Registration of Private Investment Companies Proposed in Senate Bill

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On January 29, 2009, a bill entitled the "Hedge Fund Transparency Act of 2009" (the "Bill") was introduced in the United States Senate. If passed, the Bill would require hedge funds, private equity funds and other alternative investment firms to register with the Securities and Exchange Commission (the "SEC"), as well as require compliance by such funds with a number of other regulatory requirements.

The Investment Company Act of 1940 (the "Act") subjects all entities that fall within its definition of "investment company" to extensive regulation. Presently, domestic hedge funds, private equity funds and other alternative investment firms rely on either Section 3 (c)(1) or Section 3 (c)(7) of the Act for exemption from the definition of "investment company" and as a result, from virtually all of the Act's extensive regulations. These sections allow domestic hedge funds, private equity funds and other alternative investment firms to be exempt from the registration requirements of the Act so long as they do not make, or propose to make, a public offering of their securities and (i) in the case of Section 3(c)(1), limit the number of their security holders to not more than one hundred (calculated as required under the Act); or (ii) in the case of Section 3(c)(7), voluntarily limit their investors to "qualified purchasers," as such term is defined in the Act and the regulations thereunder.

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