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SEC DELAYS IMPLEMENTATION OF NEW RULES FOR INVESTMENT ADVISORS

June 22, 2011

Loeb & Loeb partner Stephen Cohen attended the Securities and Exchange Commission's (the "SEC") Open Meeting held today at the SEC's offices in which the SEC approved a series of rules related to the implementation of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act which will impact both advisers and private funds. Specifically the new rules will increase the statutory threshold for SEC registration of investment advisers to non-fund clients from \$25 million to \$100 million; require advisers to hedge funds and private equity funds to register with the SEC if they have regulatory assets under management in the U.S ("RAUM") of \$150 million or more; provide an exemption from SEC registration for advisers to the following types of funds: venture capital funds (which the new rules define), private funds with regulatory assets under management in the U.S. of less than \$150 million and certain foreign private advisers with RAUM of less than \$25 million and fewer than 15 U.S clients or investors; and an exclusion for "family office" arrangements (which the new rules define) from the definition of investment adviser under the Investment Advisers Act of 1940. The new rules also create certain recordkeeping and reporting requirements for exempt advisers and the private funds they manage utilizing an amended Form ADV.

Of particular interest to our clients is the following information disclosed at today's meeting:

1. These rules will go into effect July 21, 2011, but funds and their advisers will not be required to comply by registering or claiming an exemption from registration until March 30, 2012.



2. Despite the objection of two of the five Commissioners, exempt reporting advisers such as venture capital funds and mid-sized private funds will be required to comply with an extensive disclosure of information about the private funds they manage, including the gross and net asset value of each fund, the ownership structure of each fund, conflicts of interest in managing the funds, disciplinary history of the adviser's employees, and information about fund service providers such as accountants, prime brokers and custodians. This information will be filed using the same Form ADV as registered advisers are currently using. The SEC also indicated that it will review the type of information provided by these exempt fund advisers after the first year to determine if further information is required to satisfy the SEC's census taking and system risk analysis. Under the original proposed rules, the SEC proposed requiring twenty-nine separate items of information for each private fund managed by a private fund adviser. From the tone of the meeting it does not seem that the final rules have cut back on that number.

3. The new rules address calculating regulatory assets under management for the purposes of determining whether a private fund meets the \$150 million registration threshold. Despite the numerous objections by market participants, the new rules will require advisers to calculate gross assets under management as opposed to net asset value. In addition, advisers will have to include proprietary assets, assets managed without receiving compensation and assets of non-U.S. clients. Furthermore, uncalled capital commitments would also be required to be included in this calculation.

4. Against the objection of market participants, the new rules will require that an investment adviser determine the RAUM calculation using a fair value methodology, even though this may cause numerous difficulties for private equity funds that hold illiquid assets. Cost basis accounting which is standard will not necessarily be deemed fair value.



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5. Although the proposed rules called for an adviser to make its calculation of RAUM on a quarterly basis, the final rules will reflect an annual update rather than a quarterly one.

6. Concerning the definition of venture capital funds, the final rules reflect a slight degree of additional flexibility by allowing a fund to invest in non-qualifying investments in an amount not to exceed 20% of its capital commitments.

The final rules are expected to be published on the SEC's website in the next few days. At that time we will review them in all their detail and provide a side-by-side analysis of the final rules vs. the proposed rules.

In addition, in July, Loeb will host several seminars to discuss the implication of the new rules and the registration process as it relates to private equity funds. If interested, please feel free to contact [Stephen Cohen](mailto:scohen@loeb.com) at scohen@loeb.com or [Erika Clampitt](mailto:eclampitt@loeb.com) at eclampitt@loeb.com.

Loeb & Loeb's Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas - including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance - who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

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