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## Treasury and the SEC Intend to Require Managers of Hedge Funds to Register

After several pieces of proposed legislation seeking to, among other things, require managers of private equity and hedge funds to register or the funds themselves to register with the Securities and Exchange Commission (the "SEC"), two top appointees of the Obama administration made clear that they also support some form of legislation that would regulate such funds.

Treasury Secretary Geithner's "Super Regulator" plan included a recommendation that all advisers to private equity, mezzanine finance, venture capital and hedge funds of a "certain size" be required to register. In addition to registration, Secretary Geithner's plan would also require:

- all funds advised by an SEC-registered investment adviser to be subject to investor and counterparty disclosure requirements and regulatory reporting requirements; and
- reporting to the SEC, on a confidential basis, information necessary to assess whether the fund or fund family is so large or highly leveraged that it poses a threat to financial stability.

The SEC would have the ability to share the reports that it receives from the funds with the "Super Regulator", which would allow such regulator to determine whether any hedge fund could pose a systemic threat and therefore be subjected to prudential standards. Under Secretary Geithner's proposal, prudential standards would include:

- more robust capital requirements;
- stricter liquidity, counterparty and credit risk management requirements; and
- the ability for regulators to take prompt corrective action including the ability to force protective actions as regulatory capital levels decline.

Secretary Geithner's proposal thus far is fairly general. More details are expected to come in the coming weeks.

SEC Chairman Schapiro also indicated that the SEC was considering asking for legislation that would require registration of investment advisers who advise hedge funds, and possibly registration of the hedge funds themselves. Notably absent from Chairman Shapiro's statement was a desire to require registration of managers to private equity, mezzanine finance and venture capital funds.

Chairman Shapiro also noted that:

- she requested a proposal for SEC consideration that would require investment advisers with custody of client assets to undergo an annual, unannounced third-party audit to confirm the safekeeping of assets;
- she expects the staff to recommend proposing a rule that would require certain advisers to have third-party compliance audits to review their compliance with the law; and
- she expects the SEC will be asked to consider a requirement that a senior official from the hedge fund advisory firm attest to the sufficiency of the controls they have in place to ensure safekeeping of assets. A list of certifying firms would be publicly available on the SEC's website and the name of any auditor of the firm would be available.

While it's too early to speculate as to the specifics of Secretary Geithner's planned reforms relating to hedge funds, Chairman Shapiro has indicated she would take a measured approach to regulation. Venable's investment management and regulatory group continue to follow developments closely.

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