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VIA E-MAIL

To Our Investment Adviser Clients and Other Friends

Re: JOBS Act - Implications for Private Fund Placements

On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups Act (“JOBS Act”). The JOBS Act affects many securities laws. This letter describes its effect only on the marketing restrictions that apply to unregistered securities offerings of private investment funds.

An issuer of “securities” (which generally include interests in investment funds) must either register those securities with the Securities and Exchange Commission (the “SEC”) or rely on an available exemption from registration. Issuers of interests in private funds typically have avoided registration by relying on the safe harbor provided in Rule 506 of Regulation D under the Securities Act of 1933. That safe harbor allows private placements of securities to an unlimited number of “accredited investors” and up to thirty-five non-accredited investors. For the offering to qualify as a private placement, the issuer and any person acting on its behalf must not engage in any general solicitation or advertising in connection with the offering.

The JOBS Act requires the SEC to issue final rules revising Rule 506 by July 4, 2012, to eliminate its prohibition against general solicitations and advertising in private placements made solely to accredited investors. The issuer must take reasonable measures, to be determined by the SEC in its prospective rules, to ensure that all investors are accredited investors. Issuers may still rely on Rule 506 for private placements with up to thirty-five non-accredited investors if they do not generally solicit or advertise while doing so.

The JOBS Act provides that offerings made under the revised Rule 506 will “not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.” The scope of “Federal securities laws” is unclear, but likely covers the Investment Company Act of 1940 (the “ICA”) and will allow a fund to generally solicit or advertise its securities and still rely on ICA section 3(c)(1) or 3(c)(7). On the other hand, the JOBS Act does not cover Rule 4.13(a)(3) under the Commodity Exchange Act, which permits a “commodity pool operator” to avoid registration as such if it meets certain requirements, one being that the pool’s interests are offered without marketing to the public.

Therefore, an issuer that wants to continue relying on the Rule 4.13(a)(3) exemption will not be able to exploit the marketing benefits provided by the JOBS Act.

Until the SEC adopts the rules required by the JOBS Act and clarifies which Federal securities laws are affected, you should continue to refrain from making any general solicitation or advertising and from making any public statements regarding fund interests. After the SEC adopts those rules required by the JOBS Act, issuers and persons acting on their behalf should be able to speak to the press and use internet websites and other media to market their private funds to potential investors, subject to any limitations in those rules. The general anti-fraud provisions of the securities laws will continue to apply. It will, therefore, continue to be essential that you ensure the accuracy and truthfulness of communications with prospective investors.

Effective April 5, 2012, the JOBS Act also increased the number of investors a private fund relying on ICA section 3(c)(7) of the ICA may have before having to register as a public reporting company under the Securities Exchange Act of 1934 from 500 to 2,000. The JOBS Act does not change the 100 beneficial owner limit for private funds relying on ICA section 3(c)(1).

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This letter only generally summarizes the effect the JOBS Act will have on marketing private fund interests, is not intended as specific or complete advice, and is subject to change if and when the SEC adopts further rules and issues interpretations. If you need assistance in determining the effects of these developments on your business, or preparing to comply with them, please contact Doug Hammer, John Broadhurst, Geoff Haynes, Chris Rupright, Carolyn Reiser, Neil Koren, Jim Frolik, Joan Grant, Ellyn Roberts, Anthony Caldwell, Christina Hamilton or Charles Clinger.

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