

**PRESIDENT OBAMA ANNOUNCES PROPOSED NEW OVERSIGHT
REQUIREMENTS FOR PRIVATE FUND MANAGERS**

Yesterday, President Obama announced a significant plan for overhauling the regulation of the U.S. financial services industry.¹ The plan generally provides for greater government oversight of virtually all financial services providers, including managers of hedge funds, private equity funds, venture capital funds and other private funds. Legislation has been proposed that is designed to implement several of the proposals for private fund managers set out in the plan. While many details of legislative proposals related to the plan are yet to be finalized, the plan and the proposed legislation provide insight into what increased oversight of private fund managers likely will entail.

The plan introduces four primary proposals with respect to the regulation of private fund managers:

- All private fund managers (with assets under management exceeding a “modest” threshold) would be required to register with the Securities and Exchange Commission as investment advisers under the Investment Advisers Act of 1940;
- The registration requirement would apply to managers of all types of private funds, including managers of hedge funds, private equity funds, venture capital funds and other private pools of capital;
- All private funds advised by an SEC-registered manager would be subject to examination by the SEC staff and to recordkeeping, disclosure and reporting requirements that may differ for different types of private funds; and
- Information about private funds deemed necessary to assess whether the funds pose a threat to financial stability (such as a fund’s size, borrowings or off-balance-sheet exposures) would be provided on a confidential basis to the SEC, which would then provide that information to the Federal Reserve. The Federal Reserve would consider regulating any private fund that meets the criteria of a “tier 1 financial holding company” (described in the plan as any financial firm whose combination of size, leverage and interconnectedness could pose a threat to financial stability if it failed).

¹ U.S. Department of Treasury, Financial Regulatory Reform: A New Foundation, http://www.financialstability.gov/docs/regs/FinalReport_web.pdf (June 17, 2009).

Although it is likely that the plan will undergo modifications as it winds its way through the legislative process, the plan's approach to private fund regulation is noteworthy. The plan does not call for private funds (other than those meeting the criteria for tier 1 financial holding companies) to be regulated directly, but rather would result in private funds being regulated indirectly through their managers. This approach can be contrasted with a requirement for registration of private funds under the Investment Company Act of 1940, as was proposed earlier this year in a bill sponsored by Senators Levin (D-MI) and Grassley (R-IA).² The plan also does not distinguish, for purposes of the registration requirement, between managers of different types of private funds. Indeed, the plan proposes that managers of all types of private funds be subject to registration as investment advisers under the Advisers Act. The plan would subject managers of private funds, including managers of private equity and venture capital funds, to Advisers Act requirements, including rules addressing advertising, custody of assets, recordkeeping and the implementation of compliance procedures and codes of ethics. While the plan's focus on registration of private fund managers under the Advisers Act, and not on requiring private funds to register under the Investment Company Act, is a welcome clarification, private fund managers should not underestimate the significant disclosure, recordkeeping and other regulatory obligations they would be subject to as registered investment advisers.

Concurrently with the release of the plan, Senator Reed (D-RI) proposed legislation that we understand was designed, in large part, to implement the President's proposals outlined above.³ The bill would eliminate the exemption that most private fund managers rely upon to avoid registration as investment advisers—having fewer than fifteen clients within the past twelve months. The bill retains the minimum threshold of \$30 million of assets under management for requiring a private fund manager to register with the SEC. The bill has a narrow exclusion, however, from the registration requirement for “foreign private advisers”—those advisers that do not have a place of business in the United States, have had fewer than fifteen clients who are U.S. persons within the past twelve months *and* have less than \$25 million of assets under management attributable to clients in the United States.

Senator Reed's bill also fills in several details left open in the plan. The bill makes explicit the SEC's regulatory authority with respect to recordkeeping and confidential reporting by private funds and their managers and removes certain restrictions under the Advisers Act on the SEC in collecting certain information from managers of private funds. The bill also clarifies that, with respect to private funds relying upon either of the two exemptions from the Investment Company Act that private funds typically rely upon—Sections 3(c)(1) or 3(c)(7) of the Act—the records of a private fund are deemed to be the records of the fund's manager for purposes of Advisers Act recordkeeping and reporting requirements.

² Press Release, *Grassley and Levin Introduce Hedge Fund Transparency Bill*, <http://levin.senate.gov/newsroom/release.cfm?id=307481> (Jan. 29, 2009).

³ Press Release, *Reed Introduces Bill to Regulate Hedge Funds*, <http://reed.senate.gov/newsroom/details.cfm?id=314527> (June 16, 2009).

It appears from these proposals that both the administration and Congress intend to pursue private fund manager registration and increased reporting obligations about private funds. The bill sponsored by Senator Reed, while welcome in comparison to other proposals, would nonetheless impose significant obligations on private fund managers, obligations that will require time and care to implement. We will continue to monitor and report on these proposals as they evolve.

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