

Guide to Investment Adviser Registration

On June 22, the SEC adopted rules defining three new exemptions from investment adviser registration mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. These exemptions were discussed in detail in our July 28 Client Advisory [Summary and Analysis of Dodd-Frank Rules for Investment Advisers](#). The purpose of this Advisory is to provide easy-to-use guidance to assist U.S.-based and Non-U.S.-based investment advisers in making preliminary assessments of whether SEC or state registration likely will be required or permitted.

ADVISERS ORGANIZED IN THE UNITED STATES

Principal Office and Place of Business of Adviser	Type of Accounts Managed	U.S. Place of Business	Domicile of Investors/Clients	Aggregate RAUM of all Accounts ¹	Registration Conclusion
U.S.	Private funds ² only (regardless of domicile of the funds).	Yes	U.S. and/or Non-U.S.	< \$150 million	Exempt reporting under §203(m) as “private fund adviser.” Potential state registration required (unless proposed NASAA exemption adopted by state). ³
U.S.	Private funds ² only (regardless of domicile of the funds).	Yes	U.S. and/or Non-U.S.	≥ \$150 million	SEC registration required under §203(a).
U.S.	Venture capital funds only.	N/A	U.S. and/or Non-U.S.	N/A	Exempt reporting under §203(l) as “venture capital fund adviser.” Potential state registration required (unless proposed NASAA exemption adopted by state). ³
U.S. (other than WY and NY) ⁴	Managed accounts only or private funds ² and managed accounts.	Yes	U.S. and/or Non-U.S.	≥ \$25 million and < \$100 million	State registration required if adviser meets minimum threshold for number of clients and there is no institutional exemption available; otherwise, SEC registration required.
U.S. (other than WY and NY) ⁴	Managed accounts only or private funds ² and managed accounts.	Yes	U.S. and/or Non-U.S.	≥ \$100 million	SEC registration permitted (mandatory if RAUM > \$110 million). SEC registration must be withdrawn if RAUM falls below \$90 million.
U.S. domiciled in WY ⁴	Managed accounts only or private funds ² and managed accounts.	Yes	U.S. and/or Non-U.S.	> \$0	SEC registration required. No qualifying state registration regime.
U.S. domiciled in NY ⁴	Managed accounts only or private funds ² and managed accounts.	Yes	U.S. and/or Non-U.S.	≥ \$25 million	SEC registration required. No qualifying state registration regime. SEC registration must be withdrawn if RAUM falls below \$25 million.

Symbols: < less than; > greater than; ≥ greater than or equal to.

¹ Regulatory Assets Under Management (RAUM) is gross assets in “securities portfolios” and private funds for which the adviser provides continuous and regular supervisory or management services. Must include assets attributable to clients, whether U.S. or Non-U.S., proprietary assets, generally assets managed without compensation and uncalled capital commitments.

² “Private fund” means a fund excluded from the definition of investment company by §3(c)(1) or §3(c)(7) of the Investment Company Act of 1940; advisers to funds relying on other exclusions from the definition of investment company may elect to treat those funds as private funds.

³ NASAA has proposed, but has not yet adopted, a model rule governing the registration and reporting requirements for advisers to private funds. NASAA’s proposal is designed to follow certain provisions in the Dodd-Frank Act as implemented by the SEC. After adoption by NASAA, individual states must determine whether to adopt such an exemption.

⁴ Each state (other than WY) maintains its own regulatory regime. All WY investment advisers are subject to SEC registration. NY regulates investment advisers but does not have a regular examination program and thus mid-sized advisers (≥ \$25 million and < \$100 million) in NY must register with the SEC.

