Client Advisory

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Financial Services

June 23, 2011

SEC Adopts Rules Implementing Core Provisions of Dodd-Frank That Apply to Investment Advisers

At an open meeting on June 22, the SEC voted to adopt rules substantially as proposed earlier this year that:

- implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), by requiring certain advisers to hedge funds and other private funds to register with the SEC;
- establish new exemptions from investment adviser registration and reporting requirements for certain advisers; and
- reallocate regulatory responsibility for advisers between the SEC and the states.

Final rules that are both lengthy and complex were just published. See http://sec.gov/rules/final/2011/ia-3221.pdf, http://sec.gov/rules/final/2011/ia-3222.pdf. We will issue a Client Advisory shortly that provides an in-depth analysis of the rules. In the meantime, the following points are particularly noteworthy:

1. The deadline for advisers to come into compliance with the rules is March 30, 2012. By that date:
   - advisers with more than $100 million in assets under management ($150 million for advisers solely to private funds) must register and comply with the obligations of a registered investment adviser; and
   - mid-sized advisers generally must transition from SEC to state registration, provided such advisers would be subject to state registration and examination.
2. Mid-sized advisers that maintain their principal office in the states of Minnesota and New York will remain subject to SEC registration as those states do not subject advisers to examination. Advisers that maintain their principal office in Wyoming will also remain subject to SEC registration as Wyoming does not regulate investment advisers.
3. Advisers solely to venture capital funds and private funds with less than $150 million in assets under management in the United States (Exempt Reporting Advisers) will be subject to certain reporting requirements, which will require less than the full panoply of information required of SEC registered advisers. The SEC does not intend to conduct routine examinations of Exempt Reporting Advisers, but will have the ability to do so if the circumstances warrant.
4. A venture capital fund as defined by the SEC may invest in a “basket” of non-qualifying investments of up to 20% of its committed capital; an adviser to such a venture capital fund would still qualify for an exemption from registration.
5. The SEC reaffirmed the validity of the *Unibanco* line of no-action letters; thus, a non-U.S. adviser affiliated with an SEC registered adviser will not be required to register with the SEC if it follows the guidance provided by the SEC staff in those letters.

If you have additional questions concerning the rules or the June 22 open meeting of the SEC, please contact your Katten Muchin Rosenman LLP attorney or any of the following members of the **Financial Services Practice**.

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