

DEPARTMENT OF CORPORATIONS*Business Services and Consumer and Investor Protection*

Preston DuFauchard
California Corporations Commissioner
Sacramento, California

May 13, 2011

Re: Dodd-Frank Elimination of Private Adviser Exemption

The Department of Corporations will soon issue emergency regulations to address the elimination of the current exemption from registration for investment advisers who are deemed "private advisers." The nature of these emergency regulations will be to preserve the status quo, exempting private advisers from registration, until such time as the Department adopts a final rule regarding private fund advisers.

Effective July 21, 2011, the Wall Street Regulatory Reform and Consumer Protection Act, commonly referred to as Dodd-Frank, will eliminate the existing exemption from registration for private advisers contained in section 203(b)(3) of the Investment Adviser Act of 1940 ('40 Act). Currently, an Investment Adviser (IA) in California can rely on the private adviser exemption by virtue of California Department of Corporations Rule 260.204.9. That rule makes specific reference to the private adviser exemption contained in section 203(b)(3) of the '40 Act. Dodd-Frank, however, calls for a new regulatory regime for advisers to "private funds." The Securities and Exchange Commission's rules regarding private fund advisers have yet to be adopted. The time frame for such SEC rules to become effective, and corollary state rules regarding such advisers to "private funds," will not likely occur before December 31, 2011. Accordingly, some uncertainty may exist about the need to become registered after July 21, 2011, for California IAs who are currently unregistered, in reliance on the existing exemption set forth in Rule 260.204.9.

The Department will soon issue emergency regulations to address this potential uncertainty. These emergency regulations will amend Rule 260.204.9, but have the effect of preserving the status quo. Therefore, California IAs who currently rely on the exemption from registration for private advisers, will be able to continue to rely on that exemption until such time as the Department adopts final rules related to private fund advisers.

Preston DuFauchard
California Corporations Commissioner

A handwritten signature of Preston DuFauchard in cursive script, underlined.