DechertOnPoint

July 2011 / Issue 9

A legal update from Dechert's Financial Services Group

SEC Adopts Final Rules Regarding Exemptions from Investment Adviser Registration Applicable to Non-US Investment Advisers and Amends Form ADV

The Securities and Exchange Commission ("SEC") has adopted final rules under the US Investment Advisers Act of 1940, as amended ("Advisers Act"), that are designed to implement and give effect to the provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] The final rules, adopted on 22 June 2011 by the SEC ("Final Rules"), among other things: (i) establish new exemptions from Advisers Act registration and reporting requirements for certain advisers; (ii) extend the compliance date for registration of certain previously unregistered advisers until 30 March 2012; and (iii) amend Form ADV.

Background

Effective 21 July 2011, the Dodd-Frank Act repealed the "private adviser exemption" on which many non-US advisers[2] have relied in order to avoid registration with the SEC under the Advisers Act. The private adviser exemption has historically allowed a non-US adviser to avoid SEC registration if, among other requirements, the non-US adviser did not hold itself out to the public in the United States as an investment adviser and had fewer than 15 US clients during the preceding 12 months. A private fund typically qualified as a single client for purposes of the private adviser exemption. Thus, non-US advisers to private funds avoided registration under the Advisers Act by limiting themselves to advising a maximum of 14 private funds organised in the United States and other US client accounts. With the elimination of the private adviser exemption, non-US advisers to one or more US clients or with one or more US investors in any fund they advise generally will be required to register with the SEC, unless they can rely on another exemption.

The Dodd-Frank Act offers three new exemptions that are available to certain advisers that previously relied on the private adviser exemption. This *DechertOnPoint* focuses on the substantive obligations and reporting requirements for non-US advisers under two of those new exemptions: the "foreign private adviser exemption" and the "private fund adviser exemption".

1 The Final Rules were presented in two releases: *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Release No. IA-3221 (June 22, 2011) ("Implementing Release"), *available at* www.sec.gov/rules/final/2011/ia-3221.pdf and *Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers*, Release No. IA-3222 (June 22, 2011) ("Exemptions Release"), *available at* www.sec.gov/rules/final/2011/ia-3222.pdf.

2 Because the Advisers Act and the rules thereunder do not differentiate between them, the term "non-US adviser" should be read to include both investment managers with discretionary authority over the portfolios they manage and investment advisers without discretionary authority in respect of the portfolios they advise.

Foreign Private Adviser Exemption

Terms of Exemption

The first new exemption from registration for non-US advisers is an exemption for so-called "foreign private advisers" (the "Foreign Private Adviser Exemption"). Non-US advisers relying on the Foreign Private Adviser Exemption will be exempt from all registration, reporting and recordkeeping requirements of the Advisers Act but will continue to be subject to the anti-fraud rules and pay-to-play rules under the Advisers Act. Because these are the same requirements as applied to advisers previously relying on the former private adviser exemption, non-US advisers able to rely on the Foreign Private Adviser Exemption will experience little in the way of substantive change as result of the repeal of the prior exemption.

The Dodd-Frank Act defines a "foreign private adviser" as any investment adviser that, among other requirements:

- has no place of business in the United States;[3]
- has, in total, fewer than 15 US clients and US investors in private funds (regardless of where the fund is domiciled) advised by the adviser;
- has aggregate "Regulatory AUM" (as defined below) of less than $25 million attributable to US clients and US investors in private funds advised by the adviser;
- does not hold itself out generally to the public in the United States as an investment adviser; and
- does not advise US registered investment companies or US registered business development companies.

Under the Final Rules, a "private fund" is any issuer that would be an investment company under the Investment Company Act of 1940, as amended (the "1940 Act"), but for the application of Section 3(c)(1) or Section 3(c)(7) of the 1940 Act.[4] This includes hedge funds, UCITS, OEICs and other types of funds organised outside the United States if they have US investors or are offered to US investors.

