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SEC Rules and Regulations

SEC Adopts Private Fund Systemic Risk Reporting Rule

On October 31, 2011, the SEC and the CFTC (the "**Commissions**") jointly adopted new rules under the Commodity Exchange Act and the U.S. Investment Advisers Act of 1940 (the "**Advisers Act**") implementing certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"). SEC rule 204(b)-1 (the "**final rule**") requires investment advisers registered or required to register with the SEC under the Advisers Act that advise one or more private funds (i.e., 3(c)(1) or 3(c)(7) funds) and that have at least $150 million in private fund assets under management ("**private fund advisers**") to file Form PF with the SEC for the purposes of reporting systemic risk information to the SEC. The new CFTC rule 4.27 requires CFTC-registered commodity pool operators ("**CPOs**") and commodity trading advisors ("**CTAs**") that are also registered with the SEC as investment advisers and required to file Form PF to satisfy certain CFTC filing requirements with respect to their private funds by filing Form PF with the SEC, in which case the filing would be a filing with both the SEC and CFTC. The new CFTC rule also allows such CPOs and CTAs to satisfy certain additional CFTC systemic risk reporting by submitting information on Form PF regarding their commodity pools that are not private funds. Please see the ***February 14, 2011 Investment Management Regulatory Update*** for a discussion of the proposed rules regarding Form PF and the ***October 27, 2011 Client Newsflash*** for a discussion of the SEC open meeting unanimously voting to adopt the final Form PF.

The information reported on Form PF and shared with the FSOC will generally remain confidential; however, both Commissions are allowed to use Form PF information in their regulatory programs, including examinations, investigations and enforcement actions. The adopting release also notes that the Commissions may share information reported on Form PF with non-U.S. financial regulatory authorities pursuant to information sharing agreements in which the non-U.S. authority agrees to keep the information confidential.

Frequency of Reporting; Implementation Period

Smaller private fund advisers (as described below) are required to file Form PF annually within 120 days of the end of their fiscal year. For large private fund advisers (as described below), the frequency of reporting and the timing of filing reports depend on the types of private funds they manage. Large hedge fund advisers are required to file Form PF on a quarterly basis within 60 days after the end of each fiscal quarter. Large liquidity fund advisers are required to file Form PF on a quarterly basis within 15 days after the end of each fiscal quarter. Finally, large private equity fund advisers are required to file Form PF on an annual basis within 120 days after the end of their fiscal year.

Implementation Period. The SEC Rule provides for a two-stage implementation period for Form PF reporting:

- For advisers with at least (i) $5 billion in hedge fund assets under management, (ii) $5 billion in private equity fund assets under management or (iii) $5 billion in combined liquidity fund and registered money market fund assets under management, the compliance date is June 15, 2012, at which time such large private fund advisers will be required to file a report after the next fiscal quarter (or year, as applicable) to end on or after such date (e.g., June 30, 2012 for large hedge fund advisers with a December 31 fiscal year-end).
- For all other advisers, the compliance date for reporting is December 15, 2012, at which time such advisers will be required to file a report after the next fiscal quarter (or year, as applicable) to end on or after each date.

A newly registering adviser is subject to the same reporting deadlines as registered advisers, but such an adviser is not required to file Form PF with respect to any period that ended prior to the effective date of its registration.

Form PF Reporting

Form PF has four sections. Section 1 is required to be completed by all filers, while Sections 2, 3 and 4 are required only of large private fund advisers advising hedge funds, liquidity funds and private equity funds, respectively. For these purposes, Form PF defines “hedge fund,” “liquidity fund,” and “private equity fund” as follows:

Hedge Fund. A “hedge fund” is defined as “any private fund (other than a securitized asset fund) (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (“**NAV**”) (including any committed capital) or may have gross notional exposure in excess of twice its NAV (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).” The form instructs that the fund should not net long and short positions in calculating its borrowings. In addition, the form stipulates that the fund should include any borrowings or notional exposure of another person that are guaranteed by the fund or that the fund may otherwise be obligated to satisfy.

A commodity pool about which an adviser is required to report is treated as a hedge fund for Form PF purposes.

Liquidity Fund. A “liquidity fund” is defined as any private fund that “seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable [NAV] per unit or minimize principal volatility for investors.”

Private Equity Fund. A "private equity fund" is defined as "any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course."

