

# Client Alert

A report  
for clients  
and friends  
of the Firm      February 2009

## Electronic Filing of Form D as of March 16, 2009: Answers to Client Questions

The Securities and Exchange Commission (“SEC”) issued final rules amending Regulation D on February 6, 2008. The new rules amend the Form D and require electronic filing of Form D. The SEC implemented a transition period from September 15, 2008 through March 15, 2009, during which issuers can choose to file Form D electronically or continue to file in paper format.

Some of the frequently asked questions regarding what happens after March 15, 2009 are addressed in this alert.

### **What is Form D, and when does it have to be filed?**

Under Rule 503 of Regulation D, an issuer that is issuing securities in reliance on Regulation D must file Form D with the SEC no later than 15 days after the first sale (defined as the time when an investor has delivered an irrevocable commitment to invest) of securities in the offering. Form D requires certain basic information about the issuer and the offering, including total size of the offering, amount sold to date, the use of proceeds and the names of any persons paid commissions. Under the Securities Act of 1933, securities issued in reliance on Regulation D are “covered securities,” and no state may impose registration or qualification requirements on any such security; however, states may impose notice filing requirements.

### **What happens on March 16, 2009?**

Starting on March 16, 2009, Form D and any amendments to it are required to be filed electronically. Issuers engaged in continuous offerings, such as hedge funds, will be required to amend their Form Ds annually.

### **If we previously filed a Form D, when are we required to file an annual amendment electronically?**

Absent any further guidance from the SEC regarding the timing of the annual amendment filings, clients should assume the following:

- If you filed a Form D or any amendment prior to March 16, 2008, then you **must** file an amendment on or before March 16, 2009.
- If you filed a Form D or any amendment between March 16, 2008 and March 16, 2009, then you **must** file an amendment on or before the one-year anniversary date of such filing.

**Please feel free to call any of the Proskauer personnel listed below if you have additional questions, or if we can be of additional assistance with the issues raised in this alert.**

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## Client Alert

Proskauer's Private Investment Funds Group comprises more than 100 lawyers and advises clients worldwide on all of the legal and business issues important to private equity and hedge funds and their managers, including structuring investment vehicles of all types, portfolio company investments, institutional investor representation and secondary purchases and sales.

Please feel free to call any of the Proskauer lawyers listed below at any time if you have additional questions, or if we can be of additional assistance with the issues raised in this note.

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