

THE PRIVATE FUNDS BULLET REPORT

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Business Planning, Structural, Legal, Regulatory & Compliance Developments

- The Private Company Flexibility and Growth Act was introduced in Congress on June 14, 2011. The bill would amend the Exchange Act to (i) increase the current 500 investor threshold to 1,000 for determining the point at which a private company must make public disclosure of its financial information, and (ii) exempt accredited investors from being counted towards the 1,000 investor limit.
 - On July 6, 2011, the CFTC hosted a roundtable to discuss its proposed elimination of exemptions from commodity pool operator registration. The staff indicated that it is moving forward with its proposals with some modifications.
 - On July 7, 2011, the FTC/DOJ announced changes to the form parties must file when seeking antitrust clearance of proposed mergers and acquisitions under the Hart-Scott-Rodino (HSR) Act. These changes will go into effect in mid-August. Certain revisions eliminate information requests that the FTC no longer deems useful, while others expand the types and amount of information that must be collected and included in the HSR filing.
 - President Obama has proposed changing the tax treatment of "carried interest" received by fund managers as part of his budget proposals. In addition, the administration has proposed this change as one of the revenue raisers that could be used to reduce the federal budget deficits. Although no legislative language has been proposed at this time, we will continue to keep you apprised of any developments in this area.
 - Both the SEC and CFTC have delayed most of the derivatives reforms imposed by Dodd-Frank originally scheduled to take effect on July 16, 2011. The SEC stated on July 1 that it will not enforce most of the "self-executing" derivatives provisions for security-based swaps until it completes the entire rule-writing process for derivatives reforms. Last month the CFTC took similar action.
- In addition, on June 29, 2011, the SEC announced that it is proposing new business conduct standards for the derivatives industry, echoing similar standards earlier proposed by the CFTC. For the first time various market participants (including hedge funds) would be required, among other things, to (a) communicate with counterparties in a fair and balanced way, including advising counterparties of conflicts of interest, material incentives and risks posed by potential transactions, (b) establish a supervisory and compliance infrastructure, and (c) make suitability determinations. The proposed rules also contain heightened standards of conduct when dealing with "special entities" which include federal agencies, states and political subdivisions, employee benefit plans, governmental plans, and endowments. The SEC is seeking public comments by August 29, 2011.
- Managers are reminded that the 13F filing deadline for the second quarter is August 15, 2011 and the first TIC Form SLT will be required to be made by October 24, 2011.

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