- A "real estate fund" is defined as "any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets."
- A "securitized asset fund" is defined as "any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders."
- A "venture capital fund" is defined as a fund that meets the definition of venture capital fund under rule 203(l)-1 of the Advisers Act.

Large Private Fund Advisers

The final rule has adopted the following thresholds for "large private fund advisers" (i.e., private fund advisers who are required to complete Sections 2, 3 or 4 of Form PF):

- For purposes of Section 2, any private fund adviser that, together with its related persons, collectively had at least $1.5 billion in hedge fund assets under management as of the end of any month in its prior fiscal quarter;
- For purposes of Section 3, any private fund adviser that advises one or more liquidity funds and, together with its related persons, had at least $1 billion in combined liquidity fund and registered money market fund assets under management as of the end of any month in its prior fiscal quarter; and
- For purposes of Section 4, any private fund adviser that, together with its related persons, collectively had at least $2 billion in private equity fund assets under management as of the end of its most recently completed fiscal year.

Advisers not meeting these thresholds are considered smaller private fund advisers.

In order to determine if an adviser meets the $150 million minimum reporting threshold or is a large private fund adviser for purposes of Form PF, the adviser must aggregate with its private funds:

- assets of managed accounts advised by the adviser's firm that pursue substantially the same investment strategy and invest in substantially the same positions as one of the adviser's private funds (i.e., parallel managed accounts), unless the value of those managed accounts exceeds the value of the private fund with which they are managed; and
- assets of private funds advised by any of the adviser's "related persons," which are defined generally as: (i) all of the adviser's officers, partners, or directors; (ii) all persons directly or indirectly controlling, controlled by, or under common control with the adviser and (iii) all of the adviser's employees (other than employees performing solely clerical, administrative, support or similar functions). However, advisers should exclude the assets under management of related persons that are "separately operated," which are related persons for which an adviser is not required to complete section 7.A. of Schedule D to Form ADV. The instructions to Form PF permit, but do not require, the adviser to file a consolidated Form PF for itself and its related persons.

Additionally, if the adviser's principal office and place of business is outside the U.S., the adviser may exclude any private fund that during the last fiscal year was not (i) a U.S. person, (ii) offered in the United States and (iii) beneficially owned by any U.S. person. An adviser may also exclude assets invested in the equity of other private funds.

The instructions to Form PF clarify that, in order to prevent duplicative reporting, only one adviser should report information on Form PF for any fund, which should be the adviser that completes the information on Section 7.B.1 of Schedule D to Form ADV with respect to that private fund.

Information Required to be Reported on Form PF

Section 1 (All private fund advisers). All filers must complete Section 1 of Form PF. Subsection 1a requires identifying information about the adviser such as its name, the names of any related persons whose information is reported on the Form PF, its large trader identification number (if any) and total and net private fund assets under management by private fund type.

Additionally, the adviser is required to complete subsection 1b for each private fund it advises (excluding feeder funds in master-feeder structures), which requires reporting for each such fund: (i) gross and net assets; (ii) aggregate notional value of derivative positions; (iii) borrowings; (iv) concentration of the investor base; (v) value of the fund's investment in other private funds; (vi) value of any parallel managed accounts managed alongside the fund; (vii) annual, and, if already calculated for the fund, monthly and quarterly performance information; (viii) fair value of the assets and liabilities according to U.S. GAAP and (ix) the approximate percentage of each fund beneficially owned by certain types of investors.

For private funds that invest substantially all of their assets in the equity of other private funds (e.g., funds of funds), and meet certain other conditions, reporting advisers must complete subsection 1b with respect to those funds but may otherwise disregard them for Form PF reporting purposes.

Subsection 1c requires the reporting of information about hedge funds managed by the adviser, including (i) their investment strategies; (ii) percentage of fund assets managed using high-frequency trading strategies; (iii) significant counterparty exposures (including the identities of such counterparties); (iv) trading and clearing practices and (v) transactions outside the securities and derivatives markets.

Section 2 (large private fund advisers with at least $1.5 billion in hedge fund AUM as of the end of any month in the prior fiscal quarter). Subsection 2a requires reporting, on an aggregate basis, of certain information about hedge funds managed by the adviser, including: (i) value of assets invested (on a short and long basis) in different types of securities and commodities; (ii) duration, weighted average tenor or 10-year bond equivalent, of fixed income portfolio holdings (including asset backed securities); (iii) turnover rate in certain asset classes (including listed equities, corporate bonds, sovereign bonds and futures) in the hedge funds' portfolios during the reporting period and (iv) geographic breakdown of investments held by the funds.

