paid to third party solicitors of clients, (v) the need to maintain specified books and records, and (vi) a requirement to adopt a compliance system to govern the adviser’s operations, including policies and

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<sup>1</sup> Advisers required to register with the SEC may do so voluntarily before the one-year registration deadline.

<sup>2</sup> The new law will also mandate registration with the SEC, even where assets under management is below the new \$100 million threshold, if the investment adviser is not registered with or subject to examination by a state regulator in its home state. Further, advisers that manage less than \$100 million of assets may voluntarily register with the SEC if they would be required to register with 15 or more states.

procedures designed to prevent violations of the securities laws and the designation of a chief compliance officer to administer these policies.

### Exemptions from SEC Registration

The Act adds a number of important new exemptions from the registration requirements, as described below. Notably, however, during the House-Senate conference process, the conferees agreed to eliminate an exemption for advisers to private equity funds which had been included in the version of the legislation passed by the Senate.

The following categories of investment advisers will not be required to register with the SEC:

- *Venture capital fund advisers* - any adviser that acts as an investment adviser *solely* to one or more “venture capital funds,” with such term to be defined by the SEC through a rulemaking process.<sup>3</sup> However, while not required to register with the SEC under the Advisers Act, advisers to venture capital funds would be subject to annual report and other reporting and recordkeeping requirements to be specified by SEC.
- *Advisers to smaller private funds* - any adviser acting solely as an adviser to private funds with assets under management in the United States of less than \$150 million. However, as with venture capital fund advisers, advisers to these smaller private funds would be subject to annual report and other reporting and recordkeeping requirements to be specified by SEC.
- *Foreign private advisers* - any adviser who: (i) has no place of business in the United States, (ii) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the adviser, (iii) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the adviser of less than \$25 million, and (iv) doesn’t hold itself out to the public in the United States as an investment adviser or act as an investment adviser to a registered investment company or business development company.<sup>4</sup>
- *Advisers to small business investment companies* - any adviser who solely advises: (i) small business investment companies (SBIC) licensed under the Small Business Investment Act of 1954, (ii) entities that have been notified by the Small Business Administration that they may proceed to qualify for a license as a SBIC, or (iii) applicants for a SBIC license that are affiliated with another licensed SBIC.

### Recordkeeping and Reporting Requirements for Private Fund Advisers

Advisers to private funds that are required to register with the SEC will be subject to special recordkeeping and reporting rules. More specifically, the Act gives the SEC authority to require registered investment advisers to maintain such records, and file such reports, regarding private funds advised by the adviser as are necessary and appropriate in the public interest and for the

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<sup>3</sup> Given the overlap between venture capital investment, on the one hand, and growth equity and other similar areas of private equity investment, on the other, the SEC will face challenges in defining what constitutes a “venture capital fund.”

<sup>4</sup> The foreign private adviser exception is a narrow one and may require further clarification by the SEC, particularly with regard to the circumstances under which assets are attributable to clients in the United States. The narrow scope of the exception has the effect of expanding the extra-territorial reach of the SEC’s authority to regulate investment advisers.

protection of investors or, notably, for the assessment of systemic risk by the Financial Stability Oversight Council.<sup>5</sup>

The Act specifies several categories of information that must be included in the records and reports required to be maintained by registered advisers that are subject to inspection by the SEC and that may also be required to be included in reports filed with the SEC. These categories of information are, for each private fund:

- the amount of assets under management and use of leverage (including off balance sheet leverage);
- counterparty credit risk exposure;
- trading and investment positions;
- valuation policies and practices of the fund;
- types of assets held;
- side arrangements or side letters giving some investors in a fund more favorable rights or entitlements than other investors;
- trading practices; and
- such other information as the SEC determines is necessary and appropriate.

The Act requires the SEC to share with the Financial Stability Oversight Council copies of all reports, documents, records, and other information filed with it or provided to it by advisers to private funds, so that the Council may assess the systemic risk posed by private funds. However, reports and other information provided to the SEC, the Financial Stability Oversight Council or any other governmental agency or any self-regulatory organization will be excluded from the scope of Freedom of Information Act requests. Further, “proprietary information” of an investment adviser (including information regarding investment or trading strategies and analytical or research methodologies) ascertained by the SEC from any report filed with the SEC by a registered investment adviser will be kept confidential to the same extent as facts ascertained during an examination of the adviser as provided by Section 210(b) of the Advisers Act.

