Message from the Chair

Sherwin P. Simmons, II
Akerman Senterfitt
Tampa, FL

As Chairman of the Business Law Section's Young Lawyer Committee, I would like to invite you to join us in Las Vegas, Nevada for the Ninth Annual Institute for the Young Business Lawyer, scheduled for March 22, 2012, during the Section's Spring Meeting.

This year's Institute will feature eight CLE programs running in four concurrent sessions. Each concurrent session will feature a beginner level focused on the "nuts and bolts" directed towards the New Business Lawyer and more advanced level directed towards the more experienced Young Business Lawyer. We will kick off the morning with the "Insights from Legal Luminaries" panel, which will be a Q&A session with a few members of the Business Law Advisors. The Institute will conclude the day's programming with a presentation from Harry L. Hutchinson, VP and Head of Business Development for Bad Boy Entertainment, Inc. He will discuss his career path from law school to his current role as Sean "Diddy" Combs chief brand manager.

The day will start off with a networking breakfast where you can meet and mingle with your fellow Institute participants. There will be a lunch in the middle of the day and a brief overview meeting of the Young Lawyer Committee followed by the plenary session. There will also be a Section Orientation Reception, followed by the Section Welcome Reception, followed by the always fun Young Lawyer Committee Annual Dinner. This year we have joined with the Private Equity and Venture Capital Committee. The dinner will be at the Taqueria Canoita Restaurant! All of these opportunities are offered for the low cost of $225.00 plus the cost of the dinner ticket. You can register for the dinner by clicking here and scrolling to the bottom where the dinner is listed.

Due to the economy and the pressures facing Young Lawyers, an opportunity to obtain legal education in the fields you directly work in and to have social and marketing opportunities make the Institute and Young Lawyer Committee an easy choice. The Young Lawyer Committee provides opportunities to members of the Business Law Section under 40 or whom are in practice for less than ten years to become involved in the Section and provide a common meeting ground. The Committee provides its members with numerous education, training, leadership, business development and social events and opportunities. Our main focus is to integrate members into the framework of the Business Law Section and create future leaders of the Section.

The Young Lawyer Committee has provided wonderful opportunities to me and I would like to extend an invitation to you personally to allow us to provide you with these wonderful opportunities. I look forward to seeing all of you on March 22nd in Las Vegas at the Institute.

The Young Lawyer Committee is on Facebook (Young Lawyer Committee of ABA Section of Business Law) and follow us on Twitter at @ylbls.

I am happy to discuss the Institute, the Young Lawyer Committee, the Section and leadership opportunities with you. Feel free to email me at sherwin.simmons@akerman.com or call me at 813.209.5039. Some of us will be gathering on Wednesday night in my room at Caesar's to go to dinner and go out after, feel free to email me if you are interested.

http://apps.americanbar.org/buslaw/committees/CL983500pub/newsletter/201203/
How Young or New Lawyers Can Make the Most of Their ABA and Business Law Section Membership
By Joanna Garcia, Carlton Fields, P.A.

The ABA's Business Law Section provides its young members with an incredibly rich array of opportunities, including first-class education, publishing and speaking opportunities, and leadership training and mentoring. As a Section member, you are automatically a member of the Young Lawyer Committee (“YLC”) if you are under the age of 40 or have been in practice for less than 10 years.

What the YLC Is:

The YLC is a hub for "young" Section lawyers to learn more about the Section's work and interact with peers while honing leadership skills through active involvement in the various subcommittees. Ultimately, the YLC's goal is to engage its members in the substantive work of the Section and to encourage future leadership roles within the Section. In the meantime, however, the YLC provides its members with numerous opportunities for education, training, networking, socializing, leadership and business development. It provides the perfect setting for the Section’s young lawyers to make friends, generate business, network with lawyers from around the globe, and take advantage of dynamic continuing legal education programs in the various business law fields.