Subsection 2b requires additional information about any hedge fund advised by the adviser that had a NAV of at least $500 million as of the end of any month in the prior fiscal quarter (a "qualifying hedge fund"). The adviser must identify its qualifying hedge funds by aggregating parallel funds and funds that are part of the same master-feeder structure and, subject to certain limitations, any parallel managed accounts and relevant funds of related persons. For each qualifying hedge fund, the form requires reporting of: (i) exposure to different types of assets; (ii) portfolio liquidity; (iii) holdings of cash and cash equivalents; (iv) concentration of positions; (v) the fund's base currency; (vi) collateral practices with significant counterparties; (vii) whether the fund cleared trades through a central clearing counterparty; (viii) the fund's value at risk ("**VaR**") metric for each month of the reporting period, if regularly calculated by the adviser during the reporting period; (ix) risk metrics other than VaR the hedge fund uses to manage risk; (x) the impact of changes to certain market factors on the fund's portfolio (if considered in the fund's risk management); (xi) monthly breakdown of the fund's secured and unsecured borrowing and its derivative exposures; (xii) the value of collateral and other credit supporting the fund's borrowing, and the fund's types of creditors; (xiii) total notional derivatives exposures, net mark-to-market value of uncleared derivatives positions and the value of the collateral and other credit support posted by the fund to its most significant counterparties (and vice versa) in respect of such uncleared positions; (xiv) breakdown of the term of the fund's available financing and the identity of, and amount owed, to certain creditors; and (xv) investor composition and liquidity (e.g., the percentage of the fund's NAV that is subject to side pocket or gating arrangements).

Section 3 (large private fund advisers advising a liquidity fund and with at least $1 billion in combined liquidity fund and registered money market fund assets as of the end of any month in the prior fiscal quarter). Section 3 requires reporting of certain information about each liquidity fund managed by the adviser, including: (i) NAV per share calculation methodology; (ii) whether the fund has a policy of complying with certain provisions of rule 2a-7 under the Investment Company Act of 1940; (iii) portfolio information (e.g., for each month of the reporting period: NAV, NAV per share, weighted average maturity, weighted average life, seven-day gross yield, daily liquid assets, weekly liquid assets, assets with a maturity of greater than 397 days, amount of assets invested in different types of instruments broken down by maturity, and information about each open position that is 5% or more of the fund's portfolio); (iv) secured and unsecured borrowing of the fund; (v) whether the fund has a committed liquidity facility in place; (vi) concentration of the fund's investor base; (vii) gating and redemption policies; (viii) investor liquidity and (ix) an estimate of the percentage of the fund purchased using securities lending collateral.

Section 4 (large private fund advisers with at least $2 billion in private equity fund assets as of the end of its most recently completed fiscal year). Section 4 requires reporting of certain information about each private equity fund managed by the adviser, including: (i) information about guarantees issued in respect of a portfolio company's obligations; (ii) the leverage of the portfolio companies in which the fund invests, including the weighted average debt-to-equity ratio of controlled portfolio companies, the range of the debt-to-equity ratio among such portfolio companies and the aggregate gross asset value of the portfolio companies; (iii) the total amount of borrowings categorized as current and long-term liabilities on the balance sheets of the fund's controlled portfolio companies; (iv) the portion of controlled portfolio companies' borrowings that is zero coupon or payment-in-kind and whether the fund and/or its portfolio companies experienced any event(s) of default; (v) the identities of the institutions providing bridge financing to the fund's controlled portfolio companies and the amount of such financing; (vi) certain additional information if the fund controls any financial industry portfolio company (e.g., portfolio company's name, its debt-to-equity ratio and the fund's percentage beneficial ownership of such portfolio company); (vii) whether any of the adviser's related persons co-invest in portfolio companies and (viii) a breakdown of the fund's investments by industry and geography.

Format for Reporting

Advisers must file Form PF electronically through the Form PF filing system on the Investment Adviser Registration Depository (the "**IARD**"). Currently, the IARD is used by registered investment advisers to file electronically Form ADV.