The Final Rules define certain other key terms used by Congress in the Dodd-Frank Act by generally using familiar rules and concepts already in use under the federal securities laws. For instance, the manner in which an adviser must count "US clients" and "US investors" refers to concepts such as how a non-US adviser would count the number of US beneficial owners for purposes of the 100 person limit in Section 3(c)(1) of the 1940 Act or limiting US investors to "qualified purchasers" for purposes of Section 3(c)(7) of the 1940 Act.[5] Specifically, US clients and US investors are, subject to certain exceptions, to be identified based on the definition of "US person" in Regulation S under the Securities Act of 1933, as amended.[6]

Because the concept of being "in the United States" is integral to the Foreign Private Adviser Exemption, the Final Rules codify the existing interpretation that a person is only considered "in the United States" if such person is deemed to be in the United States at the time the person becomes a client of an adviser or, in the case of an investor in a private fund, each

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3 Under the Final Rules, a "place of business" is "any office where the investment adviser regularly provides advisory services, solicits, meets with, or otherwise communicates with clients, and any location held out to the public as a place where the adviser conducts any such activities." Whether a non-US adviser has a place of business in the United States for these purposes will depend on the facts and circumstances.

4 Issuers that qualify for other exceptions to the definition of investment company in addition to Section 3(c)(1) or 3(c)(7) will not be disqualified from being qualifying private funds, but if an adviser elects to treat such a fund as a private fund for this purpose, the adviser must treat such fund as a private fund for all purposes under the Advisers Act.

5 However, unlike the counting regime under Section 3(c)(1) of the 1940 Act, a beneficial owner of short-term paper issued by a private fund is an "investor" and must be counted for purposes of the 15 client and investor limit. In addition, the Final Rules permit advisers not to count "knowledgeable employees" (as defined in Rule 3c-5 under the 1940 Act) as investors for this purpose. Nonetheless, the assets of "knowledgeable employees" must be included for purposes of calculating "Regulatory AUM". In addition, and contrary to previous practice, the Final Rules require an adviser to count as a client any person who receives investment advice regardless of whether the adviser receives compensation for such service. As a result, advisory services provided gratis and/or to knowledgeable employees may have the effect of altering an adviser's registration status under the Advisers Act.

6 One such exception is that, even though not considered a US person within the definition under Regulation S, any discretionary account or similar account that is held for the benefit of a person in the United States by a dealer or other professional fiduciary is to be considered "in the United States" if the dealer or professional fiduciary is a related person of the investment adviser seeking to be exempt and is not organised, incorporated or (if an individual) resident in the United States.

time the investor acquires securities of the fund. Advisers may treat an investor as being not "in the United States" if the adviser has a reasonable belief that an investor was not in the United States at the relevant measurement points (i.e., at the time the investor becomes a client or, in the case of a fund, each time an investor makes an investment).

Additionally, the Exemptions Release sets forth circumstances where an adviser must "look-through" certain structures and count as US clients and US investors for purposes of the 15-person threshold: (i) each beneficial owner of an investor that is a nominee account; (ii) each US investor in a feeder fund, if the feeder fund is formed or operated for the purpose of investing in the master fund; and (iii) each holder of a total return swap or other instrument that effectively transfers the risk of investing in the private fund to the holder.[7]

Foreign Private Adviser Exemption Likely to be of Limited Use

While attractive due to the limited requirements imposed on advisers relying on the exemption, the Foreign Private Adviser Exemption is quite narrow and likely will be unavailable to most non-US advisers that generally accept US persons as clients or investors in private funds. Each of the strict conditions of the Foreign Private Adviser Exemption must be met in order for an adviser to rely on the exemption. As a result, a foreign private adviser must monitor and limit both (i) the number of clients and investors in the United States and (ii) the amount of assets attributable to such clients and investors.[8]

The limit on assets attributable to clients or investors in the United States may present particular difficulty for a non-US adviser because the $25 million limit does not distinguish between a client's or investor's initial commitment of capital to the adviser's management and subsequent increases in such capital resulting from, among other things, an adviser's successful asset management. While Congress provided the SEC with the option of increasing the $25 million AUM threshold to "such higher amount as the [SEC] may, by rule, deem appropriate," the SEC did not increase the threshold so that the Foreign Private Adviser Exemption may be of greater use. Therefore, it is likely that the Foreign Private Adviser Exemption will be of most use not to non-US advisers that seek US business, but instead to non-US advisers who service US clients or investors only as an accommodation.

