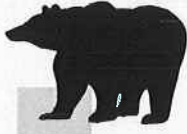


THE PRIVATE FUNDS BULLET REPORT

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Business Planning, Structural, Legal, Regulatory & Compliance Developments

- The SEC has proposed a new Part 2 of Form ADV requiring SEC-registered advisers to revise Part 2 and file it electronically with the SEC. The changes would require an adviser to provide clients with a narrative brochure written in "plain English" rather than the current check-the-box format and Schedule F. The brochure would address an adviser's business, services, conflicts of interest and disciplinary history. A brochure supplement would sometimes also be required for certain personnel. Please note that a fuller discussion will be forthcoming in an upcoming memorandum.
- The SEC has proposed two new rules under the Investment Company Act concerning exchange-traded funds (ETFs): (i) Rule 6c-11 would provide exemptions to permit ETFs to form and operate without the need to obtain individual exemptive orders from the SEC; and (ii) Rule 12d1-4 would allow investment companies larger investments in ETFs than the currently permitted 3 percent.
- In addition to federal securities law filing requirements (e.g., 13Gs and 13Fs), managers are reminded that for significant investments there may also be international securities law filing requirements and industry-specific regulatory filing requirements (e.g., gaming, insurance, and utilities).
- The FTC has again sued a manager for failing to comply with the Hart-Scott-Rodino Act, which, among other things, requires certain persons wanting to acquire more than \$63.1 million of another entity's voting securities to file notification with the FTC, pay significant fees and observe a waiting period before consummating the transaction. Despite making corrective filings, the manager paid a civil penalty of \$1.1 million to settle the charges. It should be noted that the manager had a prior violation in which no penalty was imposed; the second violation likely influenced the FTC's decision to take legal action and seek penalties.
- SEC Chairman Cox recently stated that the SEC is developing a new standard document request letter to be used in routine examinations and is addressing concerns over the depth of document requests made to registered advisers. Mr. Cox stated that information requests must "be sufficiently thorough to provide the needed information but not so burdensome that investment advisers find compliance unworkable or unduly intrusive and expensive."
- The SEC has also proposed a new anti-fraud rule targeting those who knowingly deceive brokers about having located securities before engaging in short sales, and who fail to deliver the securities by the delivery date.

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