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How Savvy Lawyers Harness Their Social Media Skills to Win Cases
By Agnieszka A. McPeak, Stone Pigman Walther Wittmann L.L.C.

Social media is in no way a passing fad. Individuals have embraced social media because it simplifies staying in touch and provides an online platform for sharing photos, stories, ideas, and interests with others. Businesses have discovered social media’s utility and use it to reach a targeted audience of present and future customers.

Savvy lawyers too have seized upon social media as a tool in litigation and with good reason. Social media websites contain a rich archive of facts about, and statements by, witnesses, litigants, and clients. Lawyers should see social media websites as a valuable resource for gathering information in litigation. In particular, young lawyers, who tend to be well-versed in social networking, can add value to a litigation team by knowing how to seek out social media evidence.

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Federal Investment Adviser Registration: A New World Order
By Andrew M. Por, Cohen & Gresser LLP

Within the legal profession, experience is unquestionably a virtue. Clients pay hefty fees to receive advice from seasoned attorneys able to draw upon a wealth of experience. Occasionally, however, there are seismic shifts in regulatory landscapes where young attorneys can gain equal footing with the partners in their group as entire practice areas adapt to new terrain.

The financial crisis, the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and the subsequent rules promulgated by the Securities and Exchange Commission (the "SEC") regarding the registration of investment advisers represent such a shift. Among other things, Title IV of the Dodd-Frank Act ("Title IV") includes significant amendments to the Investment Advisers Act of 1940 (the "Advisers Act"), amendments which transfer primary responsibility for the
oversight of certain mid-sized investment advisers from the federal government to the states. Title IV also repealed the so-called "private adviser exemption" in the Advisers Act, an exemption that was widely relied upon by many hedge funds, private equity firms and venture capital funds, and brings a wider scope of advisers under the purview of the federal government.

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Practice Tips for Being Your Best
By Amy R. Rigdon, Holland & Knight LLP

This column will offer a different practice tip each issue to help young lawyers navigate the practice of law and be the best young lawyer.

Make Yourself Indispensable. Or at least as indispensable as possible. If you practice with other lawyers, you will receive assignments that are pieces of a larger case or deal. It is easy to simply do your piece, hand it over, and either learn nothing about the larger project or retain nothing about your particular piece, or worse yet, both. Acting this way will never make you indispensable; it may make you a good "retriever" who can go find the answer and complete your assignment, but that will not be enough if you want to be the best young lawyer and become indispensable to your colleagues.

To become indispensable, you must take every opportunity to learn the in's and out's of your assignment and, to the extent possible, how your piece fits into the overall case or deal. Understandably, you may not always have the opportunity to learn about the larger project, but you can always become indispensable for your piece of the project. To do this, you must pay very close attention to the details and keep very accurate notes of these details--in essence, become the "know-it-all." By "details," I do not mean simply the "facts" of your project; the details also include the research, considerations and legal conclusions that have informed the legal strategy for your project. Frankly, partners or your senior colleagues will tend to be concerned with the high-level strategy, but the details are just as important. Particularly, in large or complicated cases or deals or in those that span over a long period of time, most people cannot recall all the details, but if someone can, that person becomes indispensable and their knowledge is constantly sought.

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Subcommittee Feature
Pro Bono and Public Service Subcommittee
By Victoria Newman, Co-Chair, Holland & Knight LLP

My name is Victoria Newman and I am co-chair of the Pro Bono and Public Service Subcommittee of the Business and Corporate Litigation Committee ("BCLC") of the Business Law Section. The Pro Bono and Public Service Subcommittee serves as the pro bono and public service arm of the BCLC and works to create and implement a meaningful public service project in the locations hosting the Spring Business Law Section meeting and the ABA Annual Meeting each year. Today, the Pro Bono and Public Service Subcommittee is preparing for the ABA Annual Meeting in Chicago this Summer. We are seeking volunteers to help us plan and participate. If you have any questions about this year's volunteer experience, the plans for 2012 or would like to volunteer, contact Kristin Gore at kgore@carltonfelds.com or Victoria Newman at victoria.newman@hklaw.com.
How Young or New Lawyers Can Make the Most of Their ABA and Business Law Section Membership

By: Joanna Garcia

The ABA’s Business Law Section provides its young members with an incredibly rich array of opportunities, including first-class education, publishing and speaking opportunities, and leadership training and mentoring. As a Section member, you are automatically a member of the Young Lawyer Committee (“YLC”) if you are under the age of 40 or have been in practice for less than 10 years.

