

SEC Registration For Non-U.S. Managers — It's Happening!

The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law today, requires managers of private funds, including non-U.S. fund managers with U.S. investors, to register with the SEC as investment advisers.

Today, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act” or the “Act”) into law. The Act requires managers of private (non-regulated) funds, including non-U.S. fund managers with U.S. investors, to register with the U.S. Securities and Exchange Commission (“SEC”) as investment advisers. There are exemptions that may benefit some non-U.S. firms, but these are very limited in scope, and most firms with U.S. investors will have to register with the SEC by no later than July 2011.

The three exemptions available to non-U.S. fund managers are:

- A “foreign private adviser” exemption that applies if the firm:
 - has no place of business in the U.S.,
 - has fewer than 15 U.S. investors in private funds, and
 - has less than US\$25m of commitments in aggregate attributable to US investors.

This exemption may be useful for some of the smallest firms, or those with very small amounts of commitments from U.S. investors.

- A new exemption that applies if the firm:
 - manages only private funds, being funds that rely on the §3(c)(1) (*100 or fewer investors*) or §3(c)(7) (*qualified purchasers only*) exemptions from registration under the U.S. Investment Company Act of 1940, and
 - has assets under management of less than US\$150m in aggregate.

This exemption may also benefit smaller fund managers. However, there is some doubt as to whether a foreign private adviser will be able to utilise the exemption unless the firm can demonstrate all its funds qualify as “private funds”.

- An exemption for “venture capital funds,” the scope of which is yet to be defined by the SEC, but which is likely to be limited.

It is likely that many European private equity firms will fall outside these exemptions, and thus will be required to register with the SEC. Although this sounds alarming, the obligations arising from SEC registration are similar in many respects to those already imposed on FSA authorised firms, and are generally less onerous than those included in the proposed EU Alternative Investment Fund Managers Directive (“AIFMD”). So, while this new obligation will inevitably give rise to additional costs and administrative burdens, many firms will find that this is manageable and does not cause fundamental business issues. However, firms that are currently unregulated in their home jurisdictions are likely to find the shift to regulated status more challenging, especially as the U.S. rules will come into effect quickly—much sooner than the AIFMD.

In any event, non-U.S. fund managers subject to the new SEC-registration requirements should begin preparing for registration well in advance of the July 2011 registration deadline, and larger managers may want to begin the planning process in autumn 2010 to provide sufficient planning and implementation time.

Please also see our [KirklandPEN](#) outlining additional effects that the Dodd-Frank Act will have on private fund managers and investors.

Should you have any questions about the matters addressed in this *KirklandPEN*, please contact the following Kirkland authors or your regular Kirkland contact.

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PENnotes

Kirkland & Ellis Private Fund Manager Advisers Act Registration Seminars

Please join Kirkland & Ellis at one of our Private Fund Manager Advisers Act Registration Seminars, chaired by partner Scott A. Moehrke, P.C. Panelists at the seminars will focus on how the Private Fund Investment Advisers Registration Act of 2010 will affect private fund managers and the steps private fund sponsors need to take to plan for SEC registration and operate as a registered adviser. The seminars will allow interactive dialogue with our panels and are designed to give practical, hands-on advice for private fund managers.

LOCATIONS

Chicago

Tuesday, September 14, 2010
8:30 a.m. CT

New York

Tuesday, September 21, 2010
8:30 a.m. ET

London

Tuesday, September 28, 2010
8:30 a.m. BST

San Francisco

Tuesday, October 5, 2010
8:30 a.m. PT

For more information, or to register to attend, please visit www.kirkland.com/pfmaar.

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