ADVISERS ORGANIZED OUTSIDE OF THE U.S.⁵

Principal Office and Place of Business of Adviser	Type of Accounts Managed ⁶	U.S. Place of Business	Domicile of Investors/Clients	Aggregate RAUM of all Accounts	Registration Conclusion
Non-U.S.	U.S. private funds ² only and Non-U.S. client accounts (whether or not private funds).	No	U.S. and Non-U.S.	N/A	Exempt reporting adviser under §203(m) as “private fund adviser.”
Non-U.S.	Non-U.S. private funds ² and other Non-U.S. client accounts only.	No	U.S. and Non-U.S. investors only, no U.S. clients.	N/A	Dependent on facts and circumstances: No U.S. jurisdiction if adviser not using U.S. jurisdictional means in connection with its advisory business. May be exempt from registration and reporting as a “foreign private adviser” if conditions described below are met. Otherwise exempt reporting adviser under §203(m) as “private fund adviser” if sufficient use of U.S. jurisdictional means to fall under U.S. jurisdiction.
Non-U.S.	U.S. private funds ² only and/or Non-U.S. private funds ² and Non-U.S. client accounts.	Yes	U.S. and Non-U.S.	< \$150 million ⁷	Exempt reporting under §203(m) as “private fund adviser.”
Non-U.S.	U.S. and Non-U.S. private funds ² and/or U.S. managed accounts.	Yes	U.S. and Non-U.S.	> \$0	SEC registration required under §203(a).
Non-U.S.	U.S. and Non-U.S. private funds ² and/or U.S. managed accounts.	No	Fewer than 15 U.S. clients and investors in private funds, with less than \$25 million in assets attributable to such U.S. clients and investors.	< \$25 million	Exempt under §203(b)(3) as a “foreign private adviser” if not holding itself out to the public in the United States as an investment adviser.
Non-U.S.	U.S. and Non-U.S. private funds ² and/or U.S. managed accounts.	No	U.S. and Non-U.S.	> \$0	SEC registration required unless qualified to claim the “foreign private adviser” exemption.

⁵ The information on this chart is also applicable to advisers organized in the United States whose principal office and place of business is outside the United States.

⁶ For this purpose, accounts of Non-U.S. clients that are not private funds should be excluded.

⁷ For this purpose, accounts of all U.S. and Non-U.S. private fund clients managed from the United States should be included. Accounts of Non-U.S. clients that are not private funds should be excluded. Not permitted to have U.S. clients other than private funds.

This Advisory is not a substitute for legal advice. If you have any specific questions regarding SEC or state investment adviser registration, please contact your Katten Muchin Rosenman LLP attorney or any of the following members of the [Financial Services Practice](#).

Henry Bregstein	New York	212.940.6615	henry.bregstein@kattenlaw.com
Wendy E. Cohen	New York	212.940.3846	wendy.cohen@kattenlaw.com
Daren R. Domina	New York	212.940.6517	daren.domina@kattenlaw.com
Jack P. Governale	New York	212.940.8525	jack.governale@kattenlaw.com
Ricardo J. Hollingsworth	New York	212.940.6482	ricardo.hollingsworth@kattenlaw.com
Joseph Iskowitz	New York	212.940.6351	joseph.iskowitz@kattenlaw.com
Marilyn Selby Okoshi	New York	212.940.8512	marilyn.okoshi@kattenlaw.com
Ross Pazzol	Chicago	312.902.5554	ross.pazzol@kattenlaw.com
Fred M. Santo	New York	212.940.8720	fred.santo@kattenlaw.com
Peter J. Shea	New York	212.940.6447	peter.shea@kattenlaw.com
Marybeth Sorady	Washington, D.C.	202.625.3727	marybeth.sorady@kattenlaw.com
Meryl E. Wiener	New York	212.940.8542	meryl.wiener@kattenlaw.com
Allison C. Yacker	New York	212.940.6328	allison.yacker@kattenlaw.com
Lance A. Zinman	Chicago	312.902.5212	lance.zinman@kattenlaw.com

Katten

Katten Muchin Rosenman LLP

www.kattenlaw.com

CHARLOTTE

CHICAGO

IRVING

LONDON

LOS ANGELES

NEW YORK

OAKLAND

WASHINGTON, DC

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