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IN THIS ISSUE

California Initiatives to Promote Emerging Managers Programs

Newly enacted California Senate Bill 294 (the "Senate Bill") requires the California Public Employees' Retirement System ("CalPERS") and the California State Teachers' Retirement System ("CalSTRS"), the nation's largest public pension funds, to establish five-year strategic plans for emerging investment manager participation across all asset classes and to provide annual reports on the progress of such plans. Although these pension funds publically supported the final draft of the Senate Bill, they argued against earlier proposals for the bill to create a uniform definition of "emerging manager" and to establish minimum participation goals. The absence of these criteria in the final Senate Bill distinguishes the California legislation from other states' initiatives to promote emerging manager programs. However, CalPERS' and CalSTRS' commitment to emerging managers cannot be doubted given their voluntary adoption of emerging manager programs to increase investment diversification, including CalPERS' new Emerging Manager Program for Real Estate.

CalPERS and CalSTRS Support New Emerging Manager Program Legislation

Beginning August 1, 2012, the Senate Bill will require the Board of Administration of each of CalPERS and CalSTRS to establish a five-year strategic plan for emerging investment manager participation across all asset classes. In addition, the Boards will be required to submit annual reports regarding the progress of such strategic plans to the California legislature beginning March 1, 2014. The legislation is scheduled to remain in effect until January 1, 2018.

The office of California State Senator Curren Price, the author of the Senate Bill, stated that the legislation is meant "to encourage expanded opportunities for newer and smaller investment companies in the state procurement of financial services."[1] Supporters of the Senate Bill, who testified before the California State Senate, echoed their hopes that the progress reports will foster an annual dialogue between the pension funds and the state legislature about improving and increasing emerging manager participation.

Both CalPERS and CalSTRS publically supported the final version of the Senate Bill. In particular, CalSTRS noted that the bill was consistent with its existing investment policy and that "CalSTRS currently makes significant efforts to encourage a broad range of investment managers to participate in managing CalSTRS funds. As a result, CalSTRS anticipates gradually increasing the number of emerging investment managers in all asset classes to meet its investment goals."[2]

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[1] See, "Bill Analysis" by Senate Rules Committee, dated May 24, 2011 (http://info.sen.ca.gov/pub/11-12/bill/sen/sb_0251-0300/sb_294_cfa_20110524_133926_sen_floor.html).

[2] See, "Bill Analysis of SB 294 (Price) as amended on May 9, 2011," [undated] (http://www.calstrs.com/legislation/Current%20Legislation/2011/analysis/sb_294.pdf).

Differences in Emerging Manager Legislation among States

California is the latest in a series of states — including Maryland, Illinois and New York — to adopt legislation supporting emerging manager programs. Texas, Michigan, Ohio and Florida are also considering similar legislation. Compared to other states' initiatives, however, California's Senate Bill contains two notable differences.

No Uniform Definition of "Emerging Manager"

An emerging manager has traditionally been identified by its short (or non-existent) investment track record and modest assets under management. States such as Illinois and New York have adopted uniform definitions of what constitutes an emerging manager in connection with their recent legislation. However, California's Senate Bill does not define the term because, as CalPERS argued, the meaning may vary by asset class. "For some investors, it may be defined based on total assets under management, or stage of a firm's organizational development, or a combination of some or all of these and other factors or characteristics."[3] Instead, the Senate Bill allows CalPERS and CalSTRS to create their own definitions.

