



# California Corporate & Securities Law

## **Commissioner Proposes Successor To Rule 260.204.9**

By Keith Paul Bishop on December 21, 2011

With the enactment of the National Securities Markets Improvement Act of 1996, Congress divided registration authority over investment advisers between the Securities and Exchange Commission and state securities regulators. In general, large advisers (*i.e.*, those with at least \$25 million in assets under management) were required to register with the SEC and smaller advisers were subject to state registration.

Fund advisers, however, found themselves in an anomalous situation. Because former Section 203(b)(3) of the Investment Advisers Act exempted advisers with fewer than 15 clients, many did not register with the SEC. However, failure to register exposed them to state registration requirements. California's Department of Corporations responded by adopting Rule 260.204.9. That rule exempted from state registration certain advisers having assets under management of at least \$25 million or exclusively advising "venture capital companies" as defined.

This state of affairs lasted until 2010 when Congress enacted the Dodd-Frank Act which eliminated the fewer-than-fifteen client exemption and redrew the lines between state and federal authority. California reacted with a temporary fix by amending Rule 260.204.9 (See [Commissioner Takes Emergency Action To Put More Time On The Clock For Rule 260.204.9](#)). With the clock running out on this temporary fix, the Commissioner yesterday proposed amendments to Rule 260.204.9. Here are the Commissioner's [Notice of Rulemaking](#), [Initial Statement of Reasons](#), and [Proposed Text](#). According to the Commissioner, the proposal is consistent with North American Securities Administrators Association's [Proposed Model Rule for Exempt Reporting Advisers](#).

The comment period on the Commissioner's proposed amendments expires on February 20, 2012. The Notice of Rulemaking provides information on how to submit comments.

A Freilichen Chanukah!

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