SEC Adopts Rules Implementing Dodd-Frank Act Amendments to Investment Advisers Act

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On June 22, 2011, the Securities and Exchange Commission (S*EC*) adopted rules implementing certain provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (*Dodd-Frank Act*). Specifically, the new rules (i) eliminate the private fund adviser registration under Section 203(b)(3) of the Investment Advisers Act of 1940 (*Advisers Act*); (ii) require greater disclosure by registered investment advisers and each managed private fund; (iii) establish reporting requirements for certain advisers exempt from registration with the SEC; (iv) reallocate regulatory oversight of certain mid-sized advisers to the states; (v) propose amendments to the "pay-to-play" rules of the Advisers Act, and (vi) established three new exemptions from registration with the SEC. The SEC also approved a new rule to define "family offices" that are excluded from the Advisers Act.

Registration

Title IV of the Dodd-Frank Act eliminated the private adviser exemption, which exempted advisers with fewer than 15 clients from registration with the SEC and counted each fund, as opposed to each investor, as a client. As a result, many previously unregistered advisers now must register with the SEC. The same registration requirements and regulatory oversight applicable to other SEC-registered investment advisers will apply. The deadline for these advisers to register with the SEC is **March 30, 2012.**

Reporting Requirements

The new rules have also expanded the scope of information required by private advisers, including basic organizational and operational information about each fund they manage and identification of "gatekeepers" (i.e., auditors, prime brokers, administrators, marketers and custodians) that perform important duties for advisers and the private funds they manage. The SEC also adopted amendments to the registration form (Form ADV) that require more information about their advisory businesses, non-advisory activities and financial industry affiliations.

Exempt Reporting Advisers
While certain advisers are exempt from registering with the SEC (see below), exempt advisers must nonetheless complete a limited subset of items on Form ADV, including basic identifying information, identification of its owners and affiliates and disciplinary history. These advisers are required to file their reports on the SEC's electronic filing system (IARD) in **the first quarter of 2012**.

Reallocation of Regulatory Responsibility

Generally, a mid-sized adviser with $25 million to $100 million in assets under management, that is required to register in the state where it maintains its principal office and place of business and, if so required, would be subject to examination by that state, may not register with the SEC, and will alternatively be subject to state registration. Advisers registered with the SEC will have to declare that they are permitted to remain registered in a filing in the first quarter of 2012, and those no longer eligible for SEC registration will have until **June 28, 2012** to switch to state registration.

Amendments to "Pay-to-Play" Rule

The SEC also adopted amendments to the "pay-to-play" rule in response to changes made by the Dodd-Frank Act. The purpose of the rule is to prevent advisers from seeking to influence government officials' awards of advisory contracts through political contributions. Specifically, an adviser is permitted to (i) pay a registered municipal adviser to solicit government entities on its behalf subject to the pay-to-play rule adopted by the Municipal Securities Rulemaking Board (*MSRB)* and (ii) hire SEC registered investment advisers or broker-dealers subject to pay-to-play rules adopted by the Financial Industry Regulatory Authority (*FINRA*) that, in either case, is at least as strict as the investment adviser pay-to-play rule.

The SEC extended the time period for compliance to **June 13, 2012** in order to provide enough time for the MSRB and FINRA to adopt pay-to-play rules if they so choose, and to give third-party solicitors additional time to come into compliance.

Exemptions From Registration

The SEC also adopted amendments to the Advisers Act that created three new exemptions from registration: (i) advisers solely to venture capital funds; (ii) advisers solely to private funds with less than $150 million in assets under management in the U.S.; and (iii) certain foreign advisers with no place of business in the U.S. The adopted rules will implement and define each of these exemptions, which are substantially similar to the proposed rules, and are effective July 21, 2011. Private advisers newly required to register with the SEC have until **March 30, 2012** to do so.

Definition of "Family Office"

The Dodd-Frank Act included a new provision requiring the SEC to define "family offices" in order to exempt them from regulation under the Advisers Act. Family offices are generally considered to be investment advisers under the Advisers Act because they are entities established by wealthy families to manage their wealth and provide other financial planning services to family members. The definition of "family members" was expanded to include all lineal descendants of a common ancestor not more than 10 generations removed from the youngest generation of family members, and the lineal descendents' spouses or spousal equivalents. Family offices that are excluded from this definition will have to register with the SEC or with applicable state securities authorities by **March 30, 2012**.