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Unlike other sections, the Business Law Section and the YLC include lawyers from many practice areas, providing robust opportunities for networking and business development. Sherwin P. Simmons, II, the YLC Chair, believes that timing could not be better for young lawyers to take advantage of these opportunities: “Due to the economy and the pressures facing young lawyers, an opportunity to obtain legal education in the fields you directly work in and to have social and marketing opportunities make the Young Lawyer Committee an easy choice.” Mac R. McCoy, the YLC Co-Vice Chair agrees: “The Young Lawyer Committee is a great place for young lawyers to make the most of their Section membership because we provide opportunities for leadership, nationwide peer networking, speaking, publishing, community service, and learning from quality CLE programming tailored specifically to young lawyers.”

Active participation in the YLC is easily accomplished through involvement and leadership in a number of subcommittees. As a YLC member, you can join as many subcommittees as you wish based on your specific areas of interest. The YLC’s Diversity subcommittee, for example, explores how best to ensure the inclusion and participation of young, diverse attorneys in the Section and sponsors various programs and social events at ABA meetings, including events at the upcoming Spring Meeting in Las Vegas.

Come to the Spring Meeting on March 22-24, 2012 in Las Vegas: Learn, Network and Participate!

Another excellent benefit the YLC provides to young lawyers is the opportunity to attend the Institute for the Young Business Lawyer (the “Institute”), which is held every year in
conjunction with the Section’s Spring Meeting. The Institute provides “Business Law Basics” CLE programs that are offered at a very reasonable cost – a full day of CLEs for only $225! The networking opportunities available to attendees through Institute lunches, dinners, and other events are invaluable. Many young lawyers have made lifelong friends as a result of these networking opportunities. The next Institute for the Young Business Lawyer will be held at the Section’s Spring Meeting on March 22-24, 2012 in Las Vegas. (Institute website: http://www.americanbar.org/calendar/2012/03/business_law_section-2012springmeeting/ybl.html.) There are also discounted rates for the general meeting for young and first-time attendees. (Section Spring Meeting website: http://www.americanbar.org/calendar/2012/03/business_law_section-2012springmeeting/general.html.)

We encourage you to attend this conference, which will include excellent CLE and educational opportunities, unparalleled networking and, of course, all of the fun to be had in Las Vegas. By attending the Spring Meeting you will also learn more about the Business Law Section and its many benefits

**Many Opportunities for Young Lawyers Within the YLC:**

Other YLC subcommittees include, among others, Pro Bono/Public Service, Newsletter and Technology, Membership, and Solo/Small Firm practice. The Young Lawyer Committee meets during the Business Law Section Spring Meeting and the ABA Annual Meeting. Every meeting is open to all who wish to attend and learn more about the YLC. For more information on the Business Law Section, the Young Lawyer Committee, and the Institute for the Young Business Lawyer, go to http://americanbar.org/buslaw.

For more detailed information on how to get involved with the YLC, feel free to contact one of our Membership Subcommittee co-chairs, Julia Bahner (jbahner@piteduncan.com), Joanna Garcia (jgarcia@carltonfields.com), or Jeffrey Sklarz (JMSklarz@zeislaw.com).

For updates about upcoming YLC meetings and events, "like" the Young Lawyer Committee of ABA Section of Business Law Facebook page and "follow" us on Twitter @ylcbls.