In establishing these recordkeeping and reporting requirements, the Act directs the SEC to consider the special circumstances of “mid-sized” private funds.<sup>6</sup> In its rulemaking, the SEC must take into account such funds’ size, governance, and investment strategy to determine whether such funds pose systemic risk. Further, the registration and examination procedures for advisers to mid-sized funds must reflect the level of systemic risk posed by such funds.<sup>7</sup>

Finally, although the version of legislation originally adopted by the House would have authorized the SEC to establish rules requiring registered advisers to private funds to make disclosures to investors, prospective investors, counterparties, and creditors, the House-Senate conference committee eliminated this provision. Conferees were persuaded that investors in private funds are generally sophisticated and do not need the protection of additional disclosure rules.

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<sup>5</sup> The Act also permits the SEC to require registered investment advisers to provide such information or reports directly to the Financial Stability Oversight Council.

<sup>6</sup> The Act does not specify what constitutes a mid-sized private fund.

<sup>7</sup> This provision is noteworthy because it vests responsibility for considering systemic risk in the SEC, as opposed to the Financial Stability Oversight Council.

## Other Items of Interest

The Act includes other items of interest for advisers to private investment funds:

- The term “investment adviser” has been amended to exclude a “family office,” which term will be further defined by the SEC through rulemaking, but in a manner consistent with the SEC’s previous exemptive orders for family offices.
- The SEC is directed to modify the “accredited investor” standard in its rules under the Securities Act of 1933, so that the “net worth” element of such standard excludes the value of a person’s primary residence. In addition, the SEC is authorized to review and make periodic adjustments to the accredited investor standard, as it relates to natural persons, including in light of the economy.
- Any SEC rules that define the term “qualified client” for purposes of the Advisers Act by reference to a dollar amount test will be required to be adjusted for the effects of inflation every five years.
- The General Accounting Office is directed to study the feasibility of forming a self-regulatory organization to oversee private funds.

## Potential Regulation of Systemically Important Private Funds by Federal Reserve

Under the Act, a new Financial Stability Oversight Council will have the authority to designate any U.S. or foreign *nonbank financial company* as systemically important such that the company will be subject to systemic risk regulation by the Federal Reserve. The term “nonbank financial company” generally means a company, other than a bank holding company, that is predominantly engaged in financial activities.<sup>8</sup> It would appear that the principal activities of private equity funds, hedge funds, and other private funds, as well as those of their advisers, fall within the realm of “financial activities.” This broad authority would, therefore, permit the Financial Stability Oversight Council to designate private investment funds and/or their advisers as systemically significant enough to warrant supervision by the Federal Reserve.

In determining whether a particular company warrants such designation, the Council is to take into account the threat posed to the financial stability of the United States by “material financial distress” at the company or by the nature, scope, size, scale, concentration, interconnectedness, or mix of the company’s activities. In making any such determination, the Council must consider a variety of factors that touch on systemic risk, such as the company’s leverage, off-balance sheet exposures, and inter-connectedness with other significant financial entities. The Act also requires the Federal Reserve to issue rules setting forth criteria for exempting certain types or classes of companies from systemic risk regulation by the Federal Reserve.

Any private investment fund designated for systemic risk regulation by the Federal Reserve will be subject to prudential standards which would include, among other things, the following:

- minimum leverage capital and risk-based capital requirements;

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<sup>8</sup> A company is deemed to be predominantly engaged in financial activities if (i) its annual gross revenues from activities that are “financial in nature” (as defined in Section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of insured depository institutions, represents 85% or more of its consolidated annual gross revenues, or (ii) its consolidated assets related to activities that are financial in nature and, if applicable, related to the ownership or control of insured depository institutions, represents 85% or more of its consolidated assets. Under Section 4(k) of the Bank Holding Company Act, among other things the business of investing for others and providing investment advisory services are considered activities that are financial in nature.

- limits on leverage;
- a prohibition on merging with or acquiring a company if the total consolidated liabilities of the resulting company would exceed 10% of the aggregated consolidated liabilities of all financial companies;
- treatment as a bank holding company for certain purposes, including (i) needing prior approval by the Federal Reserve for certain acquisitions of interests in banks and (ii) prohibiting in certain circumstances interlocking directorships or senior management;
- required reporting of the company's credit exposure to other systemically important firms and such other firms' exposure to the company;
- for public companies, required establishment of a risk committee;
- required periodic stress tests;
- imposition of escalating remediation requirements if the company experiences increasing financial distress; and
- potential assessment for the new orderly resolution fund to cover the cost of resolving systemically important firms.

