

February 3, 2009

## Legislation Requiring Investment Fund Registration Introduced in the U.S. Senate

On January 29, 2009, Senators Chuck Grassley (R-Iowa) and Carl Levin (D-Michigan) introduced the Hedge Fund Transparency Act of 2009 (the "**Act**") in the United States Senate with the stated purpose of imposing more extensive regulatory oversight of hedge funds. However, the bill is not limited to hedge funds; it generally would apply to, and dramatically impact, all private funds (including private equity and venture capital funds) that rely on an exemption from registration under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "**Company Act**").<sup>1</sup>

The Act generally provides that a fund with \$50 million or more of assets under management would be exempt from the Company Act only if the fund:

- (i) effects a limited registration with the Securities and Exchange Commission (the "**SEC**") under the Company Act;
- (ii) makes extensive periodic public disclosures regarding the fund, including information regarding its beneficial owners, accountants and prime broker(s);
- (iii) maintains books and records in accordance with SEC rules and regulations; and
- (iv) cooperates with any request for information or examination by the SEC.

A fund that fails to comply with the foregoing requirements would become subject to the more onerous requirements imposed on investment companies registered under the Company Act. Investment advisers to any such registered fund generally would be required to register with the SEC under the Investment Advisers Act of 1940, as amended, and comply with the rules and regulations thereunder. The Act also would require all funds, regardless of size, to adopt extensive anti-money laundering policies and procedures.

This proposed legislation likely will face stiff criticism by many fund managers. It raises important issues regarding privacy and investor protection that we believe will be the subject of much debate. Please note that the Act (i) is proposed legislation that may or may not be enacted and (ii) could undergo significant change as it proceeds through the legislative process. Accordingly, it is impossible to predict a final outcome. However, given the bipartisan nature of the bill and the current regulatory environment, we believe it is likely that significant new regulations will be adopted in some shape or form during the current legislative session. If the Act is adopted by Congress and signed by the President, the SEC would be required to issue forms and guidance to implement the Act within 180 days after its enactment.

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<sup>1</sup> Sections 3(c)(1) and 3(c)(7) are commonly relied upon by private investment funds to avoid regulation as an investment company under the Company Act. Section 3(c)(1) generally exempts funds with fewer than 100 beneficial owners. Section 3(c)(7) generally exempts funds whose beneficial owners are all "Qualified Purchasers."

We will continue to monitor the Act and other related legislative and regulatory developments. If you have any questions regarding the foregoing, please contact any of the following members of our Investment Fund Practice Group:

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