HUSCH BLACKWELL

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: APRIL 12, 2011

SEC will issue rules regarding Investment Adviser registration under Dodd-Frank by July 21, 2011, but will likely delay registration until first quarter of 2012

On April 8, 2011, the associate director of the Division of Investment Management of the Securities and Exchange Commission (SEC) issued a letter to the North American Securities Administrators Association regarding the implementation of two provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) with respect to investment adviser registration.

The SEC explained that when it implements the Dodd-Frank Act-related rules regarding mid-sized advisers (certain advisers with $25 to $100 million of assets under management), the Investment Adviser Registration Depository system will require re-programming to accept transition filings by those advisers, which is anticipated to take until the end of the year to complete. As such, the SEC will consider extending the period in which mid-sized advisers must de-register with the SEC and register with one or more states until the first quarter of 2012. The SEC originally required these advisers to transition to state registration by October 19, 2011. See our white paper, Implementing Dodd-Frank: SEC Proposes Rules for "The Switch."

Next, for those advisers with fewer than 15 clients who have relied on the private adviser exemption of Section 203(b)(3) of the Investment Advisers Act of 1940, as amended (Advisers Act) (the exemption that was repealed by the Dodd-Frank Act—effective July 21, 2011), the SEC expects to adopt rules exempting advisers to venture capital and private funds by July 21, 2011. However, the SEC expects that advisers who do not qualify for the new registration exemptions will have until the first quarter of 2012 to register under the Advisers Act.

Private equity firms have not ended their fight to seek an exemption from registration under the Advisers Act. A consortium of private equity fund principals have sent comments to the SEC regarding such an exemption and U.S. Rep. Robert Hurt of Virginia has introduced legislation in the House of Representatives under the Small Business Capital Access And Job Preservation Act to repeal the provision of the Dodd-Frank Act requiring the registration of certain private equity fund managers. Any extension of the registration deadline discussed above would provide these firms additional time to seek repeal of the Dodd-Frank Act’s registration requirement.

What This Means to You

If you are a private or venture fund manager with fewer than 15 clients and previously relied on the exemption at the federal level, and you will not meet the conditions of either the new private fund adviser or venture fund adviser exemptions, you will need to register in the first quarter of 2012 rather than in 2011. If you are an investment adviser registered with the SEC with $25 to $100 million of assets under management and will need to switch to state registration because of the Dodd-Frank Act, you will not need to switch until the first quarter of 2012 (rather than October 2011 as initially proposed by the SEC).

Contact Info

For more information or assistance in understanding the Dodd-Frank Act and how it affects investment advisers, please contact your Husch Blackwell attorney.

Husch Blackwell LLP regularly publishes updates on industry trends and new developments in the law for our clients and friends. Please contact us if you would like to receive updates and newsletters, or request a printed copy.

