

## What are the Proposals for Advisers Act Registration for Private Fund Advisers and What is the Status?

There are currently two principal proposals pending in Congress that each would effectively eliminate the exemption from registration under the Investment Advisers Act of 1940 (the “Advisers Act”) used by many private fund advisers. On March 15, 2010, Senator Dodd, Chairman of the Banking Committee, proposed the “Restoring American Financial Stability Act of 2010” (the “Stability Act”), which includes the “Private Fund Investment Advisers Registration Act of 2010” (at Title IV) (the “Senate Proposal”). At the end of last year, on December 11, 2009, the House of Representatives approved “The Wall Street Reform and Consumer Protection Act” (H.R. 4173) by a vote of 223-202, which includes the “Private Fund Investment Advisers Registration Act of 2009” (at Title V) (the “House Bill”).

The Senate Proposal will next be further reviewed by Chairman Dodd’s Committee, a process that could

result in some changes. Following Committee consideration and a Committee recommendation to pass the Stability Act, the entire Senate will have to vote on the Stability Act (of which the Senate Proposal forms a part). Once passed by the Senate, the Stability Act will need to be reconciled with the House Bill. The resulting consensus legislation would have to be approved by Congress, following which it would be submitted to the President for signature and enactment into Law.

### Who would be required to register?

**House Bill and Senate Proposal.** All investment advisers to “private funds” (but not the funds themselves) would be required to register, subject to the exemptions described below. “Private funds” are funds that rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940.

### What types of investment advisers would be exempt?

HOUSE BILL	SENATE PROPOSAL
Advisers to private funds that have less than \$150 million of assets under management.*	Advisers to private equity funds.* The term “private equity fund” has not yet been defined.**
Advisers to venture capital funds.* The term “venture capital fund” has not yet been defined.	Advisers to venture capital funds. The term “venture capital fund” has not yet been defined.**
Advisers to small business investment companies.	Advisers to small business investment companies.
Non-US advisers, provided that they: (i) have no place of business in the US; (ii) have fewer than 15 US domiciled client funds and/or other US clients; (iii) have less than \$25 million of assets under management attributable to US clients; and (iv) do not advise US registered investment companies or business development companies.	Non-US advisers, provided that they: (i) have no place of business in the US; (ii) have fewer than 15 US domiciled clients; (iii) have less than \$25 million of assets under management attributable to US clients; and (iv) do not advise US registered investment companies or business development companies.

\* These advisers will nonetheless have to keep such records and provide to the SEC such reports as the SEC determines.

\*\* Subsequent amendments to the Senate Proposal would, if adopted, eliminate these exemptions.

## What are the consequences of registration?

The Advisers Act requires, among other things, the implementation of a comprehensive compliance program, the adoption of a code of ethics and an insider trading policy, compliance with certain custody procedures, advertising restrictions and document retention obligations, and the disclosure and reporting of specified information to the SEC on Form ADV. It also subjects registrants to SEC examinations.

## Would there be any additional disclosure and reporting requirements?

**House Bill and Senate Proposal.** The SEC would be given the power to require any registered investment adviser to maintain additional records and to file reports with the SEC, including information about: (i) the amount of assets under management; (ii) the use of leverage (including off-balance sheet leverage); (iii) counterparty credit risk exposure; (iv) trading and investment positions; and (v) trading practices.

**Additional Requirements in the Senate Proposal.** Would require the maintenance of records and disclosure to the SEC regarding: (i) valuation policies and practices of a fund; (ii) types of assets

held; and (iii) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors.

## Change of Asset Threshold for Registration Under the Senate Proposal

The Senate Proposal would change the threshold under which investment advisers are generally prohibited from registering with the SEC from \$25 million of assets under management to \$100 million of assets under management. The House Bill does not contain a similar provision and leaves the registration threshold unchanged at \$25 million.

## Adjustment of Accredited Investor Standard for Inflation under the Senate Proposal

The Senate Proposal would increase the financial threshold for accredited investor status by subjecting the current thresholds to adjustments for inflation.

## By what date would investment advisers subject to registration have to register?

**House Bill and Senate Proposal.** One year after the date of enactment into law.

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