WHY DOES A PRIVATE FUND NEED AN INVESTMENT ADVISOR?

- **What is an Investment Advisor ("IA")?**

An IA conducts securities analysis in return for a fee. An IA may directly manage others' investments or provide advice indirectly through publications. In any event, the IA's activities are regulated by the Securities and Exchange Commission ("SEC"), and/or state regulatory authorities, to protect the interests of the consumer.

- **What is the risk of attaching the usual duties of an IA to the fund manager or some other employee?**

Regardless of whether the individual holds themselves out as an IA, they can become subject to SEC oversight by performing the duties of an IA. An individual is performing the duties of an investment advisor if he or she (i) gives advice (ii) as to securities (iii) for a fee. Since the manager controls the efforts of the fund, including its substantive investment or trading activities, he or she risks being considered an unregistered IA, and invites costly enforcement action by the SEC. Either the fund manager should register as an IA, or outsource the function to a registered advisor.

- **After the 2010 Dodd-Frank Act, what constitutes an Exempt Reporting Advisor ("ERA")?**

An ERA is a type of limited investment advisor. A private fund reduces its administrative complexity by employing an ERA rather than a registered IA. After Dodd-Frank, three exemptions allow an IA to be an ERA. The "private fund advisor exemption" applies if the advisor solely advises private funds and has less than $150 million in assets under management. An ERA is not required to register as an IA with the SEC, and is subject to lesser degrees of oversight and regulation than a registered IA. In most situations an ERA will be sufficient to satisfy the advisory requirement for a private fund.

- **What exemptions to registration for private fund IAs did the 2010 Dodd-Frank Act eliminate?**

For many years prior to the Dodd-Frank Act, which went into effect on July 21, 2010, advisors to private funds were able to avoid registering with the SEC. Back then, an exemption to registration applied to advisers with fewer than 15 clients – an exemption that counted each fund as a client, as opposed to each investor in a fund. Because of this construction, nearly all funds qualified for this private fund exemption. Dodd-Frank amended Section 203(b)(3) of the Investment Advisor Act of 1940, changing the private fund exemption. Consequently, many previously unregistered advisers, particularly those to hedge funds and private equity funds, were required to register with the Commission and be subject to its regulatory oversight, rules and examination. Now, these advisors are subject to the same requirements that apply to other SEC-registered investment advisors. The SEC fact sheet about this change can be found on their website, at: https://www.sec.gov/news/press/2011/2011-133.htm