

Status of Advisers Act Registration for Private Fund Advisers

What is the Registration Act?

The Private Fund Investment Advisers Registration Act of 2009 (the Registration Act) would eliminate the exemption from registration under the Investment Advisers Act of 1940 (the “Advisers Act”) used by many private fund advisers.

The Registration Act has not yet become law. What is the status and what is left to be done before it becomes law?

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 Registration Act (at Title V). In order for the bill to become law, the Senate must first take action on this or similar legislation that must also be acceptable to the House. Following agreement by both chambers of Congress, the agreed upon bill can then be presented to the President for signature.

Who would be required to register under the Registration Act?

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?

- Advisers to private funds that have less than \$150 million of assets under management.*
- Advisers to venture capital funds.* The term “venture capital funds” has not yet been defined.
- 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.

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

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 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 under the Registration Act?

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.

By what date would investment advisers subject to the Registration Act have to register?

One year after the date of the enactment of the Registration Act.

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