- See a copy of the SEC adopting release
- See a copy of the fact sheet

SEC Proposes Rules on the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants

On October 12, 2011, the SEC proposed rules under the Dodd-Frank Act (the "**Proposal**") to provide for the registration of security-based swap dealers and major security-based swap participants ("**SBS Entities**"). Under the Proposal, market participants registered as both an SBS Entity and a broker-dealer would be subject to a "similar and complementary registration regime." Additionally, the Proposal would permit SBS Entities that are registered or registering as intermediaries with the SEC or the Commodity Futures Trading Commission to complete streamlined application forms. The SEC comment period ends December 19, 2011. The Proposal would also require a "Senior Officer Certification" of the SBS Entity's financial, operational and compliance capabilities as part of the application for registration. The Proposal does not include guidance concerning how the registration requirements or the other provisions of Title VII of the Dodd-Frank Act would apply to the global operations of registered SBS Entities. However, the SEC indicated that it intends to address these issues in a separate, forthcoming release.

More information on the Proposal can be found in the Davis Polk Client Memorandum ***SEC Proposes Rule on the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants***.

Industry Update

FSOC Issues Proposed Rules on Designation of Systemically Important Nonbank Financial Companies

On October 11, 2011, the Financial Stability Oversight Council (the "**FSOC**") released a re-proposal of the rule (the "**Proposed Rule**") relating to the designation of a nonbank financial company as systemically important under the Dodd-Frank Act as well as additional proposed guidance.

The Proposed Rule is substantially similar to the proposed rule issued by the FSOC in January 2011, but the related guidance includes a description of certain metrics that the FSOC may use in the designation process and details a three-stage process that the FSOC expects to follow when designating nonbank financial companies as systemically important.

Please see the Davis Polk Client Memorandum ***FSOC Releases Proposed Rules on Designation of Systemically Important Nonbank Financial Companies*** for a discussion of the Proposed Rule and related guidance.

CFTC Adopts Final Position Limits for 28 Physical Commodity Futures, Options and Swaps

On October 18, 2011, the CFTC approved final rules establishing position limits for 28 exempt (metals and energy) and agricultural commodities. The rules cover futures and options contracts on these commodities and swaps, futures, and options that are economically equivalent to those contracts.

The final rules establish a new Part 151 of the CFTC's regulations. Among other things, new Part 151:

- defines new standards for calculating position limits in spot and non-spot months for the relevant physical commodity contracts;
- defines contracts eligible to be netted (e.g., swaps economically equivalent to futures contracts outside of the spot month) for purposes of determining a trader's position;
- establishes revised aggregation standards (as discussed in more detail below);
- implements a new statutory definition of bona fide hedging;
- establishes effective dates for the final rules and exemptions for pre-existing positions;
- establishes position visibility reporting requirements; and
- defines responsibilities of designated contract markets ("**DCMs**") and swap execution facilities ("**SEFs**") for establishing and enforcing position limits and position accountability rules.

Aggregation Standards

As under current rules, position limits apply to all "positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading and to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding." The final rules also maintain the requirement for a person to aggregate positions or accounts in which the person has a 10% or greater ownership interest, with exceptions for passive ownership as a limited partner or other types of similar ownership, subject to specified conditions.

The final rules also require a person that holds or controls trading in accounts or pools with identical trading strategies, including passively managed index funds, to aggregate all such accounts or positions. A futures commission merchant ("**FCM**") must aggregate positions held by it and its separately organized affiliates in a discretionary account or in an account which is part of, participates in, or receives trading advice from a customer trading program of the FCM, its officers, partners, or employees, or the FCM's affiliates, unless a trader other than the FCM or the affiliate directs trading in the account and the FCM or the affiliate maintains only a minimum level of supervision over the account.

Exemptions from the aggregation requirement. The CFTC largely retained the "independent account controller" exemption from the aggregation requirement as it currently exists under the CFTC's position limits rule. Under the exemption, a commodity pool operator ("**CPO**") or commodity trading advisor ("**CTA**") (whether or not required to register with the CFTC), a bank or trust company, or any of their separately organized affiliates ("**Eligible Entities**") need not aggregate client accounts for which:

- the Eligible Entity has authorized an independent account controller to control all trading decisions without the Eligible Entity's day-to-day direction;
- the Eligible Entity maintains only such minimum control over the independent account controller consistent with its fiduciary responsibilities and as necessary to supervise the trading done on its behalf; and
- the Eligible Entity files with the CFTC to claim the exemption.

The exemption is not available for spot-month positions in physical-delivery referenced contracts covered by the rules. The independent account controller exemption applies only to client positions; proprietary positions of an Eligible Entity must be aggregated.