Since the Senate bill was enacted on October 9, 2011, neither pension fund has announced any new definition, or changes to existing definitions, of "emerging manager." However, CalSTRS previously stated that it classifies "an emerging manager in terms of the size and longevity of the fund managers, without regard to gender or ethnicity."[4] Based on this preliminary statement, it appears that CalSTRS will adopt a broader definition — specifically not tied to gender or ethnicity — than other states. In comparison, Illinois law defines an "emerging investment manager" as a qualified investment adviser that is a "minority-owned business," "female-owned business" or "business owned by a person with a disability" as such terms are defined in Illinois law.[5] New York law authorizes the state comptroller to establish a MWBE [minority and women business enterprises] asset management and financial institution strategy for the purpose of investing assets of the common retirement fund with MWBE asset managers.[6] A "MWBE asset manager" is defined as an asset manager that is, among other things, at least 51% owned by either one or more minority group members or women, or is substantially owned and/or operated by women or minority group members.[7]

> *California is the latest in a series of states — including Maryland, Illinois and New York — to adopt legislation supporting emerging manager programs.*

No Participation Goal

Another difference between the states' legislation is Maryland's goal for emerging managers to administer at least 25% of the investment portfolios of the state's public pension funds. In contrast, the Senate Bill does not contain a participation goal, although one existed in earlier versions of the bill. Until May 2011, the proposed California bill suggested a 15% participation goal and that annual reports to the state legislature detail the pension funds' progress in achieving such goal.

Relying on Article XVI, Section 17(a) of the California Constitution, CalPERS argued against the 15% threshold, asserting that the state Constitution expressly provides that each pension fund's Board of Administration has the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. As a result of CalPERS' stance, the final version of the Senate Bill clarifies and confirms that the pension funds will not be required to take any action that is inconsistent with their fiduciary duties and plenary investment decision-making authority granted by the Constitution as they refine existing emerging manager programs.

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[3] Memorandum from CalPERS' Office of Governmental Affairs to Investment Committee, dated May 16, 2011 (http://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/invest/201105/item06a.pdf).

[4] "Bill Analysis of SB 294 (Price) as amended on May 9, 2011," [undated] (http://www.calstrs.com/legislation/Current%20Legislation/2011/analysis/sb_294.pdf).

[5] 40 ILCS § 5/109.1(4).

[6] N.Y. RSS. Law § 423-c.

[7] N.Y. RSS. Law § 176.

Historical Support of Emerging Manager Programs

CalPERS and CalSTRS have historically supported emerging managers through their own initiatives. As early as May 2000, CalPERS established the Manager Development Program with the objective of providing investment opportunities to new and emerging managers. It targeted firms managing public equity and fixed income securities with less than $2 billion AUM. In 2004, CalPERS reaffirmed its commitment to investing with emerging managers and approved a second Manager Development Program with a similar objective, although its targeted firms are now limited to firms with less than $2 billion in AUM in public equity or fixed income securities. In 2007, CalPERS rolled out a series of emerging manager programs, such as the Emerging Manager Fund-of-Funds Program, which engages fund-of-funds managers to build portfolios of smaller asset managers. CalPERS has invested $700 million in such emerging manager programs.

Likewise, in 2004, CalSTRS established its Developing Manager Program and allocated $600 million to three managers-of-managers, who were tasked with outperforming the Russell 3000 Index by 150 basis points through a portfolio comprised of “developing managers” (i.e., any investment management firm with less than $2 billion AUM). Due to the initial success of the program, CalSTRS has since allocated an additional $775 million. As of March 2010, the program consisted of six managers-of-managers, of which five firms were minority- and/or women-owned firms and 33 of the underlying developing managers were minority- and/or women-owned firms.

CalPERS’ Emerging Manager Program for Real Estate

The Emerging Manager Program for Real Estate (the “Real Estate Program”) is the latest commitment by CalPERS to support emerging manager firms. On August 15, 2011, CalPERS approved the new Real Estate Program and earmarked $200 million towards such program. The Real Estate Program is targeted for emerging real estate managers who have less than $1 billion of AUM and no more than three prior commingled funds or separate account investment vehicles. The program will focus on managers and assets in urban California markets. In addition, CalPERS’ current investment managers will provide mentoring and back office support to the new emerging managers participating in the Real Estate Program. Although this is a new program, CalPERS points to a report prepared by Crosswater Realty Advisors, which indicates that 22 of its current real estate managers would have met the Real Estate Program’s current “emerging manager” criteria at the time CalPERS first allocated capital to them. Since those initial allocations, the same real estate managers have grown to become “large investment managers” to whom CalPERS has allocated $23.45 billion.

