

SEC Likely to Postpone Deadlines for Compliance with Investment Adviser Registration and Reporting Requirements under the Dodd-Frank Act

The staff of the U.S. Securities and Exchange Commission (the “SEC”) has indicated that the SEC will consider postponing to the first quarter of 2012 the July 21, 2011 registration deadline for currently unregistered private equity and hedge fund advisers who are required to register with the SEC under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**”) – and presumably also the August 20, 2011 reporting deadline for “exempt reporting advisers” under the Dodd-Frank Act.

As we noted in a previous [client alert](#), under the Dodd-Frank Act and the SEC’s proposed (but not yet finalized) [implementing regulations](#), investment advisers with fewer than 15 “clients” for purposes of the U.S. Investment Advisers Act of 1940 (the “**Advisers Act**”) – a category that includes a great many private equity and hedge fund advisers who have not previously been subject to the Advisers Act’s registration requirements – are required to register with the SEC unless an exemption from registration is available. The deadline for registration is July 21, 2011 (the “**Registration Deadline**”), the day on which the applicable provisions of the Dodd-Frank Act become effective. In order to be registered by the Registration Deadline, investment advisers would need to file their Form ADV applications for registration with the SEC no later than June 6, 2011.

Under the Dodd-Frank Act and the SEC’s proposed (but not yet finalized) [exemptions regulations](#), exempt reporting advisers – i.e., investment advisers relying on the Dodd-Frank Act’s exemptions for venture capital fund advisers and advisers to private funds (including many non-U.S. private fund advisers) who manage less than \$150 million of assets in the United States – are exempt from registration so long as they file periodic reports with the SEC. The deadline for exempt reporting advisers to file their initial Form ADV reports with the SEC is August 20, 2011 (the “**Reporting Deadline**”), or 30 days after the effective date of the Dodd-Frank Act.

In an [April 8, 2011 letter](#) to the North American Securities Administrators Association (the “**NASAA Letter**”), an associate director of the SEC’s Division of Investment Management wrote that the SEC expects its regulations relating to the exemptions for venture capital fund advisers and advisers to private funds who manage less than \$150 million of assets in the United States to be issued in final form before the Registration Deadline. “However,” the NASAA Letter goes on to say, “given the time needed for advisers to register and come fully into compliance with the obligations applicable to them once they are registered, we expect that

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the [SEC] will consider extending the date by which these advisers must register and come into compliance with the obligations of a registered adviser until the first quarter of 2012.” Although the NASAA Letter does not state explicitly that the SEC will consider postponing the Reporting Deadline in addition to the Registration Deadline, we do not believe that exempt reporting advisers would be required to file their initial reports with the SEC earlier than non-exempt advisers are required to register with the SEC. We therefore expect that the Reporting Deadline will also be postponed until the first quarter of 2012.

Note that the NASAA Letter does not constitute the kind of formal action that would be required, in effect, to waive the effective date of the private fund adviser registration provisions of the Dodd-Frank Act, and that an exercise of the SEC’s statutory exemptive authority is likely to be necessary. If the SEC issues an appropriate exemptive order postponing the Registration Deadline, however, the NASAA Letter indicates that investment advisers whose obligations to register are postponed will also be permitted to defer compliance with the substantive requirements applicable to registered investment advisers under the Advisers Act and related SEC regulations – such as the requirement to establish and maintain a code of ethics (Rule 204A-1), the advertising rule, which includes restrictions on the content of fund offering materials (Rule 206(4)-1), and custody requirements for client funds and securities (Rule 206(4)-2).

We will continue to monitor statements from the SEC with respect to investment adviser registration and reporting deadlines and will keep our clients informed of any developments.

This client memorandum does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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