We hope to see you at our next meeting on March 22-24, 2012 in Las Vegas!
Social media is in no way a passing fad. Individuals have embraced social media because it simplifies staying in touch and provides an online platform for sharing photos, stories, ideas, and interests with others. Businesses have discovered social media's utility and use it to reach a targeted audience of present and future customers.

Savvy lawyers too have seized upon social media as a tool in litigation and with good reason. Social media websites contain a rich archive of facts about, and statements by, witnesses, litigants, and clients. Lawyers should see social media websites as a valuable resource for gathering information in litigation. In particular, young lawyers, who tend to be well-versed in social networking, can add value to a litigation team by knowing how to seek out social media evidence.

Facebook is by far the leading social media website. Touting over 800 million active users, Facebook enables anyone to create individual profile pages containing personal data such as hometown, schools attended, employers, family connections, relationship status, hobbies, and even political and religious views. Users can upload photos, video, audio, and other multimedia content and can tag people in photos (or be tagged in others' photos). Notably, Facebook also has geo-tagging features, such as "Places," that enable users to publicize their specific location at a specific time. All of these features represent a potential gold mine of data for those who know to look for it.

Images and comments on social media websites may be highly relevant in civil litigation, particularly in family law and personal injury cases. For example, in Romano v. Steelcase Inc.,
2006-2233, 2010 NY Slip Op 20388 (Sup. Ct., Suffolk Co. Sept. 21, 2010), a plaintiff's profile photo showed her smiling on vacation in Florida, which clearly contradicted her allegations of debilitating neck and back injuries and loss of enjoyment in life in her personal injury suit. The court allowed the defendant to seek discovery of current and prior (even deleted) items on the private portions of the plaintiff's Facebook and MySpace pages, reasoning that the plaintiff placed her physical condition, as well as her enjoyment of life, at issue in the litigation.

Just as social media evidence can be crucial in civil litigation, it can also become a factor in criminal prosecutions. In one criminal case, a Facebook post was used to corroborate an alibi. The defendant in a felony armed robbery contended that he was ten miles away from the crime scene at the time, using his father's computer to post on Facebook (specifically, he posted "where's my pancakes?"). The charges against him were dropped. *I'm Innocent. Just Check My Status on Facebook*, NY Times (Nov. 11, 2009). In another criminal case, MySpace photographs and captions were admissible to impeach a minor witness' statement that she was a virgin prior to an alleged rape. *In the Matter of K.W.*, 666 S.E.2d 490, 494 (N.C. App. 2008).

Aside from using social media data as evidence in criminal and civil matters, attorneys also look to social media to learn about potential jurors during voir dire, with some attorneys utilizing courtroom internet connections to perform real-time searches of jurors during the jury selection process. Lawyers also monitor social media during trial to make sure jurors are not engaging in inappropriate online activity. One attorney in Michigan used Facebook to discover that a 20-year old Detroit juror posted news of a guilty verdict on her Facebook page before the jury officially reached a verdict. The juror was removed as a result. *Detroit juror updates Facebook with defendant's guilt — before the trial is over*, NY Daily News (Aug. 30, 2010); *see People v. McNeely*, D052606, 2009 WL 428561 (Ca. Super. Ct. Feb. 23, 2009) (criminal
defendant not entitled to a new trial for juror misconduct, even though juror failed to disclose that he was an attorney during voir dire and discussed confidential case information on his blog).

