HERRICK

PRIVATE FUND ALERT
JANUARY 2012

Deadline to File Part 1A of Form ADV for Exempt Reporting Advisers

Private fund advisers that were previously relying on the exemption from registration under the Investment Advisers Act of 1940 (the "Advisers Act") pursuant to Section 203(b)(3) thereof (formerly known as the "private advisers" exemption), which exemption was eliminated under amendments to the Advisers Act contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2011 ("Dodd-Frank"), must file and have their Form ADV declared effective by the SEC by March 30, 2012.

However, advisers who advise solely "private funds" (as defined below) and who have less than $150 million of aggregate assets under management in the U.S. will generally be considered "exempt reporting advisers" under the Dodd-Frank amendments, and will not be required to register with the SEC. Instead, exempt reporting advisers will be required to file, and periodically update, abbreviated reports with the SEC, using the same Form ADV. Exempt reporting advisers must fill out a limited subset of items in Part 1A of Form ADV, but will not be required to prepare a brochure or brochure supplements under Part 2A or 2B.

A "private fund" is defined under the Adviser's Act as a pooled investment vehicle that is exempt from registration under the Investment Company Act of 1940 pursuant to either Section 3(c)(1) (for funds with fewer than 100 beneficial owners) or Section 3(c)(7) (for funds whose only investors are "qualified purchasers").

As with registered investment advisers, exempt reporting advisers must file their reports on the SEC's investment adviser electronic filing system (IARD). The deadline for fund advisers who are exempt reporting advisers as of January 1, 2012 to file Part 1A of Form ADV with the SEC is March 30, 2012. Accordingly, exempt reporting advisers will want to start the process of gathering information and filling out Part 1A to timely meet such reporting requirement.

If you have any questions about this new filing requirement or would like assistance in completing and filing the relevant portions of the Form ADV, please contact Irwin Latner at (212) 592-1558 or ilatner@herrick.com or Patrick Sweeney at (212) 592-1547 or psweeney@herrick.com.

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