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Financial Reform

Effects on the Middle Market and Private Equity

Presenters

- Moderator
  - Deirdre Patten
- Panel
  - Peter Lehrman
  - Bart J. McDonald
  - Louis J. Dempsey
  - Erik B. Dykema

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Agenda

- Dodd Frank Recap
- Dodd Frank Impact on Private Equity and Private Investment Funds
- Mergers and Acquisitions Services – Regulatory Issues
- Investment Banking Licensing Issues

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Dodd Frank Wall Street Reform and Consumer Protection Act

- New Investment Adviser Registration Requirements
- New Recordkeeping and Reporting Obligations
- Adjustment to Regulation D definitions
- The "Volcker Rule"
- Fiduciary Duty Study
- SEC to Propose Rules to Implement
- Effective July 21, 2011

Impact on Private Funds

- Investment Adviser Registration Requirements
  - Rescinds the “private adviser exemption” effective July 21, 2011
  - Present law mandates SEC registration for investment advisers that have at least 15 “clients” and more than $30 million in assets under management (“AUM”)
  - Under Dodd-Frank, most advisers will be required to register with either the SEC or state authority

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Impact of Private Funds

- Investment Adviser Registration Requirements, Continued
  - Minimum AUM for federal registration raised to $100 million
  - Proposed SEC eligibility
    - AUM over $100 million
    - Adviser to a Registered Investment Company
    - Adviser to a Business Development Company
    - Pension Consultant

Impact on Private Funds

- Proposed SEC eligibility, continued
  - Multi state adviser (15)
  - Internet adviser
  - Affiliation with another SEC adviser
  - Expecting to have the AUM within 120 days (new Advisers)
  - Adviser not subject to examination by its home state
- Proposed state eligibility
  - AUM under $100 million

Impact on Private Funds

- Proposed state eligibility, continued
  - State must have an examination program (“subject to examination” requirement)
  - North American Securities Administrators Association (NASAA)
- Exemptions from registration
  - Adviser that solely advises one or more “Venture Capital Funds”
  - Private fund with AUM under $150 million
  - Foreign advisers

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Impact on Private Funds

- Exempt Reporting Advisers
- Recordkeeping and reporting requirements
  - Subject to Section 204, which sets forth the recordkeeping and reporting obligations
  - Subject to SEC inspections
  - Amended Form ADV Part 1
  - Adviser information:
    - Identifying information, names of offices, other business activities and affiliates, disciplinary information, etc.
  - Fund information:
    - Identifying information, exemptions, gross and net asset values, number and type of investors, and service provider information

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Impact on Private Funds

- Counting AUM
  - "Regulatory" AUM
  - AUM includes committed assets even before they are called
  - Exempt Reporting Advisers (quarterly)
- SEC Registration Process
  - Timing
  - Requirements
  - Implementation Costs

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Impact on Private Funds

- Compliance Programs
  - Books and records
  - Compliance policies and procedures
  - Disclosures to clients
  - Restrictions and limitations on:
    - Affiliated transactions
    - Performance fees
    - Custody of client assets
    - Client solicitations

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Impact on Private Funds

- Regulatory Examinations :
  - Preparation
  - Identify contact person
  - Handling document requests
  - Speaking with examiners
  - Senior Management involvement

Mergers & Acquisitions Services

- Crossing the regulatory line
  - Intermediaries and Finders
  - Compensation arrangements
    - Commissions / Transaction-based compensation
    - Percentage vs. flat rate
  - Providing recommendations or investment detail
  - History of activity (regular activity)

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Mergers & Acquisitions Services

- FINRA Registration Process/Overview
  - Timing
  - Requirements
    - Licensing requirements
    - Investment banking (Series 79)
  - Implementation costs
  - Ongoing costs

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"Effects on the Middle Market and Private Equity"

We would like to Thank you the Audience

and

The AM&AA

Questions?

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Contact Information

Patten Training & Review, LLC
6700 Woodland pkwy
Suite 230
The Woodlands TX 77382
www.pattentraining.com
Deirdre Patten
281-419-6030
dpatten@PattenTraining.com

Renaissance Regulatory Services, Inc.
350 Camino Gardens Blvd
Suite 105
Boca Raton, Florida 33432
www.RRSCompliance.com
Louis J. Dempsey
561-368-2245
LouisDempsey@RRSCompliance.com
Bart J. McDonald
561-368-2245
BartMcDonald@RRSCompliance.com

Lineage Capital, LLC
222 Berkeley Street
21st Floor
Boston, MA 02116
www.lineagecap.com
Erik B. Dykema
617-778-0665
erik@lineagecap.com

AxialMarket, LLC.
845 Third Avenue, 13th Floor
New York, NY 10022
www.axialmarket.com
Peter Lehrman
650-284-1910
peter.lehrman@axialmarket.com

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