

Strictly Business

A Business Law Blog for Entrepreneurs, Emerging Companies, and the Investment Management Industry.



ABOUT THE AUTHOR

Alexander J. Davie is an attorney based in the Nashville, TN area. His practice focuses on corporate, finance, and real estate transactions. He works mainly with emerging companies, venture funds, entrepreneurs, and startups. His firm's website can be found at www.alexanderdavie.com.

In his corporate practice, Mr. Davie has worked extensively with his clients on all aspects of their businesses, including company formation, business planning, mergers and acquisitions, vendor and customer contracts, corporate governance, debt and equity financings, and securities offerings. In addition, he has represented investment advisors, securities brokers, hedge funds, private equity funds, and real estate partnership syndicators in numerous private offerings of securities and in ongoing compliance. Prior to returning to private practice, Mr. Davie served as the general counsel to a private investment fund manager.

In his real estate practice, he has participated in property acquisitions, mortgage financings, and commercial leasing matters throughout the United States. He has represented developers, governmental entities, life insurance companies, banks, and owners of malls, shopping centers, industrial parks, and office towers. He has worked on a number of transactions involving the syndication of real estate partnerships, advising sponsors on both real estate and securities issues.

What exactly does being exempt from Investment Adviser registration under Dodd-Frank mean?

It is widely known that under the Dodd-Frank Act passed last year, private fund managers with assets under management of \$150 million or more will be required to register as investment advisers with the SEC. It's also widely known that Congress exempted venture capital funds from this requirement. So does this mean that if you are the manager of a small hedge fund or that if you run a venture capital fund, you won't need to deal with the SEC? Unfortunately, no. In [recent rule-making](#), the SEC has required exempt private fund managers to file many of the same forms as those of registered advisers.

The new sections 203(l) and 203(m) of the Investment Adviser's Act created by Dodd-Frank allow the SEC to require exempt private fund advisers to provide such records and reports as "the Commission determines necessary or appropriate in the public interest or for the protection of investors." Under this authority, the SEC has designated private fund advisers that are exempt because they manage assets under \$150 million and private fund advisers that are exempt because they solely advise venture capital funds as "exempt reporting advisers." Like their registered counterparts, exempt reporting advisers will be required to file Form ADV through the IARD system managed by FINRA. Sections of Form ADV that exempt reporting advisers will be required to complete are:

- Item 1 - Identifying Information - The exempt reporting adviser must disclose information such as its principal place of business, website address, and the name and contact information of its chief compliance officer.

- Item 2B - Identification of Exemption - The exempt reporting adviser must identify the exemption it is relying upon.
- Item 3 - Form of Organization - The exempt reporting adviser must disclose its corporate form and state of organization.
- Item 6 - Other Business Activities - The exempt reporting adviser must disclose the other business activities in which it is engaged and if it sells products or services other than investment advice to its advisory clients.
- Item 7A - Related Persons - The exempt reporting adviser must disclose the business activities of any affiliates.
- Item 7B - Private Funds - This section will require substantial disclosure on each private fund managed by the exempt reporting adviser, including organizational structure, asset values, and service providers.
- Item 10 - Control Persons - The exempt reporting adviser must disclose the identity of every person who

directly or indirectly controls the adviser or its policies.

- Item 11 - Disciplinary Events - The exempt reporting adviser must disclose its disciplinary history as well as those of its employees.

Despite the fact that the items above are a subset of Form ADV, they impose a significant burden on the exempt reporting adviser that is comparable to that of registering with the SEC. One consolation is that the exempt reporting adviser will not have to produce a Brochure, a plain-english narrative description of the adviser's business that must be filed at registration and provided to all clients, also known as ADV Part 2.

The requirements imposed by the SEC on exempt reporting advisers are significant. Any fund manager who thought they would escape the scrutiny imposed by Dodd-Frank, either because their fund is small or because they manage a venture capital fund, is unfortunately mistaken. These fund managers will be required to file their initial Form ADV between January 1, 2012 and March 30, 2012. So much for being "exempt."

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