The rules will become effective 60 days after publication in the Federal Register. The position limits will be phased in depending on the relevant contract. For more information on the final rules, please see the Davis Polk Client Memorandum, ***CFTC Adopts Final Position Limits for 28 Physical Commodity Futures, Options, and Swaps.***

FINRA Proposes New Rule 5123 Regarding Disclosure and Filing Obligations in Private Placements in Which FINRA Members Participate

On October 5, 2011, the Financial Industry Regulatory Association ("**FINRA**") filed with the Securities and Exchange Commission (the "**SEC**") proposed new FINRA Rule 5123 (Private Placement of Securities) ("**Rule 5123**"), which, if approved by the SEC, will establish certain disclosure and filing requirements for private placements in which FINRA members participate, subject to significant exceptions.

Proposed Rule 5123 is a more limited initiative than an earlier proposal contained in FINRA Regulatory Notice 11-04, which was published for public comment in January 2011 (the "**11-04 Proposal**"). The 11-04 Proposal would have expanded virtually all of FINRA Rule 5122 requirements regarding private placements of securities issued by a FINRA member or a "control entity" of a FINRA member ("**member private offerings**") to all private placements in which a FINRA member participates.

Disclosure Requirement

Proposed Rule 5123(a) prohibits members and their associated persons from offering or selling any security pursuant to an exemption from registration under the Securities Act of 1933 ("**private placement**"), or participating in the preparation of disclosure documents in connection with such private placements, unless the member or associated person provides to each investor prior to sale, a private placement memorandum ("**PPM**") or term sheet (or in private placements without a PPM or term sheet, a disclosure document) that discloses the following in connection with the offering:

- anticipated use of offering proceeds;
- the amount and type of offering expenses; and
- the amount and type of compensation provided or to be provided to sponsors, finders, consultants and members and their associated persons.

Notice Filing Requirement

Proposed Rule 5123(b) would require every participating member to file with FINRA the PPM, term sheet or such other disclosure document (including exhibits) no later than 15 calendar days after the date of the first sale, and to file any material amendments to such document or disclosures mandated by Rule 5123 no later than 15 calendar days after the date such document is provided to investors.

Exemptions

Offerings sold only to any one or more of the following purchasers would be exempt from the requirements of Rule 5123:

- institutional accounts, as defined in National Association of Securities Dealers ("**NASD**") Rule 3110(c)(4);
- qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 ("**Investment Company Act**");
- qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933 ("**Securities Act**"), or any entity composed exclusively of qualified institutional buyers;
- investment companies, as defined in Section 3 of the Investment Company Act;
- banks, as defined in Section 3(a)(2) of the Securities Act; and
- employees and affiliates of the issuer.

The following types of offerings would also be exempt:

- offerings of exempted securities, as defined by Section 3(a)(12) of the Securities Exchange Act of 1934 ("**Exchange Act**");
- offerings made pursuant to Rule 144A or Regulation S under the Securities Act;
- offerings of exempt securities with short term maturities under Section 3(a)(3) of the Securities Act;
- offerings of subordinated loans under Rule 15c3-1, Appendix D under the Exchange Act;
- offerings of "variable contracts" as defined in FINRA Rule 2320(b)(2);
- offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in FINRA Rule 5110(b)(8)(E);
- offerings of non-convertible debt or preferred securities by issuers that meet the eligibility criteria for incorporation by reference in Forms S-3 and F-3;
- offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;
- offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(11) of the Commodity Exchange Act; and

- offerings filed with FINRA under FINRA Rules 2310, 5110, 5121 or 5122.

Confidentiality and Application for Exemption

The proposed rule provides that FINRA would keep confidential all documents and information filed pursuant to the rule and would utilize such documentation solely for determining compliance with FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

FINRA members may apply for an exemption from the requirements of the rule for good cause.

Comments Deadline and Implementation Date

Comments on proposed Rule 5123 are due to the SEC by November 14, 2011. FINRA indicated that it would announce the implementation date of Rule 5123 within 90 days following the SEC's approval and such implementation date would be no later than 180 days following the SEC's approval.

- See a copy of the FINRA filing with the SEC

FINRA Releases Regulatory Notice on ETF Advertising Regulation

In a recent Regulatory Notice (the "**Regulatory Notice**"), FINRA issued guidance concerning NASD Rule 2210 as it relates to, among other things, exchange-traded products.

