

Scott, Shelley

From: Fallon-Houle, Nancy
Sent: Monday, November 16, 2009 11:39 AM
To: Scott, Shelley
Subject: FW: Dodd Discussion Draft Bill
Importance: High
Attachments: dodddiscussion.doc.pdf

Please download the document and the summary email, as two separate docs.

Nancy Fallon-Houle
nfallon@nfhlaw.com
 630-963-0439 x22

From: Committee on State Regulation of Securities [mailto:BL-STATEREGS@MAIL.ABANET.ORG] **On Behalf Of** Parness, Alan
Sent: Thursday, November 12, 2009 2:05 PM
To: BL-STATEREGS@MAIL.ABANET.ORG
Subject: Dodd Discussion Draft Bill
Importance: High

In case you haven't seen this as of yet, I pass along a copy of a draft bill prepared by Sen. Dodd (CT), which hasn't been introduced as of yet (caution: it runs 1136 pages!). For those of you representing issuers effecting private offerings, investment advisers or broker-dealers, please note that certain of the provisions of the bill would directly or indirectly impact state securities regulation, as follows:

1. Sec. 18(b)(4)(D) of the Securities Act of 1933 would be repealed, thereby removing Rule 506 offerings as "covered securities" [Sec. 928, pp. 686-687].
2. The SEC would be required to increase the \$200,000/\$300,000 minimum income and \$1,000,000 minimum net worth thresholds for natural person "accredited investors" in Reg. D, and to adjust those thresholds not less than once every 5 years, so as to reflect the percentage increase in the cost of living [Sec. 412, pp. 302-303].
3. Sec. 203(b) of the Investment Advisers Act of 1940 (the "IAA") would be amended to: (a) modify the exemption for intrastate investment advisers in Sec. 203(b)(1) so as to deny it to advisers to "private funds," a new defined term to be added as IAA Sec. 202(a)(29); (b) delete the Sec. 203(b)(3) exemption for advisers with fewer than 15 clients in any 12 months, and replace it with an exemption solely for certain "foreign private advisers," another new defined term to be added as IAA Sec. 202(a)(30); and (c) modify the Sec. 203(b)(6) exemption for persons registered as commodity trading advisers with the CFTC so as to deny it to advisers to "private funds" [Secs. 402 and 403, pp. 291-293].
4. New IAA Sec. 203(l) would be added, exempting advisers to "venture capital funds," a term to be defined by SEC rule required to be finalized within 6 months after enactment of the bill [Sec. 407, p. 300].
5. A new IAA Sec. 203(m) would be added, exempting advisers to "private equity funds" from registration, but subjecting them to recordkeeping and reporting requirements, with the term "private equity fund" to be defined, and the recordkeeping and reporting requirements to be set forth, in an SEC rule required to be finalized within 6 months after enactment of the bill [Sec. 408, pp. 300-301].
6. IAA Sec. 202(a)(11) would be amended to add a new exception from the definition of "investment adviser" for a "family office," a term to be defined by SEC rule, regulation or order [Sec. 409, pp. 301-302].
7. IAA Sec. 203A(a)(1)(A) would be amended to increase the \$25 million in assets under management threshold for federal investment adviser registration to \$100 million [Sec. 410, p. 302].

8. The "solely incidental/no special compensation" exception for broker-dealers from the definition of "investment adviser" in IAA Sec. 202(a)(11)(C) would be deleted [Sec. 913(a), p. 643].

By reason of the foregoing provisions, except for persons who may qualify under the new "family office" exception added to IAA Sec. 202(a)(11), who, together with their "supervised persons," will be exempt from state investment adviser registration or licensing by reason of IAA Sec. 203A(b)(1)(B), "foreign private advisers" and advisers to "venture capital funds" and "private equity funds" exempted from SEC registration by reason of the amendments to IAA Sec. 203, as well as broker-dealers, will all be subject to state investment adviser registration if they are managing less than \$100 million in assets, unless they qualify for the "national de minimis standard" preemption of state registration under IAA Sec. 222(d) [Sec. 222(d) is unaffected by the bill], or qualify for an exemption or exception under a particular state's Blue Sky law.

Alan M. Parness
Counsel
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Tel: +1 212.504.6342
Fax: +1 212.504.6666
alan.parness@cwt.com
www.cadwalader.com

IRS Circular 230 Legend: Any advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal, state, or local tax penalties. Unless otherwise specifically indicated above, you should assume that any statement in this email relating to any U.S. federal, state, or local tax matter was written in connection with the promotion or marketing by other parties of the transaction(s) or matter(s) addressed in this email. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

=====
NOTE: The information in this email is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information; please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy. Although this email and any attachments are believed to be free of any virus or other defect that may affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Cadwalader, Wickersham & Taft LLP for any loss or damage arising in any way from its use.
