

THE PRIVATE FUNDS BULLET REPORT

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Business Planning, Structural, Legal, Regulatory & Compliance Developments

- The House of Representatives passed legislation (“H.R. 1664”) amending the executive compensation provisions of the Emergency Economic Stabilization Act of 2008 to prohibit certain compensation to employees of financial institutions that have received capital investments under the TARP (and certain other federal loan programs) so long as such capital investments remain outstanding. The compensation restrictions of H.R. 1664 prohibit: (i) “unreasonable and excessive” compensation payments and (ii) bonus or other supplemental payments not directly based on “performance-based measures.”
- On March 17, 2009, the Internal Revenue Service issued guidance addressing the tax treatment of losses suffered by investors in “Ponzi” schemes. This advice was prompted by losses suffered by entities and individuals who invested with Bernard Madoff. This guidance generally provides a “safe harbor” procedure whereby investors in Ponzi schemes that were discovered during 2008 may claim an ordinary “theft loss” deduction on their 2008 federal income tax returns of 75% of the amount of their investment, if they plan to pursue legal claims against third parties, and 95% of the amount of their investment, if they do not plan to pursue such legal claims.
- Treasury Secretary Timothy Geithner recently outlined proposals for financial regulatory reform before the House Committee on Financial Services. Among the proposals, Geithner recommended that advisers to hedge funds (and other private pools of capital) “with assets under management over a certain threshold be required to register with the SEC.” Geithner also suggested that such funds should be subject, on a confidential basis, to reporting requirements aimed at providing information necessary to determine whether such funds pose a “threat to financial stability.”
- An act has been introduced by CT lawmakers to regulate private funds that: (i) have a CT office; (ii) offer securities in reliance on Reg D; and (iii) claim an exemption under 3(c)(1) or 3(c)(7) of the Investment Company Act. Under the act, funds would be required to provide enhanced disclosure (including of fees, material changes in investment strategy or management, and the existence of side letters) and investments in funds would be permitted only by people with at least than \$2.5 million in assets.
- The SEC is working on a series of reforms to bolster custody protections of client assets, including requiring investment advisers with custody to undergo an annual surprise “audit” by an independent third party.

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