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## *Hedge Fund Adviser Registration Deadline may be Extended until 2012*

The SEC may soon issue welcome news for hedge fund advisers registering for the first time as investment advisers under the Investment Advisers Act of 1940. According to a recent letter from associate director of the SEC's Division of Investment Management, Robert Plaze, the SEC may extend the registration deadline of certain investment advisers, including private equity and hedge fund advisers. Under Title IV of the Dodd-Frank Act, known as the Private Fund Investment Advisers Registration Act of 2010, certain advisers are required to register with the SEC by July 21, 2011. According to Plaze's letter, which was sent to the president of the North American Securities Administrators Association, David Massey, Plaze expects the Commission to consider extending the registration deadline until the first quarter of 2012.

### PRIVATE ADVISERS EXEMPTIONS

Prior to the passage of the Dodd-Frank Act, many hedge fund advisers relied on the private advisers exemption of section 203(b)(3) of the Investment Advisers Act of 1940 for operating as unregistered firms. This exemption, which was repealed by the Dodd-Frank Act effective July 21, 2011, applied to investment advisers who, among other things, had fewer than 15 clients during the previous 12 months. Hedge fund managers were able to avoid the various provisions of the Advisers Act triggered by registration by counting as clients the funds they advised rather than the individual investors in the funds. With the repeal of this exemption, and the SEC's proposal of new (more limited) private adviser exemptions, many hedge fund managers have been feverishly preparing for SEC registration.

The new private adviser exemptions, which were proposed by the Commission on November 19, 2010, would exempt certain advisers – including private fund advisers managing less than \$150 million in assets under management, certain foreign private fund advisers and venture capital fund advisers – from SEC registration. However, these exemptions have yet to be finalized and do not need to be finalized until July 21, 2011 under the Dodd-Frank Act. According to Plaze's letter, the Commission fully intends to meet this deadline, but the coinciding of the registration deadline with the final rulemaking deadline has left hedge fund advisers and others seeking an exemption in a murky situation. A six-month extension would give advisers much needed time to evaluate these exemptions.

### MID-SIZE ADVISERS

Plaze's letter also suggested a compliance extension for advisers with \$25 million to \$100 million in assets under management, known as mid-sized advisers. Under Section 410 of the Dodd-Frank Act, these advisers are required to withdraw from registration with the SEC and register with one or more state securities regulators. According to Plaze, the Investment Adviser Registration Depository ("IARD") system must be reprogrammed to accept the transition filing that such advisers will be required to submit to switch to state registration, which could take until the end of 2011. Accordingly, Plaze indicated that the Division of

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Investment Management expects the Commission to extend the deadline to 2012 to allow all advisers to report their eligibility for SEC registration or transition to state regulatory oversight.

#### CONCLUSION

Even without finalized rules, most unregistered advisers should be able to make a reasonable assessment of whether their firm will meet one of the proposed exemptions. Advisers that are able to conclude at this point that the exemptions will not be helpful should continue developing and implementing compliance programs that meet the requirements of the Investment Advisers Act. For such advisers, the extension provides valuable additional time to establish a culture of compliance, train employees, and identify compliance gaps before registering with the SEC.

A copy of Plaze's letter can be viewed on the SEC's website at: <http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf>

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