Private Fund Adviser Exemption

Terms of Exemption

A second exemption provided by the Dodd-Frank Act exempts from registration any adviser that acts solely as an adviser to certain private funds, provided such adviser's "Regulatory AUM" (as described further below) in the United States are less than $150 million ("Private Fund Adviser Exemption"). The Final Rules require non-US advisers relying on this exemption to count only "qualifying private fund" assets that are managed from a place of business within the United States.[9]

Unlike the "Foreign Private Adviser Exemption" discussed above, non-US advisers relying on the "Private Fund Advisers Exemption" will be subject to certain SEC filing requirements and recordkeeping obligations. (See "Reporting Requirements for Certain Exempt Advisers" below.)

Under the Private Fund Adviser Exemption, a non-US adviser: (i) would be permitted to manage an unlimited amount of qualifying private fund assets provided its principal office and place of business is outside the United States and it does not manage

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7 In response to comments received on the proposing release, the Exemptions Release indicates that an adviser is required to "look-through" only those structures that the adviser knows, or should have known, introduce additional indirect beneficial owners to a fund. Thus, an adviser is required to treat as an investor only those persons the adviser reasonably believes (based upon the exercise of reasonable due diligence) are investors, and the adviser's reliance on the Foreign Private Adviser Exemption would not be jeopardised as a result of the unknown actions of third-party investors, for example, where the adviser had no knowledge of persons having an indirect interest in a fund or that a structured product had been created.

8 The Exemptions Release is silent as to whether the $25 million threshold for assets attributable to a US person should be monitored on a continuous basis or whether it should be measured annually. Based on the guidance provided for the annual threshold measurement for the Private Fund Adviser Exemption and the instructions in the Amended Form ADV relating to the annual measurement of Regulatory AUM, it may be reasonable for an adviser relying on the Foreign Private Adviser Exemption to only measure its AUM on an annual basis for purposes of complying with the exemption. The number of clients and investors threshold, however, appears to be continuous.

9 A "qualifying private fund" is defined as any private fund that is not registered under the 1940 Act and has not elected to be treated as a business development company.

any assets for US persons other than qualifying private funds and (ii) would count only those qualifying private fund assets that are managed at a place of business in the United States toward the $150 million "Regulatory AUM" limit. Thus, non-US advisers that manage more than $25 million in assets for US persons (the amount allowed under the Foreign Private Adviser Exemption (as discussed above)) will be required to register with the SEC if any US client account is not a qualifying private fund, even if the non-US adviser does not have a place of business in the United States.[10] Such an adviser will be unable to qualify for either the Private Fund Adviser Exemption or the Foreign Private Adviser Exemption.[11]

Under the Private Fund Adviser Exemption the number of US investors in private funds advised by the non-US adviser and the assets under management attributable to such US investors are not relevant factors.

Whether a non-US adviser is "managing assets" at a place of business in the United States will depend on the facts and circumstances. Under the Advisers Act, "assets under management" are the securities portfolios for which an adviser provides "continuous and regular supervisory or management services". Under the Form ADV instructions, an adviser provides "continuous and regular supervisory or management services" with respect to an account if it has either discretionary authority over the account or "ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, [it is] responsible for arranging or effecting the purchase or sale." In the Exemptions Release, the SEC notes that it would not view "providing research or conducting due diligence to be 'continuous and regular supervisory or management services' at a US place of business if a person outside of the United States makes independent investment decisions and implements those decisions."

Practical Applicability of Exemption

A non-US adviser would not be precluded from relying on the Private Fund Adviser Exemption by maintaining an office or place of business in the United States, provided that its principal place of business remains in a non-US jurisdiction. However, given the global operations of many large advisers, advisers with a principal place of business outside the United States should be careful to limit any activities that occur within the United States such that no US office is deemed to be (i) its principal office or (ii) a place of business at which assets above the permissible limit or clients other than private funds are managed.

Advisers relying on the Private Fund Adviser Exemption are required to file certain information with the SEC and remain subject to limited substantive requirements under the Advisers Act as well as SEC examination authority. In this regard, the SEC's treatment of non-US advisers is similar to the current "Regulation Lite"[12] approach, under which a non-US adviser registered with the SEC has been able to avoid many of the substantive provisions of the Advisers Act with respect to its management of non-US client accounts. Under the Final Rules, a non-US adviser can rely on the Private Fund Adviser Exemption, while managing any number of US-domiciled qualifying private funds (but not other US clients) together with any number and kind of clients that are not US persons, provided that: (i) *without regard to where management activities take place*, every client that is a US person is a qualifying private fund; and (ii) *with respect to assets managed at a place of business in the United States*, all such assets are attributable to qualifying private funds and the total value of such assets does not exceed $150 million. As a result, this exemption may be available to non-US advisers that do not service US clients other than private funds, but are unable to meet the more restrictive Foreign Private Adviser Exemption (discussed above) because, for

10 Depending on the facts and circumstances, private funds with only a single investor may or may not be considered a private fund.

