



California Corporate & Securities Law

Rule 260.204.9 – What is to be Done (Part II)?

Posted In [Department of Corporations, Investment Advisers](#)

10-25-2010

Last August, I wrote about the impact of the Dodd–Frank Act on Rule 260.204.9 in this [post](#). Last Thursday, I attended a meeting called by the Department of Corporations to solicit input from persons with an interest in the rule. Technically, the meeting was held in accordance with Government Code § 11346.45. That statute *requires* state agencies to “involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period”.

Commissioner DuFauchard and Corporations Counsel Ivan Griswold attended the meeting as did a number of lawyers from the private sector and a representative of the North American Securities Administrators Association (NASAA). The Department recognizes that Rule 260.204.9 must be amended, if for no other reason than it refers to, and is premised upon, Section 203(b)(3) of the Investment Advisers Act of 1940 which has been repealed effective next July.

Deciding on what’s to be done with respect to Rule 260.204.9 is complicated by the fact that the Securities and Exchange Commission won’t be adopting rules defining the advisers to private funds and venture capital exemptions for several months. (According the Commission’s website, proposed rules will be published for comment before the end of the year.)

In my view, the options for Rule 260.204.9 include, among others, requiring state licensing for all advisers not subject to federal registration; registration, but not licensing of advisers to private funds and venture capital companies; or adapting Rule 260.204.9 to reflect the increased thresholds for federal registration. My guess is that advisers to venture capital funds will continue to be exempt from licensing as investment advisers and that some form of registration or notice will be required for advisers to private funds. Whatever path is chosen, the Department has very little time to get rules in place before next July’s deadline.

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