### Volcker Rule Restrictions

The Act imposes limitations on fund sponsorship and investment activities by banks, bank holding companies, and certain nonbank financial companies based on proposals first advanced by former Chairman of the Federal Reserve Paul Volcker. These provisions will have a number of consequences for banking entities, which may be required to divest or substantially reduce their interests in hedge funds and private equity funds, as well as for the affected funds and potential acquirors of such funds.

Specifically, subject to certain exceptions, the Act amends the Bank Holding Company Act to prohibit specified banking entities<sup>9</sup> from sponsoring or investing in private equity or hedge funds,<sup>10</sup> as well as from engaging in proprietary trading. The Act also prohibits banking entities from extending credit to, or engaging in certain other specified transactions with, private equity and hedge funds for which they act as investment manager, adviser, or sponsor, or that they organize and offer. Any transactions between a banking entity and any such fund that are not specifically prohibited must be entered into on arms-length market terms. Finally, the Act gives authority to the Federal Reserve Board to impose additional capital and quantitative limits on certain nonbank financial companies<sup>11</sup>—i.e., those designated by the Financial Stability Oversight Council as being systemically important—that sponsor or invest in private equity or hedge funds or engage in proprietary trading.

There are important exceptions to the prohibition on sponsoring and investing in private equity or hedge funds. Under one of the most significant of those exceptions, banking entities will be permitted to organize and offer a private equity or hedge fund if (i) the banking entity provides *bona*

<sup>9</sup> Specified banking entities include insured depository institutions (as defined in the Federal Deposit Insurance Act), companies that control an insured depository institution or that are treated as bank holding companies for purposes of the International Banking Act of 1978, and affiliates or subsidiaries of any such entity.

<sup>10</sup> The Act defines “sponsoring” as (i) serving as a general partner, managing member, or trustee of a fund; (ii) in any manner selecting or controlling (or having employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or (iii) sharing with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

<sup>11</sup> The term “nonbank financial company” generally means a company, other than a bank holding company, that is predominantly engaged in financial activities. See f.n. 8 above.

*fide* trust, fiduciary, or investment advisory services as part of its business, (ii) the fund is organized and offered only in connection with such services and only to customers of such services, (iii) the banking entity does not guarantee or otherwise assume or insure the obligations or performance of the fund, (iv) no director or employee of the banking entity has an ownership interest in the fund unless he or she is directly engaged in providing services to the fund, and (v) certain other conditions are met.

Further, a banking entity may acquire or retain an ownership interest in a private equity or hedge fund that it organizes and offers, provided that its ownership interest is either a seed capital investment made in order to establish the fund and attract unaffiliated investors, or a *de minimis* investment. Within one year of establishing a fund, a banking entity's ownership interest in the fund must represent no more than three percent of the total ownership interests of such fund. The banking entity must actively seek unaffiliated investors to dilute its investment in the fund. In addition, a banking entity's investment in any private equity or hedge fund must be "immaterial" to the banking entity, as defined by the appropriate regulators, and in any event the aggregate amount of all such investments may not exceed three percent of the banking entity's Tier 1 capital. The exemption described above is not available if it would result in a material conflict of interest (as defined by the regulators) between the banking entity and its customers or counterparties, would result in material exposure to high-risk assets or high-risk trading strategies (as defined by the regulators), or would pose a threat to U.S. financial stability or the safety or soundness of the banking entity.

Under this part of the Act, the terms "hedge fund" and "private equity fund" mean any issuer that is exempt from registration as an investment company pursuant to Section 3(c)(1) or 3(c)(7) of the Investment Company Act, as well as any similar fund as may be determined through rulemaking by the appropriate regulators. This title's approach to defining these terms is so broad that it picks up not only hedge funds and private equity funds, but also venture capital funds and other private funds that rely on the Section 3(c)(1) or Section 3(c)(7) exemptions under the Investment Company Act.

