

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.

As you are aware, effective July 21, 2011, the Wall Street Regulatory Reform Act, commonly referred to as Dodd-Frank, will eliminate the current exemption from registration for private advisers contained in section 203(b)(3) of the Investment Adviser Act of 1940. An Investment Adviser (IA) in California can rely on the private adviser exemption by virtue of California Department of Corporations Rule 260.204.9. Dodd-Frank calls for a new regulatory regime for mid-sized advisers, known as advisers to "private funds." The Securities Exchange Commission's rules regarding private fund advisers have yet to be finalized. 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 for California IAs who are unregistered, in reliance on the current exemption set forth in Rule 260.204.9, about a need to register after July 21, 2011.

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

Original signed by Preston DuFauchard