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Implications of Dodd-Frank for Non-U.S. Investment Advisers and the Definition of "Place of Business"

On November 19, 2010, the U.S. Securities and Exchange Commission (the "SEC") proposed rules that would implement new exemptions from registration requirements under the U.S. Investment Advisers Act of 1940 (the "Advisers Act") for advisers to certain private investment funds that were enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The proposed new rules have replaced the private fund adviser exemption with two new, and narrower, exemptions. One of these exemptions is the "Private Fund Advisor Exemption."

The private fund adviser exemption and application for "non-U.S. advisers"

The broader of the two new exemptions (and the one that, practically speaking, will be the most useful for investment advisers) is the "private fund adviser" exemption. New section 203(m) of the Advisers Act provides for an exemption from registration to any investment adviser that solely advises private funds if the adviser has assets under management in the United States of less than $150 million. The exemption is applied differently for U.S. and non-U.S. advisers. If an adviser's principal office and place of business is in the U.S., it is a "U.S. adviser." As a result, all of the assets managed by the adviser are deemed to be managed in the U.S. If the adviser's principal office and place of business is outside the U.S., it is a "non-U.S. adviser." A "non-U.S. adviser" can qualify for the private fund adviser exemption so long as (i) all of the adviser's clients that are U.S. persons are qualifying "private funds" and (ii) if the adviser has a "U.S. place of business," all of the clients whose assets the adviser manages at that place of business must be private funds and the assets managed at that place of business must have a total value of less than $150 million.

The test for whether an adviser is a "non-U.S. adviser" turns on the location of the adviser's "principal office and place of business."

Definition of "principal office and place of business"

The test for whether an adviser is a "non-U.S. adviser" turns on the location of the adviser's "principal office and place of business." The definition of "principal office and place of business" is, according to the SEC, "where the adviser controls, or has ultimate responsibility for, the management of private fund assets, and is *the* place where all the adviser's assets are managed."

For some advisers who have both front and back office operations outside of the United States, the analysis required in order to confirm the location of "principal office and place of business" will be relatively straightforward.

For others, with more complex or far-flung operations, the analysis may prove a bit more challenging. To help clarify the situation, the SEC has provided some further, primarily factually based guidance. For example, where an adviser splits its front and back office operations, if the back office is located in the U.S., even if a portfolio manager is heavily dependent on its back office to make a decision, the adviser will not be a "U.S. adviser." In this example, so long as the adviser has its primary office outside the United States and maintains overall control of its investment advisory activities at this location, its principal office and place of business will be outside the United States. As the SEC makes clear in the proposing release related to the new rules, the "non-U.S. activities of a non-U.S. adviser are less likely to implicate the U.S. regulatory interests and is in keeping with general principles of international comity." The situation becomes slightly less clear if "control" is split. For example, if multiple managers across offices make investment decisions jointly, it is unclear where a "principal office and place of business" may be located. As a result, for some advisers, the analysis may not be entirely clear cut. What is clear, however, are the benefits to being a "non-U.S. adviser" under the new rule. Under the terms of the SEC's release, a non-U.S. adviser may enter the U.S. market and take advantage of the exemption without regard to the type or number of its non-U.S. clients or the amount of assets it manages outside of the United States. Accordingly, a non-U.S. adviser with no place of business in the United States and whose only U.S. clients are private funds will meet this test. The fact that the adviser may have a variety of different clients outside the U.S. need not be taken into account. However, the investment adviser must be comfortable that its U.S. clients are "private funds" and that, if it has a U.S. place of business, all of the clients whose assets the adviser manages at that place of business must be private funds and the assets managed at that place of business must have a total value of less than $150 million.

