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## SEC Considers Extending Compliance Dates for Private Fund Adviser Registration and “Mid-Sized Adviser” Transition to State Regulation

On April 8, 2011, Robert Plaze, Associate Director of the Division of Investment Management of the Securities and Exchange Commission (“SEC”), issued a letter to the North American Securities Administrators Association (the “Division Letter”) regarding the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (the “Dodd-Frank Act”). The SEC is considering extending the date by which:

- mid-sized advisers impacted by its rulemaking under the Dodd-Frank Act must transition to state regulation; and
- investment advisers required to register with the SEC as a result of the repeal of the “private adviser exemption” by the Dodd-Frank Act must register and come into compliance with their obligations as an SEC-registered investment adviser.

As of July 21, 2011, Section 403 of the Dodd-Frank Act repeals the “private adviser exemption” in Section 203(b)(3) of the Investment Advisers Act of 1940, as amended. The private adviser exemption was most heavily relied upon by investment advisers to hedge funds, private equity funds, real estate funds and other private investment funds. When they repealed the private adviser exemption, Congress also enacted three new exemptions from registration under the Dodd-Frank Act for:

- advisers who advise venture capital funds only (without regard to the number of such funds advised by the adviser or the size of such funds);
- advisers who advise “private funds” only, and who have assets under management in the United States of less than \$150 million<sup>2</sup> (without regard to the number or type of private funds advised); and
- non-U.S. advisers with under \$25 million in aggregate assets under management from U.S. clients and private fund investors and fewer than 15 such clients and investors.<sup>3</sup>

As a practical matter, the Dodd-Frank Act most significantly impacts two groups – advisers to private funds (other than those who manage venture capital funds exclusively) who have assets under management in excess of \$150 million, and investment advisers to private funds who also offer separate accounts or who manage vehicles exempt from registration under the Investment Company Act of 1940, as amended, other than pursuant to Section 3(c)(1) and 3(c)(7).<sup>4</sup> Most of these advisers, if they are currently unregistered because of the private adviser exemption, will be required to register with the SEC. The Division Letter states that the SEC is likely to extend the time by which such advisers must register and come into compliance to the first quarter of 2012.

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The SEC is considering a similar extension for “mid-sized advisers” (e.g., advisers having between \$25 million and \$100 million of assets under management).<sup>5</sup> Pursuant to the Dodd-Frank Act, mid-sized advisers will be required to withdraw their registration with the SEC and register with one or more applicable states. In recognition of the substantial reprogramming of the IARD system to accommodate and accept such transition filings, the Division Letter suggests that the SEC may also extend to the first quarter of 2012 the period by which mid-sized advisers must transition to state regulation and report their eligibility for registration with the SEC.

If you have any questions about maintaining compliance with the latest SEC regulations, please contact a member of Venable’s [Investment Management](#) or [Corporate Finance and Securities](#) group.

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[1] See Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[2] The SEC has proposed rule 203(m)-1, which includes provisions for determining the amount of an adviser’s private fund assets for purposes of the exemption and when those assets are deemed managed in the United States. See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Act Release No. IA-3111, File No. S7-37-10, 17 C.F.R. 275 at 8 (Nov. 19, 2010).

[3] See Section 402 of the Dodd-Frank Act.

[4] Venture capital fund advisers and “private fund advisers” exempted under the Dodd-Frank Act must still provide the SEC with certain reports and maintain other books and records.

[5] See Section 410 of the Dodd-Frank Act; Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Act Release No. IA-3110, File No. S7-36-10, 17 C.F.R. 275, 279 at 8 (Nov. 29, 2010).

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