

Hedge Funds

March 12, 2010

Reminder: Form D Updates May Be Required

Annual Updates

Under the rules of the Securities and Exchange Commission effective from March 16, 2009, issuers of securities relying on the SEC's safe harbor for private placements under Regulation D must file an annual update to Form D if the offering originally reported is continuing on the anniversary date of the previous filing. Many hedge funds and other private investment funds engage in continuous offerings that exceed one year.

When amending any previously filed notice on Form D, all information on the form must be brought current, even if a particular change by itself would not have triggered the amendment requirement. All filings must be made electronically through the SEC's EDGAR website. If the issuer has not previously made an electronic filing, it must obtain EDGAR access codes, which generally takes 24 to 48 hours from submission of signed and notarized request forms. Issuers should take this additional time into account in planning their compliance calendars.

Other Required Updates

In addition to the annual updates, we remind you that:

- **An issuer must file an amendment to a previously filed notice for an offering:**
 - to correct a material mistake of fact or error in the previously filed notice, as soon as practicable after discovery of the mistake or error; or
 - to reflect a material change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change.

Examples of material changes include:

- an increase in the offering amount, if the increase is in excess of 10% of the amount listed in the last filing;
 - an increase in the amounts paid to executive officers, directors or promoters, if the increase is in excess of 10% of the amount listed in the last filing;
 - a decrease of more than 10% in the minimum investment amount; and
 - the addition of executive officers, directors or promoters.
- **An amendment is not required** to reflect a change that occurs after the offering terminates or a change solely in the following information contained in a previous Form D notice or amendment:
 - the address or relationship to the issuer of a related person identified;
 - an issuer's revenues or aggregate net asset value;
 - the minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice, does not result in a decrease of more than 10%;
 - any address or state(s) of solicitation for a person receiving sales compensation;

- the total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%;
- the amount of securities sold in the offering or the amount remaining to be sold;
- the number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;
- the total number of investors who have invested in the offering; and
- the amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%.

Please contact your Katten attorney or any member of our [Financial Services](#) or [Corporate](#) practices with any questions about the need to file an amendment or for help in preparing such filings.

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