11 Advisers seeking to rely on either the Private Fund Adviser Exemption or the Foreign Private Adviser Exemption must fully meet each element of the respective exemption. Advisers may not "mix-and-match" elements of the exemptions.

12 *See ABA Subcommittee on Private Investment Companies* (pub. avail. Aug. 19, 2006). Regulation Lite requires non-US advisers to maintain records (and upon request provide such records to the SEC) with respect to non-US funds and clients and subjects a non-US adviser's non-US client activities to inspection, without subjecting such non-US client activities to other provisions of the Advisers Act. Although the SEC did not withdraw Regulation Lite, its usefulness is now limited given that most advisers that previously relied upon Regulation Lite will be able to rely on the Private Fund Adviser Exemption or Foreign Private Adviser Exemption. Additionally, the Private Fund Adviser Exemption allows a non-US adviser to advise US-domiciled private funds, which is not possible under Regulation Lite.

example, the adviser has significant investments by US persons in an offshore fund.

Regulatory AUM

Given the relevance of a non-US adviser's assets under management with respect to the Foreign Private Adviser Exemption and the Private Fund Adviser Exemption, the Final Rules require every adviser to calculate AUM for regulatory purposes ("Regulatory AUM") using a new uniform methodology. A registered adviser's Regulatory AUM will be based on the gross value (i.e., without deducting liabilities such as accrued fees and expenses or the amount of any borrowing)[13] of the securities portfolios for which the adviser provides continuous and regular supervisory or management services (each an "account"). The calculation must include the gross value of proprietary accounts, accounts managed without receiving compensation, and accounts of non-US clients, each of which an adviser may currently exclude in calculating its AUM. Regulatory AUM also includes: (i) the value of any private fund over which an adviser exercises continuous and regular supervisory or management services with the underlying assets values at a fair value (as opposed to the cost basis); [14] and (ii) the amount of any uncalled capital commitments of any private fund (a new concept intended to capture, among others, private equity fund managers); and (iii) the value of any accounts managed for knowledgeable employees.

A non-US adviser calculating its Regulatory AUM for purposes of the meeting the requirements of the Foreign Private Adviser Exemption would only include that portion of the Regulatory AUM attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser.

Non-US advisers seeking to rely on the Private Fund Adviser Exemption are required to calculate their compliance with the $150 million threshold based on their Regulatory AUM attributable to qualifying private funds they manage at a place of business in the United States.

13 The calculation of Regulatory AUM on a gross basis does not preclude an adviser from using a net assets under management calculation for marketing and other purposes.

14 The fair value of a private fund's assets may be calculated in accordance with generally accepted accounting principles ("GAAP"), another international accounting standard or some other fair valuation standard, including any such procedure identified in the private fund's governing documents.

Participating Affiliates

The Exemptions Release reiterates the SEC's position that it would treat as a single adviser two or more affiliated advisers that are separately organised but operationally integrated, which could require one or more of such advisers to register with the SEC. The determination of whether affiliates should be integrated, even if such affiliates are established as legally separate entities, is based on the facts and circumstances surrounding the operational relationship between the affiliates as described in the SEC's previous no-action guidance in *Richard Ellis, Inc*.[15] While the SEC did not provide further guidance on the *Richard Ellis* factors, which are largely considered outdated and impractical for most advisers given their rigidity, the SEC confirmed the applicability of the established alternative to the *Richard Ellis* factors – known as the participating affiliate doctrine – under which the SEC would not recommend enforcement action against the non-US unregistered affiliate of a registered adviser even if the affiliates share personnel and resources and provide certain services through the non-US unregistered affiliate.[16] The non-US unregistered affiliate, often called a "participating affiliate", would not be subject to the substantive provisions of the Advisers Act with respect to its relationships with its non-US clients, provided the limitations in the Participating Affiliate Letters are observed. The Exemptions Release also states, however, that reliance on a "participating affiliate" arrangement prevents the participating affiliate from having any US clients other than through the registered affiliate.

