

August 3 Deadline Approaching for Compliance with New Massachusetts Investment Adviser Registration/Exemption Requirements

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As discussed in previous Foley Advisers dated January 12 and January 31, the Massachusetts Securities Division (the Division) earlier this year adopted new regulations relating to the regulation of investment advisers. All investment advisers operating in Massachusetts which are not currently registered with either the SEC or the Massachusetts Securities Division must register with the Securities Division by August 3, 2012, unless they (a) qualify for the new exemption from registration for advisers solely to private funds or (b) meet certain limited, strict grandfathering provisions. The Division will begin enforcing the new registration regulations as of August 3, 2012.

Massachusetts based advisers to private funds may be able to rely upon the new private fund adviser exemption from registration if such advisers only clients are 3(c)(1) and 3(c)(7) funds, as defined under the Investment Company Act of 1940 (the Investment Company Act), and the adviser is not otherwise subject to certain disciplinary disqualifications. Private fund advisers must also satisfy certain additional disclosure and audit requirements as set out in the regulations to be exempt from registration, and will be required to: (i) file with the state the same reports and amendments as are required by the U.S. Securities and Exchange Commission (the SEC) of SEC exempt reporting advisers, and (ii) pay the state a \$300 reporting fee.

The filing and fee must be submitted through the IARD website by August 3.

Massachusetts based advisers who are exempt reporting advisers ("ERA") with the SEC may also be required to comply with these requirements. Such advisers should consult their counsel to determine whether they need to update their recent ERA filing and IARD account to ensure that Massachusetts obtains a copy of such filing and the \$300 fee by August 3.

Non-Massachusetts based advisers should consult with counsel regarding any recent updates to the registration requirements and exemptions from registration in the states where they do business, as many state registration and exemption requirements are in flux.

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