Advising private funds and U.S. place of business

For a non-U.S. adviser with no U.S. place of business, the analysis above is fairly straightforward. In order to rely on the exemption, every U.S. person that the adviser advises must be a "qualifying private fund." Under the exemption, U.S. person generally (with some limited exceptions) incorporates the definition of U.S. person from the Securities Act of 1933, as amended. For the purpose of the new rule, "qualifying private funds" includes hedge funds, private equity funds and other types of privately offered investment vehicles that rely on section 3 of the U.S. Investment Company Act of 1940 (the "Investment Company Act"). It should be noted that this definition is broader than the original proposal, and allows investment advisers to count real estate and other funds (other than the traditional 3(c)(7) and 3(c)(1) funds), which are excluded under section 3 of the Investment Company Act. As mentioned above, for a "non-U.S. adviser," the exemption is available as long as all of the adviser's clients that are U.S. persons are "qualifying private funds."

What is clear, however, are the benefits to being a "non-U.S. adviser" under the new rule. Under the terms of the SEC's release, a non-U.S. adviser may enter the U.S. market and take advantage of the exemption without regard to the type or number of its non-U.S. clients or the amount of assets it manages outside of the United States.

For a non-U.S. adviser with a "place of business" in the United States, the analysis is slightly more complex. For all of the clients whose assets the adviser manages at that place of business must be private funds and the assets managed at that place of business must have a total value of less than $150 million. Similarly to the definition of "principal office and place of business," the definition of "place of business" is based on a facts-and-circumstances analysis. It is where the adviser "regularly provides advisory services, solicits, meets with, or otherwise communicates with clients" and "any other location that is held out to the general public as a location at which the investment adviser provides investment advisory services, solicits, meets with, or otherwise communicates with clients." It should be noted that a non-U.S. adviser would not be required to take into account private fund assets that it manages from a place of business outside the United States. This would include any assets of a U.S. private fund that it manages. If the non-U.S. adviser has a place of business in the United States however, and assets of clients that are not private funds are managed from this office, it will not be able to rely on this exemption.

In terms of assets under management, the SEC has provided a uniform method to calculate AUM for regulatory purposes, which has been set forth in the instructions to amended Form ADV. Under the revised Form ADV instructions, advisers must include in their calculations proprietary assets and assets managed without compensation as well as uncalled capital commitments. In addition, an adviser must determine the amount of its private fund assets based on the market value of those assets, or the fair value of those assets where market value is unavailable (in a manner similar to that provided for in the Investment Company Act). In addition, the adviser must calculate the assets on a gross basis (without deducting liabilities such as accrued fees and expenses or the amount of any borrowing).

For the purpose of the new rule, "qualifying private funds" includes hedge funds, private equity funds and other types of privately offered investment vehicles that rely on section 3 of the U.S. Investment Company Act of 1940 (the "Investment Company Act").

Private fund assets managed in the United States

The net impact of the proposed rules implementing the private fund adviser exemption would be that non-U.S. investment advisers with no U.S. place of business would only be required to register under the Advisers Act if they had U.S. clients other than U.S. private funds. Non-U.S. investment advisers with a U.S. place of business would be required to register under the Advisers Act if they had U.S. clients other than U.S. private funds, if assets other than assets of clients that are private funds were managed from the U.S. place of business and/or they managed $150 million or more of private fund assets from the U.S. place of business.

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Carried Interest Tax Provisions of the American Jobs Act

On September 8, 2011, President Obama introduced the American Jobs Act (the "Act"). The Act includes a number of tax provisions, one of which would tax income earned by investment fund managers from a carried interest under ordinary income rates instead of the more beneficial capital gain rates currently in place. Income from a carried interest also would be subject to self-employment taxes under the Act. This provision would take effect in 2013. Similar provisions have been suggested and rejected over the past few years. Although the fate of this provision is not yet known, certain Congressional leaders have indicated that this provision is unlikely to be accepted in the House of Representatives.