15 *Richard Ellis, Inc*. (pub. avail. Sept. 17, 1981). Under *Richard Ellis*, an advisory entity would avoid integration with its parent company where the subsidiary: (1) is adequately capitalised; (2) has a board or similar governance buffer the majority of the members of which are independent of the parent; (3) has advisory personnel who are not engaged in the parent's advisory business; (4) makes investment decisions independently from the parent and does not rely solely on information provided by the parent; and (5) keeps its investment advice confidential until communicated with the client. It would appear that advisers meeting these factors would be considered separate. However, the Exemptions Release does not indicate that the failure to meet any particular factor precludes a separateness determination.

16 *See, e.g., Royal Bank of Canada* (pub. avail. June 3, 1998), *ABN AMRO Bank, N.V.* (pub. avail. Jul. 7, 1997); *Murray Johnstone Holdings Limited* (pub. avail. Oct. 7, 1994); *Kleinwort Benson Investment Management Limited* (pub. avail. Dec. 15, 1993); *Mercury Asset Management plc* (pub. avail. Apr. 16, 1993) and *Uniao de Bancos de Brasileiros S.A.* (pub. avail. Jul. 28, 1992) (collectively, the "Participating Affiliate Letters").

The SEC expressed a willingness in the Exemptions Release to further elaborate on the participating affiliate doctrine in the context of the new Foreign Private Adviser Exemption and the Private Fund Adviser Exemption via the no-action letter process.[17]

Amended Form ADV

The Final Rules also adopt amendments to Form ADV Part 1 ("Amended Form ADV") that significantly revise the Form in a manner that affects all registered advisers (both existing registrations and new ones), as well as Exempt Reporting Advisers (as defined below). The Amended Form ADV greatly expands the reporting information required of registered advisers by requiring public disclosure of information regarding: (i) the private funds they advise; (ii) their advisory businesses and related conflicts of interests; and (iii) their non-advisory activities and financial industry affiliations.[18]

With respect to each private fund an adviser manages, the Amended Form ADV will require basic organisational, operational and investment information about the private funds, such as information regarding: (i) the gross asset value of the fund; (ii) the type of investment strategy employed by the fund (to be identified from a list of available options); (iii) the number of beneficial owners of the fund and the percentage of the fund beneficially owned by the adviser and its related persons, funds-of-funds and non-US persons; (iv) the minimum investment requirements of the fund; (v) whether clients are solicited to invest in the fund and what percentage of the adviser's other clients are invested in the fund; and (vi) the identity, location, and other information regarding certain "gatekeeper" service providers of the fund (i.e., auditors, prime brokers, custodians, administrators, and marketers). These reporting requirements would apply to non-US advisers required to file an Amended Form ADV, but the reporting requirements with respect to such advisers would apply only to private funds that are organised in the United States or are offered to, or owned by, US persons.

The advisory business information required by the Amended Form ADV will specifically require an adviser to disclose: (i) the approximate number of clients; (ii) the types of clients it advises and the approximate amount of its Regulatory AUM attributable to each type of client; (iii) the percentage of clients that are not US persons; (iv) the specific number of investment personnel and their advisory activities; (v) the types of advisory services it provides; and (vi) its business practices that may present conflicts of interest, such as the use of affiliated brokers, soft dollar arrangements, and compensation for client referrals.

Reporting Requirements for Certain Exempt Advisers

The Final Rules require Exempt Reporting Advisers to submit, and update at least annually, certain reports on Part 1 of Amended Form ADV to the SEC disclosing organisational and operational information, including:

- basic identifying information, such as name, address, contact information, form of organisation, and who controls the adviser;
- other business activities engaged in by the adviser and its affiliates, and information about potential conflicts of interests, as well as the detailed private fund reporting described above;[19] and
- the disciplinary history of the adviser and certain of its related persons and personnel.

Exempt Reporting Advisers are not required, under the Final Rules, to prepare, file or deliver to clients the narrative brochure required of registered advisers by Part 2 of the Form ADV, although the SEC did reserve the right to require it in the future.

In connection with these requirements, the Amended Form ADV will serve as a registration form for registered advisers and a reporting form for Exempt Reporting Advisers. The information reported by Exempt Reporting Advisers will be (i) publicly available and (ii) used by the SEC to

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17 In addition, the Exemptions Release did not withdraw prior no-action guidance that allowed a special purpose vehicle to serve as the general partner or managing member of a private fund in certain circumstances in order to avoid registration where the affiliated investment adviser was so registered.

