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About Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP is a California law firm with over 240 attorneys practicing out of seven offices in Orange County, Los Angeles, Century City, Del Mar Heights, San Diego, San Francisco and Walnut Creek. The firm's broad based areas of focus include corporate, real estate, construction, real estate finance, business litigation, employment and labor law, taxation, land use, bankruptcy and creditors' rights, intellectual property and environmental. [more...](#)

Corporate and Securities

Proposed Federal Regulation of Private Investment Funds

As anticipated, Congress is taking the first steps toward regulation of private investment funds. On January 29, 2009, Senators Grassley and Levin introduced Senate Bill 344, the "Hedge Fund Transparency Act." A similar bill was introduced by Sen. Grassley in the last Congress but was never taken up by the Banking Committee. In this economic climate with well-publicized "blow ups" and scandals involving hedge funds, it is likely that Congress has both the desire and will to pass legislation.

Congress may soon impose registration, books and records, and filing requirements on previously unregulated funds.

Although the bill's title implies that it is only concerned with hedge funds, the bill's scope is far broader and covers any investment fund that relies on the "private investment company" or "qualified purchaser fund" exceptions to the Investment Company Act ("ICA") contained in Sections 3(c)(1) and 3(c)(7). As a result, this new legislation would cover venture funds and private equity funds, as well as hedge funds, unless they fit within another exemption under the ICA.

As proposed, there will be no real change for "private investment companies" or "qualified purchaser funds" with less than \$50 million in assets under management. In addition, funds exempt under Section 3(c)(5) of the ICA which are engaged primarily in purchasing mortgages or other liens on and interests in real estate, regardless of size, would not be covered by the proposed legislation. However, "private investment companies" and "qualified purchaser funds" with \$50 million or more in assets under management would have to register under the ICA and meet certain requirements (short of full-blown ICA registration and compliance) in order to maintain their exemption, including:

- registering with the SEC,
- maintaining books and records that the SEC may require,
- cooperating with any request by the SEC for information or examination, and
- filing an information form with the SEC electronically at least once a year with certain required disclosures.

This will subject the regulated "private investment companies" and "qualified purchaser funds" to random regulatory audits. In addition, those newly regulated funds will be required to establish an anti-money laundering program and report suspicious

transactions.

Many of the provisions of the proposed legislation are controversial, including disclosure concerning the names and addresses of “each natural person who is a beneficial owner,” disclosure of the fund’s size and the names of the fund’s primary broker.

While it is too early to know what Congress will do with this bill, anyone involved in managing an investment fund, or who is thinking about formation of an investment fund, should recognize that the fund may be subjected to SEC oversight in the very near future.

If you have any questions with regard to federal or California regulation of investment funds, our Corporate and Securities Practice Group is available to assist.

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