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A Recent District Court Decision Undermines the Supreme Court's Ruling in *Janus*

In June 2011, the United States Supreme Court issued *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011), in which the Court held that a party could not be held liable under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder unless the defendant alleged to have made misrepresentations is the party to whom the statement is attributed — the Supreme Court expressly held that parties who assist in the making of such statements cannot be held liable under these provisions. *Id.* at 2302-03. In a September 30 decision released by the United States District Court in the Southern District of New York in *City of Roseville Employees' Retirement System v. EnergySolutions*, No. 09 Civ. 8633 (S.D.N.Y. Sept. 30, 2011), the court seized on the Supreme Court's phrase "ultimate control" to deny a motion to dismiss a complaint seeking to hold a parent corporation liable for alleged misrepresentations in a registration statement issued by its subsidiary. In doing so, the district court has potentially created a huge exception to *Janus* that is inconsistent with the Supreme Court's ruling.

Following its earlier decisions with respect to secondary liability, the Supreme Court set forth a clear test in *Janus*:

> For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate control over the statement, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. One who prepares or publishes a statement on behalf of another is not a maker. And in the ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by — and only by — the party to whom it is attributed. *Id.* at 2302 (emphasis added).

In the *City of Roseville* case, the plaintiff sued, among others, the parent corporation of EnergySolutions, Inc. in connection with an IPO by EnergySolutions. The district court held that the claim against the parent under Rule 10b-5 could be sustained under *Janus*, even though the parent was not the maker of the statement. The district court seized on the ultimate "control" phrase in *Janus*, and found that the parent exercised control.

Specifically, the district court relied on allegations that (i) the parent was the sole owner of EnergySolutions stock and was the selling shareholder; (ii) the registration statement contained a corporate structure chart that showed EnergySolutions to be wholly owned by the parent; (iii) statements that the parent would continue to retain a controlling interest after the IPO; and

The district court's decision is completely disconnected from the Supreme Court's ruling in Janus.

(iv) statements that the Sponsors and Management (which owned 100% of the parent) would have the ability to effectively control all matters requiring stockholder approval, including the issuance of additional shares.[7] The district court held that these statements about shareholder control made the situation in *City of Roseville* different than the facts before the Supreme Court in *Janus*, even though in *Janus* the Supreme Court held that the plaintiff could not assert claims against the investment fund's affiliate (which provided all administrative and advisory services to the fund).

The district court's decision is completely disconnected from the Supreme Court's ruling in *Janus*. In effect, the district court has ignored the specific language in the Supreme Court's holding that control had to be exercised over "the statement, including its content and whether and how to communicate it." None of the allegations to which the district court pointed, however, indicates that the parent exercised any such control over the statements in the registration statement. Instead, the district court erroneously held that the ability to exercise control as a shareholder by itself was sufficient for the purposes of the Supreme Court's holding in *Janus*.

The district court's decision has the potential for causing great mischief, as it has severed the nexus between control and the making of statements. Indeed, the district court has adopted a standard that is substantially weaker than the standard for veil piercing, as it does not require any allegations that the control was exercised in an inappropriate manner.

At a minimum, under the district court's analysis, a parent that is the sole owner of the issuer could be per se liable under *Janus*. Potentially by the district court's logic, any controlling shareholder would be liable. In effect, the district court had read the requirements in Section 20 of the 1934 Act out of the statute by eliminating the need to satisfy that section's controlling person requirements when addressing a parent's liability for a subsidiary's disclosures.

To the extent that other courts choose to follow this decision, the rule established in *Janus* will be eviscerated with respect to claims involving a subsidiary's publicly traded securities. There is serious doubt, however, whether other courts, including Courts of Appeal, will follow the district court's logic. At no point does the district court come to the conclusion, as *Janus* expressly requires, that the complaint alleges with the requisite particularity required under *Tellabs* that the parent corporation exercised ultimate control over the making of the statements. Given the Supreme Court's desire to circumscribe the ability to assert claims under Rule 10b-5, it is unlikely that the Supreme Court used the phrase "ultimate control" to create a basis to hold a parent corporation or a controlling shareholder liable for the misrepresentations made by its subsidiary merely because of its power as a shareholder.

The district court's decision has the potential for causing great mischief, as it has severed the nexus between control and the making of statements.