Tips for Discovery of Social Media Information in Litigation

Courts are mixed on the scope of what social media evidence is discoverable in specific cases. Compare Romano v. Steelcase Inc., 2006-2233, 2010 NY Slip Op 20388 (Sup. Ct., Suffolk Co. Sept. 21, 2010) (private portions of plaintiff's social media page discoverable in personal injury case) and Crispin v. Christian Audigier, Inc., No. 2:09-cv-09509 (C.D. Cal. May 26, 2010) (private portions of plaintiff's social media page not discoverable in copyright infringement case). However, without question, social media websites can be relevant in some cases. As noted by one court: "Facebook usage depicts a snapshot of the user's relationships and state of mind at the time of the content's posting." Bass v. Miss Porter's School, 3:08cv1807, 2009 WL 3724968 (D. Conn. Oct. 27, 2009). But the admissibility of data found on social media websites is handled on the same case-by-case basis as any other evidence, and foundation, authenticity, and relevance must be considered. In the Interest of F.P., 878 A.2d 91 (Pa. Super. Ct. 2005). Further, confidentiality and privacy concerns may be implicated, though courts can craft a stipulation or a protective order to ease these concerns. In camera review may be sought if necessary. See Barnes v. CUS Nashville, LLC, 3:09-cv-00764, 2010 WL 2265668 (M.D. Tenn. June 3, 2010) (non-party witness must accept magistrate judge as a "friend" on Facebook in order for judge to perform an in camera review of Facebook page contents).

Attorneys should utilize these five tips for finding social media smoking guns:

1. Regularly check what is publicly available about a witness. Print or otherwise keep records in the event content is removed or made private.

2. Send a preservation letter to service providers and litigation hold letters to opposing counsel.
3. Inquire about a witness' social media usage, email addresses, and
usernames in discovery. Draft narrowly tailored discovery requests to obtain
social media data directly from the witness.

4. Obtain a release from the witness before sending a subpoena to
social media service providers as providers will only hand over basic data unless
the record holder consents.

5. Though costly, consider computer forensics to recreate the posted
data.

By following these tips, young lawyers can harness their knowledge of social media to
discover a wealth of evidence - evidence that may very well win a case.
Within the legal profession, experience is unquestionably a virtue. Clients pay hefty fees to receive advice from seasoned attorneys able to draw upon a wealth of experience. Occasionally, however, there are seismic shifts in regulatory landscapes where young attorneys can gain equal footing with the partners in their group as entire practice areas adapt to new terrain.

The financial crisis, the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)\(^1\) and the subsequent rules promulgated by the Securities and Exchange Commission (the “SEC”) regarding the registration of investment advisers represent such a shift. Among other things, Title IV of the Dodd-Frank Act (“Title IV”) includes significant amendments to the Investment Advisers Act of 1940 (the “Advisers Act”), amendments which transfer primary responsibility for the oversight of certain mid-sized investment advisers from the federal government to the states. Title IV also repealed the so-called “private adviser exemption” in the Advisers Act, an exemption that was widely relied upon by many hedge funds, private equity firms and venture capital funds, and brings a wider scope of advisers under the purview of the federal government.

This article is an attempt to give the young securities attorney a brief primer on the ramifications of the Dodd-Frank Act for investment adviser registration and certain significant upcoming registration deadlines.

The Advisers Act

Congress passed the Advisers Act based on a finding that investment advisers are of national concern in that their advice, taken in the aggregate, has the power to affect interstate commerce, national and securities exchanges, and other securities markets, the national banking system and the national economy.\(^2\)

Under the Advisers Act, “investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities, subject to various exclusions.\(^3\)

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\(^2\) Section 201 of the Advisers Act.
\(^3\) Section 201 of the Advisers Act. Effective July 21, 2011, the exclusions from the definition of “Investment adviser” include: (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 which is not an investment company, except that the term “investment adviser” includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately
Pursuant to the Dodd-Frank Act, those investment advisers with assets under management ("AUM") of $100,000,000 or more are now generally required to register with the SEC, subject to certain exemptions. Below the AUM $100,000,000 threshold, investment advisers generally must register as investment advisors under state law, unless state law provides an exemption. The federal exemptions from registration include, but are not limited to, any investment adviser whose clients are all residents of the state within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange.

