

Potential Extension of Compliance Date for Private Fund Investment Adviser Registration

The Securities and Exchange Commission (the “SEC”) staff indicated today that the SEC is considering extending the compliance date for investment adviser registration for currently unregistered private fund advisers from July 21, 2011 until the first quarter of 2012.

As previously noted in a Ropes & Gray [alert](#), under the *Private Fund Investment Advisers Registration Act of 2010*, part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “Dodd-Frank Act”), advisers with fewer than 15 “clients” for purposes of the Investment Advisers Act of 1940 (the “Advisers Act”) (including most U.S. private equity, hedge fund and other private fund advisers), who historically have been exempt from registration, will be required to register with the SEC as investment advisers by this July.

In a letter dated April 8, 2011 to the North American Securities Administrators Association (available [here](#)), an associate director of the SEC’s Division of Investment Management stated that the SEC expects to issue final rules by July 21 implementing the changes to the investment adviser registration regime under the Dodd-Frank Act. The letter went on to state that, given the time needed for private fund advisers to register and come into compliance with Advisers Act rules once registered, “we expect that the [SEC] will consider extending the date by which these advisers must register and come into compliance with the obligations of a registered adviser until the first quarter of 2012.”

The letter does not constitute formal SEC action, and any extension would require formal action before it becomes effective. Note that it is unclear whether any extension would also apply to the date by which exempt-reporting advisers (venture capital fund managers and advisers with less than \$150 million in regulatory assets under management in the United States) would be required to file their exemptive notice with the SEC. However, to the extent applicable, private fund advisers may want to reconsider their plans and internal timelines for registration-related matters in light of this development. Furthermore, if the SEC does formally extend the compliance date, firms that are not registered will not be subject, until the compliance date, to the specific requirements of those Advisers Act rules that by their terms apply only to advisers that are registered or required to be registered. In particular, this means that unregistered advisers who are currently raising capital will not need to revise their offering materials to comply with the advertising rule (including reporting net returns) until the extended compliance date.

Please contact any Ropes & Gray attorney with whom you regularly work if you have any questions or would like to discuss this development, which we will continue to monitor closely.