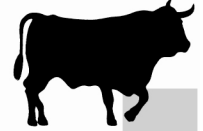


## THE PRIVATE FUNDS BULLET REPORT

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### Business Planning, Structural, Legal, Regulatory & Compliance Developments

- On October 9, 2012, the SEC published a [letter](#) to newly registered investment advisers regarding its National Exam Program. The letter informs advisers of the launch of a new initiative to conduct focused, risk-based examinations of recently registered investment advisers to private funds. The letter highlights the following areas as subject to closer review during examinations: portfolio management, conflicts of interest, safety of client assets and valuation.
- On July 25, 2012, Congresswoman Maxine Waters (D-CA) introduced the Investment Adviser Examination Improvement Act of 2012 ([H.R. 6204](#)). The draft legislation proposes that advisers subject to inspection or examination by the SEC pay annual fees to defray the cost of examinations by the SEC.
- On September 25, 2012, the Department of Justice Antitrust Division (“DOJ”) announced a \$850,000 fine against a holding company (“Acquirer”) for failing to report acquisitions of voting securities of a publicly traded company (“Target Company”) in excess of the Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 (“HSR Act”) threshold reporting requirement (currently at \$68.2 million). The Acquirer had acquired 9.7% of the outstanding voting securities of the Target Company and filed a Form 13D with the SEC, stating that it planned to “communicate with the [Target Company’s] management and Board regarding the business, governance and future plans of the issuer”. The DOJ argued that the Acquirer intended to be actively involved in the management of the Target Company, and that an HSR Act [exemption](#) for acquisitions for the purpose of investment did not apply.
- The IRS expects to release final regulations interpreting the Foreign Account Tax Compliance Act (“FATCA”) by the end of the year. Once final regulations are issued, it is anticipated that the process for offshore funds to register as “foreign financial institutions” will also begin. As currently contemplated, funds would be required to register with the IRS by June 30, 2013 in order to avoid the imposition of a 30% withholding tax on income from U.S. securities. The IRS has released draft Forms [W-8BEN](#) and [W-8IMY](#) which will be used to determine the status of non-U.S. investors under FATCA. It is expected that these forms will be finalized at approximately the same time as the FATCA regulations.
- On June 7, 2012, the SEC approved FINRA [Rule 5123](#) (the “Rule”) on an accelerated basis. The Rule requires FINRA member broker-dealers that participate in certain private placements to file with FINRA a copy of the offering document used in the private placement unless certain exemptions apply. Although private funds relying on Section 3(c)7 of the Investment Company Act of 1940, as amended, are exempt under the Rule, no exemption is available for Section 3(c)1 funds. The Rule becomes effective on December 3, 2013.
- Managers that are currently exempt from registration as commodity pool operators in reliance on CFTC Rule 4.13(a)(4) are reminded that they have to either transition to another available exemption or register as commodity pool operators by the end of the year. Managers are also reminded that certain swaps transactions are now under the jurisdiction of the CFTC and must be taken into account when calculating the trading limitations set forth in CFTC Rule 4.13(a)(3).

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