The appropriate regulators must adopt regulations implementing the Volcker rule provisions within nine months after the Financial Stability Oversight Council completes a study of those provisions. The Financial Stability Oversight Council's study must be completed within six months of the Act's enactment. The restrictions imposed by the Volcker rule take effect on the earlier of (i) 12 months after the completion of the aforementioned rulemaking, and (ii) two years after the Act's enactment. Banking entities will generally have two years from the date the restrictions take effect to bring themselves into compliance, subject to the availability of up to three one-year extensions. Banking entities may also be able to avail themselves of a five-year extension for divestitures of certain funds principally invested in illiquid assets, such as portfolio companies and real estate or venture capital investments.

These restrictions will have a number of consequences for banking entities and their affiliate funds. For example, bank holding companies with units that own, invest in, or sponsor hedge funds or private equity funds will have to dispose of or significantly reduce such investments, whether through redemptions, sales to third parties, or restructurings such as a spin-off to existing management. Sales or redemptions of fund interests by banks or their affiliates could trigger contractual rights by other investors in the funds, and could also raise fiduciary duty issues for the fund's general partner. Divesting banks may seek to provide financing for a management-led buyout, although this would not be possible where the bank will act as investment manager or adviser to the fund after its divestment. Finally, in any transaction designed to ensure compliance with these new restrictions, the interests of the divesting banks are likely to diverge from those of the fund itself and the other investors in the fund.

## **New Powers to Regulate Compensation at Many Financial Firms**

The Act contains two separate provisions giving federal banking regulators and the SEC new powers to regulate compensation arrangements at a wide variety of financial firms, including investment advisers.

### **Regulation of Incentive-Based Compensation Arrangements**

Section 956 of the Act gives new authority to federal banking regulators and the SEC to examine, and impose restrictions on, incentive-based compensation arrangements at a range of financial firms. Under this provision, a “covered financial institution” will be required to disclose to the appropriate regulator the structures of all incentive-based compensation arrangements to enable the regulator to determine whether such structures (i) provide any executive officer, employee, director or principal shareholder with excessive compensation, fees or benefits, or (ii) could lead to material financial loss to the institution.

More significantly, the Act requires the federal regulators jointly to issue rules or guidelines prohibiting any such incentive-based arrangement, or any feature of such arrangement, that the regulators determine encourage inappropriate risks by covered financial institutions by providing any executive officer, employee, director or principal shareholder with excessive compensation, fees or benefits, or that could lead to material financial loss to the institution. It is important to note that this authority is not limited to compensation arrangements for executives, which has historically been the focus of the SEC’s disclosure rules. Rather, this new authority covers incentive-based arrangements that extend to all employees, as well as incentive-based arrangements with principal shareholders.

This authority to examine and restrict incentive-based compensation applies to any “covered financial institution,” a term which includes banks, thrifts, and their holding companies, as well as credit unions, registered broker-dealers, investment advisers (including those not registered with the SEC), Fannie Mae, Freddie Mac and “any other financial institution” that the federal regulators jointly determine should be treated as such. However, any institution with assets below \$1 billion is excluded.

In determining whether incentive-based compensation arrangements encourage inappropriate risks, the federal regulators are instructed to follow standards comparable to the standards established under the Federal Deposit Insurance Act for insured depository institutions. These standards deem compensation to be excessive if the amounts paid are unreasonable or disproportionate to the services performed, in light of a number of specific factors including, among other things, the combined value of all cash and non-cash benefits provided, the compensation history of the individual and other individuals with comparable expertise at the institution, the financial condition of the institution, and comparable compensation practices at comparable institutions.

### **Compensation Schemes of Brokers, Dealers and Investment Advisers**

Section 913 of the Act authorizes the SEC to examine, and where appropriate, issue rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the SEC deems contrary to the public interest and the protection of investors. On its face, this broad language seems to give authority to the SEC to regulate both the arrangements by which clients compensate their brokers, dealers, and investment advisers, as well as the internal compensation arrangements for such entities’ executives and/or employees. While the impetus for this provision might have been a concern about full disclosure of fees charged to retail brokerage clients, the broad sweep of the language would potentially allow the

SEC to impose restrictions on contractual arrangements by which private equity and hedge fund managers are compensated in their roles as investment advisers.

