

## THE PRIVATE FUNDS BULLET REPORT

DECEMBER 2010

*A publication of the Investment Management Group*



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

- Effective September 12, 2010, New York enacted amendments to the laws governing powers of attorney executed by individuals in New York. Significantly, the amendments (i) contain a general exemption excluding powers of attorney executed primarily for a business or commercial purpose from the new statutory formalities otherwise applicable to powers of attorney executed by individuals in New York, and (ii) state that the execution of a new power of attorney does not revoke any powers of attorney previously executed by an individual. Fund managers may rely on the new exemption and should be able to avoid adhering to the statutory formalities in obtaining a power of attorney from their investors.
- In accordance with Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC has proposed rules that would require a Section 13(f) filer to report annually on Form N-PX how it voted proxies relating to shareholder approval of executive compensation and golden parachute compensation arrangements (“Section 14A Votes”). The proposed reporting rules are broadly worded and would require (i) duplicative filings when the power to vote a proxy for a Section 14A Vote is shared by multiple Section 13(f) filers, (ii) a filing when a Section 13(f) filer has no Section 14A Votes to report for a given reporting period and (iii) a filing when a security subject to a Section 14A Vote is held in a client account even for a very brief period of time.
- The Delaware Supreme Court recently held in *Parkcentral Global, L.P. v. Brown Investment Management, L.P.* that a dissolved hedge fund that expressly allowed access to investor information in its limited partnership agreement (“LPA”) was required to supply all of its limited partners upon request with a list of all partners’ names and addresses, unless the fund’s LPA explicitly stated otherwise. Confidentiality provisions in the fund’s offering memorandum were not considered sufficient to relieve the fund of this requirement.
- The Dodd-Frank Act expands the scope of the definitions of a CPO and a CTA under the Commodity Exchange Act to include investment vehicles, operators and advisers that invest and advise with respect to “non security-based” swaps. The CFTC still has to define this term. Under current law, operators of and advisors to pooled investment vehicles that trade over-the-counter derivatives, but not exchange traded future contracts or options on futures contracts, are not required to register, but such operators and advisors may be subject to registration obligations in light of the definitional changes under Dodd-Frank. Further, operators who rely on an exemption from registration with the CFTC under CFTC Rule 4.13(a)(3), which requires a commodity pool to limit its interests in commodity positions, may need to reevaluate their eligibility for such exemption, depending on the extent of their swaps trading.

The information contained in this report is for informational purposes only and is not intended and should not be considered to be legal advice on any subject matter. As such, recipients of this report, whether clients or otherwise, should not act or refrain from acting on the basis of any information included in this report without seeking appropriate legal or other professional advice. This information is presented without any warranty or representation as to its accuracy or completeness, or whether it reflects the most current legal developments. This report may contain attorney advertising. Prior results do not guarantee a similar outcome.

Seward & Kissel LLP provides legal advice to its investment management clients on structure, business planning, regulatory, compliance, corporate finance, asset securitization, capital markets, business transactions, derivatives, bankruptcy/distressed debt, tax, ERISA, litigation, trademark, employment, trusts & estates, and real estate matters.

SEWARD & KISSEL LLP

One Battery Park Plaza, New York, New York 10004

Telephone: (212) 574-1200 Fax: (212) 480-8421 Electronic Email: [sknyc@sewkis.com](mailto:sknyc@sewkis.com)

[www.sewkis.com](http://www.sewkis.com)

©2008 - present SEWARD & KISSEL LLP — All rights reserved. Printed in the USA.