

SEC Approves Final Rules Regarding Extension of Registration Deadline and Exemptions For Private Fund Advisers

June 22, 2011

On June 22, 2011, the Securities and Exchange Commission (SEC) held an open meeting and approved final rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that created exemptions from the requirement to register under the Investment Advisers Act of 1940 (Advisers Act) for advisers to venture capital funds, private fund advisers with less than \$150 million in assets under management, and foreign private advisers. Below are highlights from the meeting:

- **Registration Deadline Extension to March 30, 2012.** The deadline for private fund advisers required to register with the SEC was extended to March 30, 2012.
- **Venture Capital Exemption and 20 percent “Non-Qualifying” Basket.** The SEC approved final rules regarding the exemption for advisers solely to venture capital funds (the Venture Capital Exemption). While the SEC indicated that the final definition of “venture capital fund” will largely remain the same as the definition proposed by the SEC in November 2010, there will be at least one significant change to the definition that is beneficial to venture capital fund managers. While the proposed definition only applied to funds that own solely cash, cash equivalents, short-term U.S. treasuries and equity securities of “qualifying portfolio companies,” the final definition will permit venture capital fund managers to invest up to 20 percent of a fund’s aggregate commitments in “non-qualifying” investments. The SEC also approved largely as proposed the “grandfathering” exemption for funds that sold securities to one or more unrelated investors prior to December 31, 2010, that were represented as “pursuing a venture capital strategy” at the time of the offering of the securities and that do not accept any additional commitments after July 21, 2011.
- **Private Fund Adviser and Foreign Adviser Exemptions.** The exemptions relating to advisers solely to private funds that have less than \$150 million in assets under management in the United States (the Private Fund Adviser Exemption) and foreign private advisers were adopted largely as proposed.

Accordingly, a non-U.S. adviser will not be required to register if it does not manage any accounts directly for U.S. persons, and all assets it manages from a place of business in the United States are solely attributable to private fund assets, the total value of which is less than \$150 million. For purposes of the Private Fund Adviser Exemption, the SEC indicated that the final rules will only require advisers to determine assets under management on an annual basis (rather than quarterly as proposed).

- **Amendments to Form ADV Part 1.** The SEC approved extensive amendments to Part 1 of Form ADV to require additional information about advisers and the private funds that they manage.
- **Exempt Reporting Advisers.** The SEC approved rules that would require “Exempt Reporting Advisers” (i.e., advisers relying on either the Venture Capital Exemption or the Private Fund Advisers Exemption) to file an abbreviated version of Form ADV Part 1 annually. The SEC noted that Exempt Reporting Advisers would be subject to recordkeeping rules to be adopted in the future and would be subject to limited SEC examination oversight.
- **Family Office Exemption.** The SEC adopted the exemption for advisers to family offices, and expanded the exemption to permit additional categories of family members and key employees to be clients of the family office.
- **Transition to State Registration.** SEC-registered investment advisers that must withdraw their federal registration and transition to state registration must make the transition by June 28, 2012.[\[1\]](#)

The SEC is expected to publish the final rules shortly, at which point they will be available on the SEC’s website (<http://www.sec.gov>). We will provide additional details on the scope of the final rules at such time.

[\[1\]](#) The Dodd-Frank Act will generally require investment advisers with between \$25 million and \$100 million to register with the state in which it has its principal office and place of business (rather than the SEC) if the adviser is otherwise required to be registered in the state and the state has its own examination program.

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