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To Our Clients

Private Placements

In contemporaneous decisions in the SEC v. Continental Tobacco and Henderson v. Hayden Stone cases the Fifth Circuit Court of Appeals has cast doubt on the availability of the private offering exemption for the typical venture capital or tax shelter deal. Henderson applies the previously noted Continental Tobacco approach to a sophisticated investor who invested \$180,000 in a venture capital deal. The SEC brief in Continental Tobacco had argued for an extremely restrictive interpretation of the private placement exemption. Whether or not it reflects the SEC commission and/or staff positions is not clear; Chairman Casey having promised and the staff now working on proposed rules to provide more certainty in this area. The pure institutional and small group of key employees private placements are not affected by the Fifth Circuit cases, but there is now more doubt about the small-company-with-25-or-under-shareholders-situations as to which the present SEC proposals to substitute Rule 145 for Rule 133 are not satisfactory.

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