Since the district court's decision is an interlocutory decision at the earliest stage of the case, appellate review of their decision will not occur in the near future. It will probably take some time before there is any clarity regarding the willingness of other courts to adopt the district court's reasoning.

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[7] Although the district court relies on these statements, there is nothing special or out of the ordinary about those disclosures. Any subsidiary, such as EnergySolutions, is required to make such disclosures about its controlling shareholder or parent.

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Fund Distribution in Germany — A Primer

The transformation of the Alternative Investment Fund Managers Directive (AIFMD) into national law will affect the applicable rules for fund distribution in Germany. Still, there is some time left until 2013 that will see new fund interests in need of distribution. Furthermore, AIFMD only addresses professional investors in a cross-border set-up that also only deals with closed-ended funds. The basic regime for (national) retail fund distribution further described below will therefore remain unaffected by AIFMD, although other current legislation has to be taken into account.

The Basic Setting: Mutual Funds vs. Closed-Ended Funds

Mutual Funds (*Investmentfonds*) basically include stock funds, bond funds, mixed funds, hedge funds (single funds and funds-of-funds), money market funds, and hybrid funds as well as open-ended real estate funds. Stock funds are the largest group among those mutual funds distributed to the public. Mutual funds can, in fact, be structured either as retail funds (*Publikumsfonds*) or as special funds (*Spezialfonds*) customized to the needs of sometimes only one institutional investor. As of July 31, 2011, roughly 45 percent of the investments in German mutual funds have been made with retail funds compared to 55 percent with special funds.

Closed-ended funds (*geschlossene Fonds*) comprise closed-ended real estate funds, private equity funds, aircraft funds, ship finance funds, energy funds, leasing funds, infrastructure funds, film funds and life insurance funds. Closed-ended real estate funds are generally the largest group among them.

There is also a German REIT ("G-REIT") that has been introduced in 2007, but only three of these exist as of today. The last G-REIT, hamborner REIT AG, made the transfer effective February 18, 2010.

Distribution of Mutual Funds

Retail funds are regularly set up as investment funds managed by an investment company with at least two trustworthy managers licensed by the German Federal Finance Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)*). The investment company must have a minimum capital of €300,000.00 subject to additional funding requirements if the total value of assets under management exceeds certain (relatively high) amounts. A custodian bank must be appointed to safeguard the fund's assets, i.e., to clear all business activities as well as control and monitor the investment company.

Institutions that market and offer retail funds generally require a license under the German Credit System Act. There is an exception for independent financial advisers, but their number is steadily decreasing. Domestic as well as foreign mutual funds can generally be distributed to all German investors. Since July 1, 2011, retail clients have to be provided with a product information sheet according to new rules under the Investor Protection and Functionality Improvement Act (*Anlegerschutz- und Funktionsverbesserungsgesetz (AnFuG)*).

Distribution of Closed-Ended Funds

German closed-ended funds in the pre-AIFMD era do not offer any specific regulatory requirements with regard to the distribution of fund interests.

It is required to file a prospectus with BaFin before distributing a closed-ended fund in Germany, but there is no ongoing BaFin supervision. There are, however, certain exceptions with regard to the prospectus filing requirement for private placements that basically address a limited number of existing contacts that, in addition, are to sign relatively high fund interests. Those offerings only require some sort of private placement memorandum that would not be filed with BaFin.

Institutions that market and offer retail funds generally require a license under the German Credit System Act. There is an exception for independent financial advisers, but their number is steadily decreasing.

The offering and distribution of foreign funds is subject to licensing; domestic funds can be offered without obtaining a license.

