

THE PRIVATE EQUITY BULLET REPORT

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Business Planning, Structural, Legal, Regulatory & Compliance Developments

- The SEC has adopted final rules defining a “venture capital fund” for purposes of the exemption from investment adviser registration provided under the Dodd-Frank Wall Street Reform and Consumer Protection Act for advisers that solely advise venture capital funds. In summary, the rules define a venture capital fund as a private fund that: (i) other than short-term investments, holds no more than twenty-percent (20%) of the fund’s capital commitments in “non-qualifying investments” (generally, “qualifying investments” are direct equity investments in private companies, subject to certain additional limits); (ii) does not borrow or otherwise incur leverage, other than limited short-term borrowing (excluding certain guarantees of qualifying portfolio company obligations by the fund); (iii) does not offer its investors redemption or other similar liquidity rights except in extraordinary circumstances; (iv) represents itself as pursuing a venture capital strategy to its investors and prospective investors; and (v) is not registered under the Investment Company Act of 1940, as amended and has not elected to be treated as a business development company under that Act.
- The Institutional Limited Partners Association, an organization representing institutional limited partners in private equity, recently released the first two of a series of Standardized Reporting Templates intended to improve transparency between general partners and limited partners. The first two templates focus on best practices with respect to quarterly reporting standards and capital call/distribution notices. The model templates can be accessed at <http://ilpa.org/ilpa-standardized-reporting-templates/>.
- As a follow up to our previous article “2010 – A Year of Varied Exits”, PE sponsors in the first half of 2011 found a variety of exit strategies attractive to realize returns on their portfolio company investments. According to industry sources, record volumes have been obtained in PE-backed IPOs, reaching \$31 billion in 69 listings. In addition, secondary private equity sales volume was estimated at \$14 billion for the first half of 2011 and dividend recapitalizations reached almost \$25 billion in Q1 2011, each setting growth records over comparable prior year periods. Nevertheless, given the recent volatility in the markets, the sustainability of each of these exit strategies remains to be seen.
- On July 14, 2011, the Internal Revenue Service (“IRS”) released Notice 2011-53 which announced the phased-in effective dates for the Foreign Account Tax Compliance Act (“FATCA”) provisions of the Hiring Incentives to Restore Employment Act. FATCA will require all funds organized outside the United States to enter into an agreement with the IRS to report identifying information regarding certain of their direct and indirect U.S. accountholders. Very generally, the agreements will require offshore funds to conduct additional due diligence to determine the identities of their ultimate beneficial owners. Funds that fail to do so may be subject to certain withholding taxes.
- The first filing of the Department of Treasury’s TIC Form SLT is due by October 24, 2011. Private equity managers are urged to review their investment positions and structures to determine whether they have a filing obligation. In this regard, there may be a filing obligation if the aggregate ownership by U.S. funds of certain foreign securities and the issuances by U.S. funds of their interests to foreign investors exceeds \$1 billion.

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