

SEC Registration: Practical Pointers for Non-U.S. Fund Managers

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Most non-U.S. fund managers with U.S. investors are required to be registered as investment advisers with the U.S. Securities and Exchange Commission (SEC) by 21 July 2011. In order to meet this deadline, a firm will need to submit the necessary forms by late April/early May 2011. The work required to complete registration can be substantial, so now is a good time to start thinking about whether this affects your firm and, if so, to start planning for registration.

Even if you don't have a U.S. office, you will be required to register if you have more than 15 U.S. investors or more than US\$25 million of commitments from U.S. investors in aggregate across all funds. There is an exemption for venture capital firms, but it is currently expected to benefit only those firms making early stage investments and not private equity firms more generally (the SEC is expected to clarify this exemption towards the end of the year).

The Advisers Act is broad enough to cover managers, advisers, sub-advisers and general partners, so a firm may need to register several entities within its structure. It may be possible to rely on SEC 'no action letters' to avoid registering certain general partner or sub-advisory entities, but there are pros and cons to this approach that need to be evaluated carefully in relation to individual structures.

In advance of registration, a firm should:

- Assemble all the information and documentation required for the application form (known as Form ADV).
- Review its fund documentation and PPMs for Advisers Act compliance, and consider with fund counsel whether any amendments are required.
- If already regulated, review its compliance policies and procedures for Advisers Act compliance, and "upgrade" them where necessary. If not currently regulated, the firm will need to develop and implement a full Advisers Act compliance programme.

Without advance planning, being a registered investment adviser can have unexpected adverse consequences, such as an obligation to file a publicly available U.S. GAAP audited balance sheet, or restrictions on changing ownership, voting rights or economics within the registered entity. In many cases, these consequences can be mitigated by amendments to fund documents or structural adjustments in advance of registration.

Kirkland's investment management group advises many U.S. private fund managers on SEC registration and compliance. Our attorneys have extensive experience of the U.S. and UK regulatory regimes coupled with an in-depth knowledge of private fund structures, making Kirkland uniquely placed to advise on the issues affecting European private equity firms. Our clients also benefit from annual compliance training for Chief Compliance Officers. For further information, please contact one of the authors or your regular Kirkland contact.

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