

## THE PRIVATE FUNDS BULLET REPORT

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

- On April 25, 2012, Congressman Spencer Bachus (R-AL) introduced the Investment Adviser Oversight Act of 2012 ([H.R. 4624](#)). The draft legislation will require SEC-registered investment advisers to become members of an investment adviser self-regulatory organization. However, the proposed bill provides exemptions from registration for advisers to mutual funds, as well as advisers that have at least 90% of assets under management attributable to non-US clients, qualified purchasers, private funds, and other institutional clients.
- On March 23, 2012, the SEC [announced](#) that it has entered into arrangements with the Cayman Islands Monetary Authority (CIMA) and the European Securities and Markets Authority (ESMA) as part of a long-term strategy to improve regulatory oversight. The arrangements enhance the ability of the SEC to share information about investment advisers, fund managers, broker-dealers, and credit agencies, and also facilitate the ability of regulators to conduct on-site examinations of registered entities that are located abroad.
- In a recent decision involving a wealth management firm (*Hyde v. KLS Professional Advisors Group, LLC*, Case No. 12-CV-1592, S.D.N.Y. April 13, 2012), the U.S. District Court for the Southern District of New York refused to enforce restrictive covenants (non-compete and non-solicit) in an employment agreement with respect to an at-will employee who was terminated involuntarily and without cause. The Court concluded that the covenants are entirely unenforceable under such circumstances (involuntary dismissal without cause), without addressing the covenants' breath or scope.
- On April 17, 2012, President Obama announced an initiative to curb speculation in the oil markets, which included proposals to (i) increase the amount spent on surveillance and enforcement staff of the CFTC by 600% (\$52 million); (ii) increase criminal and civil penalties for market manipulation from \$1 million to \$10 million, and (iii) grant the CFTC broader authority to increase margin requirements for establishing trading positions.
- In a recent decision related to litigation involving the Madoff fraud (*In re: Beacon Associates Litigation*, 09-CV-777, S.D.N.Y. March 14, 2012), the U.S. District Court for the Southern District of New York ruled that a firm that received compensation for providing non-discretionary investment advice (*i.e.*, research and due diligence) to a fund-of-funds with over 25% ERISA assets was a fiduciary for purposes of Section 3(21)(A)(ii) of ERISA with respect to each ERISA plan that invested in the fund-of-funds. Even though the defendant argued that it did not provide "individualized" advice to any of the plans, the Court disagreed and concluded that "individualized advice with respect to the needs of a pooled investment fund should be considered individualized advice with respect to the plans that invest in it."
- Managers formed after January 1, 2012 that are relying on the "private fund adviser" exemption or the "venture capital adviser" exemption from SEC registration are reminded that, as Exempt Reporting Advisers, they must submit their initial Form ADV Part 1A within 60 days of first relying on the applicable exemption. Please see our [January 26, 2012 memorandum](#) for a detailed discussion.

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