

ClientAlert

Financial Markets Developments

Capital Markets/Securities
June 2011

SEC Adopts Final Rules Implementing Dodd-Frank Investment Adviser Registration Amendments and Extends Compliance Deadline for Registration Until March 30, 2012

At an open meeting yesterday the US Securities and Exchange Commission ("SEC") voted to adopt new rules that will: (1) establish the new Dodd-Frank Act exemptions from registration for venture capital fund advisers, foreign private advisers and private fund advisers with less than US\$150 million in assets in the United States; (2) implement the Dodd-Frank Act adviser registration exemptions and reallocate regulatory responsibility for mid-sized investment advisers; (3) amend Form ADV disclosure requirements for registered investment advisers; (4) impose new reporting requirements for "exempt reporting advisers"; and (5) define "family offices" for purposes of the exclusion from the definition of investment adviser.

Compliance Deadline for Registration Extended to First Quarter of 2012

Most significantly, the SEC officially extended the compliance date for the new rules relating to adviser registration until March 30, 2012. As a result, an investment adviser that is unable to rely on an exemption from registration under the Investment Advisers Act of 1940 ("Advisers Act") due to the elimination of the 14 client "private adviser" exemption, which will become effective July 21, 2011, will not be required to register with the SEC or a state until March 30, 2012.

Exempt Reporting Advisers Will Not Be Subject to Routine Examinations

In her opening remarks at the meeting, Chairman Schapiro stated that, while the Dodd-Frank Act's amendments to the Advisers Act give the SEC clear authority to examine exempt reporting advisers (which include private fund advisers with less than US\$150 million of assets under management in the US and venture capital fund advisers), the SEC does not intend to conduct routine examinations of exempt reporting advisers. Chairman Schapiro cited the SEC's scarcity of resources as the reason for not doing so. However, Chairman Schapiro indicated that the SEC will still have the authority to conduct on-site examinations of exempt reporting advisers if there are indications that such examinations are necessary.



If you have questions or comments regarding this Alert, please contact:

[Sean P. O'Malley](#)
Partner, New York
+ 1 212 819 8579
somalley@whitecase.com

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
United States
+ 1 212 819 8200

All Advisers in New York, Minnesota and Wyoming Will Continue to Be Subject to SEC Oversight

The Dodd-Frank Act raised the assets under management threshold for investment advisers to qualify for SEC registration from US\$25 million to US\$100 million. This Dodd-Frank Act provision will require an investment adviser that falls below the higher eligibility threshold to register with the state in which it operates its business, but only if the adviser is subject to examination by that state. During testimony at yesterday's meeting, an SEC senior staff member stated that the SEC had surveyed all of the US States and from that survey was able to determine that New York and Minnesota do not have an investment adviser examination program. As such, investment advisers located in New York, Minnesota and Wyoming (which does not even have an investment adviser statute) will continue to be subject to SEC oversight and registration requirements, regardless of their assets under management.

We are reviewing the full texts of the final rules and the adopting releases and will be distributing a more comprehensive analysis of the newly released final rules shortly.

This Client Alert is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Alert should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This Client Alert is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.