**Title IV and the Advisers Act**

**The Private Fund Adviser Exemption**

Title IV of the Dodd-Frank Act repealed Section 203(b)(3) of the Advisers Act, an exemption from federal registration that had previously been relied on by many fund managers acting as investment advisers to escape federal registration requirements. The repealed exemption historically provided relief from registration to those investment advisers who had fewer than 15 clients, treating a privately offered investment fund, regardless of the actual number of investors in the fund, as a single client. As a result, the Dodd-Frank Act generally extended the reach of the Advisers Act to previously unregistered hedge funds and other private funds. The Dodd-Frank Act also, however, mandated the SEC to adopt regulations providing new limited exemptions for investment advisers that (i) solely advise private funds and (ii) have AUM of less than $150,000,000 (the “Private Fund Adviser Exemption”), among other exemptions for certain other investment advisers.

As a result, certain investment advisers to private funds previously exempt from registration are now required to register with the SEC. In addition to eliminating the “fewer than 15 client” exemption, the Dodd-Frank Act raised the AUM threshold for federal registration of identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to Section 3(a)(12) of the Securities Exchange Act of 1934 (the “Exchange Act”), as exempted securities for the purposes of the Exchange Act; (F) any nationally recognized statistical rating organization, as that term is defined in Section 3(a)(62) of the Exchange Act, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; (G) any family office, as defined by rule, regulation, or order of the SEC; or (H) such other persons not within the intent of the definition, as the SEC may designate by rules and regulations or order. Section 202(11) of the Advisers Act.  

4 Section 203 of the Advisers Act.  
5 Section 403 of the Dodd-Frank Act amended Section 203(b)(3) of the Advisers Act by repealing the prior private adviser exemption and inserting a foreign private adviser exemption.  
6 Foreign private advisers and advisers that solely advise “venture capital funds” (as defined by the new Rule 203(l)-1 under the Advisers Act) are also exempt from federal registration.
investment advisers to $100,000,000 (previously established at $25,000,000) in most cases, with those advisers falling below such threshold generally becoming subject to state regulation.

These amendments have been in effect since July 21, 2011 (the “Effective Date”).

“Mid-Sized” Advisers

Section 410 of the Dodd-Frank Act creates a new category of “mid-sized advisers” and places the primary responsibility for their regulatory oversight to the states by prohibiting from SEC registration an investment adviser that (i) is required to be registered as an investment adviser in the state in which it maintains its principal office and place of business; and (ii) that has AUM between $25,000,000 and $100,000,000 (i.e., a mid-sized adviser).\(^7\)

Nevertheless, a mid-sized adviser must register with the SEC if (i) the adviser is not required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the state in which it maintains its principal office and place of business; or (ii) if registered with that state, the adviser would not be subject to examination as an investment adviser by that securities commissioner (at present, that would only implicate investment advisers registered with the securities commissioners of Wyoming or New York).

Under Section 203A(c) of the Advisers Act, which was not amended by the Dodd-Frank Act, the SEC may permit small and mid-sized advisers to register with the SEC rather than the states under circumstances where the prohibition against SEC registration would be unfair, impose an undue burden on interstate commerce, or would not be inconsistent with the mandated division between state and federal registration. Pursuant to this authority, the SEC has adopted Advisers Act Rule 203A-2 (Exemptions from Prohibition on Commission Registration) which permits SEC registration in certain cases.

Mid-Sized Adviser Threshold Buffers

Advisers Act Rule 203A-1 is designed to prevent an adviser from having to switch frequently between state and SEC registration as a result of changes in the value of its AUM or the departure of one or more clients by providing a buffer for those advisers with AUM around $100,000,000.\(^8\) The rule raises the threshold above which a mid-sized investment adviser must register with the Commission to $110,000,000, but once registered with the SEC, an adviser need not withdraw its SEC registration until it has AUM of less than $90,000,000.

Dates to Keep in Mind

January 1, 2012: To facilitate an orderly re-organization of the pre-Dodd-Frank registration regime, the SEC is requiring all mid-sized advisers registered with the SEC on the Effective Date to remain registered until they switch to state registration after January 1, 2012.

