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Geithner Proposes Private Fund Adviser Registration and Private Fund Disclosures

Earlier today, in testimony before the House Committee on Financial Services, Treasury Secretary Timothy Geithner announced key elements of the Treasury Department's proposals for financial regulatory reform.

The focus of the proposals is to create a more stable financial system, with stronger tools to prevent and manage future crises. In addition to the creation of a single entity responsible for systemic stability and having jurisdiction over major institutions affecting systemic stability, Secretary Geithner announced proposals of particular significance to private fund sponsors.

Registration of Private Fund Advisers. Under the proposal, "all advisers to hedge funds (and other private pools of capital, including private equity and venture capital funds) with assets under management over a certain threshold" would be required to register with the Securities and Exchange Commission ("SEC"). The stated purpose for such measures are to provide greater capacity for protecting investors and market integrity. Secretary Geithner initially testified that such registration requirement would apply to private *funds*, but later clarified that the requirement applied to the advisers of private funds.

Private Fund Disclosure and Reporting Requirements. Secretary Geithner also proposed that funds advised by an SEC-registered adviser be subject to "investor and counterparty disclosure requirements and regulatory reporting requirements." It is unclear at this point what these disclosure and reporting requirements might entail; however, the reports are aimed at gathering information, on a confidential basis, necessary to assess whether a fund or fund family is so large or highly leveraged that it poses a threat to financial stability. The proposals contemplate that the reports received by the SEC from the funds would be shared with the regulator responsible for systemic stability. That regulator would then determine whether such funds posed a systemic threat and could then subject them to certain prudential standards to which systemically significant institutions would be subject. As this point it is unclear how systemic risk would be determined and what such prudential standards might require.

We look forward to updating you on these developments once additional details regarding these proposals emerge, which Secretary Geithner anticipates will be in the next few weeks.

Also today, in testimony before the Senate Banking Committee, SEC Chairman Mary Schapiro stated that the SEC was considering requesting "legislation that would require the registration of hedge fund advisers and possibly the funds themselves." This testimony creates some ambiguity as to whether the current fervor for regulation will stop with registration of advisers alone, or whether private funds will also be subject to some form of registration requirement.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum may be addressed to any of the following:

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