According to the Regulatory Notice, NASD Rule 2210(c)(2) (the "**Rule**") requires member firms to file advertisements and sales literature concerning registered investment companies with FINRA within 10 business days of first use or publication. The Regulatory Notice explained that this filing requirement includes advertisements or sales literature concerning exchange-traded funds that are registered as investment companies under the Investment Company Act of 1940 ("**1940 Act ETFs**"). The Regulatory Notice emphasized that the Rule's filing requirements apply to all advertising and sales literature of 1940 Act ETFs, including research reports.

In addition, the Regulatory Notice explained that the Rule requires member firms to file advertisements and sales literature regarding exchange-traded products that are organized as grantor trusts and meet the definition of "direct participation programs" (as defined in FINRA Rule 2310(a)(4)) with FINRA within 10 business days of the first use or publication.

The Regulatory Notice also reminded member firms that, in order to assist with the review process when filing material for review by FINRA staff, member firms should "identify the reference number of any communication previously submitted by the member firm and already reviewed by FINRA that is similar to the current communication filing."

- See a copy of the Regulatory Notice

Litigation

SEC Charges Former Private Equity Firm Partner with Misappropriation of Advisory Firm's Investment Opportunity

On August 29, 2011, the Securities and Exchange Commission (the "**SEC**") charged Matthew Crisp, a former partner of Adams Street Partners, LLC ("**Adams Street**"), a registered investment adviser that managed several private equity funds, with misappropriating an investment opportunity from certain funds managed by Adams Street. The SEC alleges that in June 2006 Crisp and a friend, Joseph Wolf, established AV Partners L.P. ("**AV Partners**"), a private investment club. According to the SEC, Crisp sought out potential investments for AV Partners while Wolf contributed the initial capital for AV Partners' investments. Crisp, however, failed to disclose his involvement in AV Partners to Adams Street (and thereby, to Adams Street's private equity funds and fund investors) in violation of his fiduciary duties to the Adams Street funds and Adams Street's own internal Integrity Policy (the "**Policy**"), according to the SEC.

The SEC contends that during 2006 and 2007, Crisp was Adams Street's lead sponsor in the investment in a private company (the "**Portfolio Company**") for which Adams Street committed $15,000,000 from three of its funds (the "**Adams Street Funds**"), $1,500,000 of which Adams Street had decided to syndicate to other investors. According to the SEC, Crisp coordinated to have AV Partners invest in the transaction in an amount of $2,000,000, $500,000 more than the amount authorized by Adams Street. This effectively reduced the Adams Street Funds' investment in the Portfolio Company by $500,000. The SEC alleges that Crisp falsely represented to Adams Street and the Portfolio Company that AV Partners was Wolf's personal investment vehicle, and continued to fail to disclose his own involvement in AV Partners. Crisp's conduct, the SEC alleges, violated the Policy, which requires Adams Street employees to obtain prior approval before investing in portfolio companies, as well as certain similar provisions of the partnership agreements of the Adams Street Funds.

According to the SEC, in February 2008, the Portfolio Company was bought in a cash deal (the "**Transaction**"), which resulted in shareholders of the Portfolio Company, including Adams Street and AV Partners, receiving nearly four times their original investments in the Portfolio Company.

According to the SEC, Crisp, who served as Adams Street's representative on the board of directors of the Portfolio Company, clandestinely negotiated with and received from the Portfolio Company a $150,000 bonus (the "**Transaction Bonus**"), which came out of the proceeds of the Transaction, thus further reducing the return received by shareholders, including the Adams Street Funds. Further, according to the SEC, the limited partner agreements for the Adam Street Funds required payments such as the Transaction Bonus to be used to reduce the management fee paid by the Adams Street Funds to Adams Street.

The SEC further alleges that between March and May 2007, and before the close of the Adams Street investment in the Portfolio Company, Crisp, as the Adams Street lead sponsor, syndicated a portion of an investment in a second private company to AV Partners despite still not having disclosed his involvement in AV Partners to Adams Street.

According to the SEC, Adams Street ultimately became aware of Crisp's alleged misconduct after conducting an internal investigation and terminated Crisp, after which Adams Street voluntarily reported the matter to the SEC. The SEC indicated that Crisp has since paid back to Adams Street certain, but not all, amounts Crisp and AV Partners received as a result of the Transaction.

Pursuant to these allegations, the SEC has instituted public administrative and cease-and-desist proceedings, charging Crisp with willful violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940, as amended, and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder.

- See a copy of the SEC order

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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