Outlook

For both mutual/open-ended as well as closed-ended funds, there are currently only limited requirements with regard to the domestic distribution of fund interests. This is bound to change, e.g., with the requirement for investment advisers to prove their expertise under the Act to Amend the Law Governing Investment Intermediaries and Capital Investments (*Gesetz zur Novellierung des Finanzanlagenvermittler- und Vermögensanlagengesetzes (FinAnlVG)*).
Effective around mid-2012, FinAnlVG will also bring changes to the prospectus requirements that will also affect the retail distribution of closed-ended funds, thereby closing a gap that AIFMD will leave in the retail space. The offering of closed-ended funds to retail investors might generally also be subject to BaFin supervision, which would affect the issuers and, e.g., closed-ended fund interest secondary markets — but probably not funds-of-funds and those players that limit themselves to functions like placement guarantees or trusteeship.

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KAYE SCHOLER LLP

Investment Funds Group Presents

Emerging Managers: Successful Fundraising in Turbulent Times

Emerging Managers are reinventing themselves following the financial crisis and redefining the boundaries of the alternative asset management industry. As future leaders in the alternative asset management industry, Emerging Managers are developing new structures for launching funds as well as developing new strategies for raising capital.

The landscape for Emerging Managers is changing rapidly. Emerging Managers must understand these market developments in order to successfully launch their funds and lay the foundation for their future successes.

Please join panelists Howard Sanders (Managing Director, Old Brass Capital), Timothy Spangler (Partner, Kaye Scholer) and Patrick Michel (Counsel, Kaye Scholer) for a frank discussion about the new strategies and structures being utilized by Emerging Managers to launch private investment funds in these challenging times.

Date: November 17, 2011

Time: 4:30pm Registration
5-6pm Panel discussion
6-8pm Cocktail reception

Speakers: Howard Sanders,
Managing Director, Old Brass Capital

Timothy Spangler
Partner, Kaye Scholer LLP

Patrick Michel
Counsel, Kaye Scholer LLP

Location: Kaye Scholer
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KAYE SCHOLER LLP

Investment Funds Group Presents

Current Issues in Prime Brokerage

With financial markets once again experiencing volatile and unpredictable conditions, and domestic and international regulation increasingly affecting the operations of funds and their managers, the pivotal role of the prime broker for hedge funds is once again in focus.

Stephen McCreath (Executive Director, Prime Services, Nomura International plc) and Colin Tan (Counsel, Kaye Scholer LLP) will discuss topical commercial issues in and around the provision of prime services to hedge funds and legal developments in prime brokerage documentation.

Date: Tuesday 1 November 2011

Time: 8:00 am Registration and Breakfast
8:30 am Session
9:20 am Q&A
9:30 am Session Ends

Speakers: Stephen McCreath,
Executive Director, Prime Services, Nomura International plc

Colin Tan,
Counsel, Kaye Scholer LLP

Location: 140 Aldersgate Street
London EC1A 4HY

RSVP: You may register online at www.kayescholer.com (click on "Events") or send an e-mail to londonevents@kayescholer.com.

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Chicago Frankfurt London Los Angeles New York Palo Alto Shanghai Washington, DC West Palm Beach

AIFM — Level 2 Conference in Zurich November 30, 2011

Dr. Thomas A. Jesch, European Counsel in the Frankfurt office, will deliver the introductory presentation at an ACADEMY Conference on the European Alternative Investment Fund Managers Directive and its Level 2 implementing measures in Zurich on November 30, 2011. Other speakers will include representatives from SECA — Swiss Private Equity & Corporate Finance Association, Homburger, Swiss Funds Association SFA, Vontobel Fonds Services, Montana Capital Partners, Delbrueck Bethmann Maffei/ABN AMRO and Confortis.

Please see the attached link for further details:

http://www.academy-execution.ch/konferenzen/223-aifm-konferenz

AIFM — Level 2 Conference in Frankfurt December 8–9, 2011

Dr. Thomas A. Jesch, European Counsel in the Frankfurt office, will host a two-day Euroforum conference on the European Alternative Investment Fund Managers Directive and its Level 2 implementing measures on December 8–9, 2011. Speakers will include representatives from the Federal Ministry of Finance, the German Federal Financial Supervisory Authority (BaFin), banks, fund sponsors and limited partners.

Please see the attached link for further details:

http://www.euroforum.de/veranstaltungen/aifm_-_level_2

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