\(^7\) See Section 410 of the Dodd-Frank Act (adding new section 203A(a)(2) of the Advisers Act). This amendment increases the threshold above which all investment advisers must register with the Commission from $25,000,000 to $100,000,000.
February 14, 2012: As initial applications for registration can take up to 45 days to be approved, previously unregistered advisers that must now fully register with the SEC by March 30, 2012 are well-advised to file a complete application, both Part 1 and Part 2 of the Uniform Application for Investment Adviser Registration (“Form ADV”) by at least by February 14, 2012.

March 30, 2012: The new rules provide until March 30, 2012 for each adviser already registered with the SEC to determine whether it is still eligible for SEC registration and to file an amended Form ADV.

June 28, 2012: Advisers no longer eligible for SEC registration due to the size of their AUM have until 90 days after the March 30, 2012 deadline (i.e., by June 28, 2012) to register with the appropriate state commissioner(s) and withdraw its SEC registration by filing a Form ADV-W (Notice of Withdrawal from Registration as an Investment Adviser). After the end of this grace period, the SEC is expected to cancel the registration of advisers that are no longer eligible to register with the SEC and that fail to file an amendment or withdraw their registrations.

It should be noted that the SEC is providing additional flexibility for an adviser to choose the date by which it must calculate its assets under management reported on Form ADV by requiring the calculation within 90 days of the transition filing, rather than 30 days.

The New Exemptions

The Dodd-Frank Act has created several new exemptions to adviser registration for advisers with AUM over $100,000,000, some of which are briefly summarized below:

- **Exemption of Venture Capital Fund Advisers:** New Section 203(l) of the Advisers Act provides that “no investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund.”

- **Exemption of Advisers Solely to Private Funds with less than $150 million in AUM:** New Section 203(m) of the Advisers Act provides that the SEC shall provide an exemption from the registration requirements to any investment adviser of “private funds,” if such investment adviser acts solely as an adviser to private funds and has AUM in the U.S. of less than $150 million.

- **Exemption of Foreign Private Advisers:** Revised Section 203(b)(3) of the Advisers Act provides for a new exemption for “any investment adviser that is a foreign private adviser.” To rely on the exemption, a foreign private adviser must meet specific criteria.

- **Exemption for Family Offices:** The Dodd-Frank Act excludes from the definition of “investment adviser” in Section 202(a)(11) of the Advisers Act any “family office,” as defined by rule, regulation or order of the SEC.†
Practice Tips for Being Your Best

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To become indispensable, you must take every opportunity to learn the in's and out's of your assignment and, to the extent possible, how your piece fits into the overall case or deal. Understandably, you may not always have the opportunity to learn about the larger project, but you can always become indispensable for your piece of the project. To do this, you must pay very close attention to the details and keep very accurate notes of these details—in essence, become the "know-it-all." By "details," I do not mean simply the "facts" of your project; the details also include the research, considerations and legal conclusions that have informed the legal strategy for your project. Frankly, partners or your senior colleagues will tend to be concerned with the high-level strategy, but the details are just as important. Particularly, in large or complicated cases or deals or in those that span over a long period of time, most people cannot recall all the details, but if someone can, that person becomes indispensable and their knowledge is constantly sought.

As a young lawyer, you can easily be this person. First, it is typically expected that you will learn the details so that you can complete your piece of the project. Second, it does not require years of specialized knowledge or experience to learn the in's and out's, all the details, of your project. To learn these details, and to keep excellent notes allowing you to recall such details, is a task that any young lawyer can handle. Third, not only will learning the details make you indispensable, but you will also gain a great deal of legal experience and understanding for future projects.

The truth is that there are few people in an organization, much less a law firm, who are indispensable. But it should nevertheless be your goal. If you take the initiative to be the "know-it-all" for your assignment and the project at large, you will earn the notice of other lawyers and your knowledge (and thus assistance) will be solicited again and again. And, as a parting thought, being indispensable is a quality that resonates in this economy now more than ever.

By: Amy R. Rigdon