



Annual Review for Private Investment Fund Clients

As 2012 has drawn to a close, we provide this Alert to our private investment fund and investment adviser clients highlighting some of their annual compliance obligations. This is only a summary and is not intended to provide a comprehensive schedule of all reporting obligations. You must tailor your compliance obligations to your particular business. You are encouraged to contact us with any questions about any of the items covered in this Alert.

Update your funds' offering documents.

You must review your funds' offering documents, including the private placement memoranda and limited partnership agreements, and make adjustments for any material changes. Such changes may include modifying your investment strategy, updating the offering documents risks factors, and reflecting legal and regulatory changes. You may also need to update your funds' subscription agreements to reflect regulatory changes, including the following:

Amendments to "accredited investor" definition. In 2012, the definition of an "accredited investor" was changed. In calculating whether an individual's net worth exceeds the \$1 million minimum requirement for qualifying as an accredited investor, one must (i) exclude the individual's primary residence as an asset, (ii) exclude as a liability any debt secured by the individual's primary residence, up to the estimated fair market value of the primary residence, (iii) include as a liability debt secured by the individual's primary residence outstanding as of the date of such individual's subscription in excess of the amount of debt secured by the individual's primary residence outstanding 60 days before such date, and (iv) include as a liability debt that is secured by the individual's primary residence in excess of its estimated fair market value.

Amendments to "qualified client" definition. In 2012, the SEC issued a final rule that amends the definition of "qualified client" for purposes of allowing a registered investment adviser to accept performance based fees. The assets under management test was increased from \$750,000 to \$1 million and the net worth test was increased from \$1 million to \$2 million. In addition, a natural person's primary residence is now excluded when calculating the net worth test. The SEC included a provision to grandfather existing persons that met the prior qualified client test.

Elimination of prohibition of general solicitation and advertising. Some of our clients have inquired about the status of the Jumpstart Our Business Startups Act. The JOBS Act directed the SEC to remove the prohibition against general solicitation and advertising for private offerings under Rule 506. Although the SEC has proposed amendments to Rule 506, as of the date of this Alert, the SEC has not yet issued final rules. Elimination of the restrictions on general solicitation and advertising will significantly change the way private investment funds will be marketed. However, unless and until the SEC adopts final rules, the prohibition of general solicitation and advertising under Rule 506 remains the law.

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Should you have any questions, please feel free to contact us:

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in nature and may not be relied upon as legal advice. Under the rules of certain jurisdictions, this material may be considered attorney advertising. Prior results do not guarantee a similar outcome.

Circular 230 Disclosure Notice: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachment) (1) was not written and was not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.



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