

## Client Alert

### SEC GUIDANCE EXPANDS CUSTODIAL EXEMPTIONS TO CERTIFICATED PRIVATE SECURITIES

**August 8, 2013.** The SEC has confirmed in newly released guidance that, for purposes of Rule 206(4)-2 of the Investment Advisers Act of 1940 (the “Custody Rule”), securities acquired by private equity funds and other pooled investment vehicles managed by a registered investment adviser will be treated similarly, whether or not they are certificated. As a result of the guidance, stock certificates or certificated LLC interests, for example, obtained by the fund in a private placement do not have to be held with a qualified custodian and therefore, may be held directly by the investment adviser.

In order to avail themselves of this option, managers should ensure that their fund clients are subject to an annual audit in accordance with the Custody Rule, that the certificates for such privately offered securities cannot be transferred without the prior written consent of the issuer, that ownership of the securities is recorded on the books of the issuer and that the investment adviser properly safeguards the private stock certificates. These are the same requirements that are already in place for a fund’s investments that are not formally certificated.

If you have any questions concerning the SEC’s guidance, or any other corporate-, securities-, or fund-related inquiries, please feel free to contact the Morrison Cohen attorneys named below (or your usual Morrison Cohen contacts):

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