### Annual Stress Test

The Act requires all *financial companies* that have total consolidated assets over \$10 billion and are regulated by specified federal financial regulators (generally, the federal banking regulators, the SEC, and the Commodity Futures Trading Commission) to conduct an annual stress test. For this purpose, the Act does not define the term “financial companies.” However, based on the Act’s definition of the term “nonbank financial company,” the term “financial companies” likely means any company predominantly engaged in financial activities.<sup>12</sup> This term, together with the Act’s definition of “primary financial regulatory agencies,” suggests that the annual stress test requirement will apply to, among others, investment advisers registered under the Advisers Act, broker-dealers registered under the Exchange Act, and investment companies registered under the Investment Company Act, in each case if they have total consolidated assets over \$10 billion.<sup>13</sup>

The SEC and other applicable federal financial regulators are required to issue rules implementing the annual stress test requirement. Each agency’s rules must, for entities regulated by it, define the term “stress test,” establish methodologies for conducting the stress test that include at least three sets of conditions (including baseline, adverse, and severely adverse), and establish the form and content of a report regarding the stress test which must be submitted to the Federal Reserve Board and to the entity’s primary federal financial regulator (e.g., the SEC in the case of registered broker-dealers, investment advisers, and investment companies). Companies required to conduct an annual stress test will also be required to publish a summary of the results.

### Key Issues for Rulemaking Phase

The Act leaves many critical issues to be fleshed out in rulemaking proceedings at the SEC and other agencies. Among the key issues for the rulemaking phase are the following:

#### SEC Rulemaking

- Defining the term “venture capital fund” (advisers to which are exempt from registration under the Advisers Act).
- The precise scope and frequency of the information that will be required to be provided to the SEC and/or the Council by registered advisers to private funds, and the extent of any exceptions to such requirements for advisers to “mid-sized” private funds.
- Whether the SEC will vary the recordkeeping and reporting requirements for advisers to private funds according to the nature of the fund’s business or the type of fund or other criteria.
- The scope of the SEC’s rules regarding compensation arrangements at brokers, dealers, and investment advisers.
- The scope of the SEC’s rules with respect to the annual stress test requirement for registered broker-dealers, investment advisers, and investment companies.

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<sup>12</sup> See f.n. 8 above. Also, the Act’s title on the new orderly liquidation authority defines the term “financial company” in a manner consistent with this approach.

<sup>13</sup> The Act also calls for semi-annual stress tests by nonbank financial companies designated for systemic risk regulation by the Financial Stability Oversight Council.

## Rulemaking by Federal Banking Regulators

- Content and scope of rules setting forth criteria for exempting certain types or classes of companies from systemic risk regulation by the Federal Reserve.
- Elaboration of the specific factors or criteria that the Council will consider in determining whether a private fund should be designated as systemically important.
- Whether the Council and/or the Federal Reserve will issue any guidance identifying specific criteria or factors that would operate as a “safe harbor” from designation as systemically important.
- Defining the terms “private equity fund” and “hedge fund” for purposes of the Volcker rule restrictions.
- Clarifying the scope of the exemptions from the provisions of the Volcker rule, particularly the exemption for seed capital and *de minimis* investments in private equity and hedge funds organized and offered by a banking entity.

## What You Can Do

We believe that investment funds potentially affected by the Act will want to consider a number of steps relating to the upcoming rulemaking phase, including

- Keeping abreast of key developments in the rulemaking phase in the ensuing months so that they can (i) fully understand the implications of proposed rules for their businesses and (ii) evaluate what efforts, if any, are being made by other firms/industry groups to participate in, and possibly shape, the rulemaking process. Many firms have designated (or are considering designating) one senior-level person within their organization (often the general counsel or other senior manager) to be their “point person” for this monitoring process.
- Reaching out to peer firms and other affected businesses to explore opportunities for a collective response to proposed rules (and to share the costs of such collective response).
- Developing realistic strategies to respond to the proposed rules – and ensuring that such strategies are effectively implemented. This would include considering how most effectively to communicate firm and industry views on proposed rules to SEC commissioners, the federal banking regulators, and their respective staffs (for example, individually, through *ad hoc* groups or through trade associations).
- Consulting with legal advisors on ways to structure existing business lines to satisfy requirements under the new rules, and developing compliance action plans for expected new rules, including internal training and education, and, where appropriate, briefing of senior officers and relevant board members.

Our firm has been deeply involved in many aspects of the U.S. Government’s response to the economic crisis over the last two years. With decades of experience in assisting clients with critical regulatory and legislative issues in Washington and with our particular expertise in regulatory and legislative affairs touching the financial services industry, our firm is well-suited to assist clients in connection with the new requirements for advisers to private investment funds.

If you would like to discuss the Act and our capabilities to assist you in the upcoming rulemaking process, please contact the following members of our firm:

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