18 The new disclosure requirements in the Amended Form ADV are separate from the recently proposed Form PF, which would require registered advisers (but not Exempt Reporting Advisers) that advise one or more private funds to periodically file information with the SEC. The Form PF was proposed by the SEC on 25 January 2011, and its final form is still under consideration.

19 While an Exempt Reporting Adviser must provide information about the US and non-US private funds that have US investors (as discussed in detail above), an Exempt Reporting Adviser would not be required to report on non-US private funds that do not have (and have not been offered to) any US investors.

determine whether the activities of an Exempt Reporting Adviser warrant further SEC attention, as these advisers would be subject to examination by the SEC (although the SEC has indicated that it does not expect to subject Exempt Reporting Advisers to routine examinations).

Exempt Reporting Advisers will file the Amended Form ADV with the SEC and be subject to the SEC's nominal filing fees. Exempt Reporting Advisers will not be required to complete the entire Amended Form ADV (as described above), but will be required to file an annual updating amendment generally within 90 days of the end of the adviser's fiscal year. Exempt Reporting Advisers must file their initial reports on the Amended Form ADV by 30 March 2012.

Exempt Reporting Advisers also will be subject to certain recordkeeping rules to be determined by the SEC. The SEC has indicated that it will propose such recordkeeping rules in a separate release. Importantly, Exempt Reporting Advisers will be subject to the anti-fraud provisions of the Advisers Act and certain (but not all) of the rules thereunder and will be subject to examination by the SEC.

New Registration Threshold and Timing of Registration

The Final Rules require that each adviser that is registered with the SEC as of January 1, 2012, file an Amended Form ADV no later than 30 March 2012.

An unregistered adviser that, as of 20 July 2011, was relying on the private adviser exemption and must now register with the SEC, must do so by 30 March 2012, and, in the meantime, must continue to comply with the terms of private adviser exemption (i.e., has not had 15 or more clients during the prior 12 month period, does not hold itself out to the public as an investment adviser, and does not advise a registered investment co0mpany or business development company). Advisers whose business or marketing activities change before 30 March will need to consider whether they need to register sooner than 30 March 2012.

It may take up to 45 days for the SEC to approve an initial application for registration. Therefore, such advisers should file a complete application for registration (Part 1 and Part 2 (the narrative brochure) of the Amended Form ADV) with the SEC no later than **14 February 2012**. Exempt Reporting Advisers must file their first reports on the Amended Form ADV by 30 March 2012.

Earlier registration may be required in order to accept additional clients or engage in broader marketing efforts. Additionally, the SEC noted that these new exemptions are not mandatory and, therefore, an adviser may register with the SEC if it meets the other registration criteria, even if such adviser may rely on an exemption.

Conclusion

The Final Rules will significantly impact many non-US advisers, whether such advisers are currently registered with the SEC, facing SEC registration as a result of the elimination of the private adviser exemption. Advisers are encouraged to review the new exemptions and, if applicable, the requirements of the Amended Form ADV to evaluate if and how the changes in the regulatory landscape will affect their day-to-day operations and annual reporting requirements.

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APPENDIX A

Applicability of Advisers Act to Different Types of Advisers

The Dodd-Frank Act's repeal of the private adviser exemption will require many advisers who were previously unregistered to either: (i) register with the SEC; (ii) qualify as an Exempt Reporting Adviser; or (iii) qualify for the Foreign Private Adviser Exemption. Regardless of which category an adviser falls into, it is important for such adviser to understand the applicable duties and obligations. The chart below identifies the requirements of the Advisers Act as applicable to the various categories of advisers created by the Dodd-Frank Act.

	Registered Advisers	Exempt Reporting Advisers	Foreign Private Advisers
Form ADV, Part 1	X	X (Limited)	
Rule 204-3 (Form ADV, Part 2)	X		
Form PF (as proposed)	X		
Subject to Examination	X	X (Limited)	
Rule 204-2 Books and Records Rule	X	X (to be proposed in further rulemaking)	
Anti-Fraud Provisions (Section 206)	X	X	X
Rule 206(4)-1 Advertising Rule	X		
Rule 206(4)-2 Custody Rule	X		
Rule 206(4)-3 Cash Solicitation Rule	X		
Rule 206(4)-5 Pay-to-Play Rule	X	X	X
Rule 206(4)-6 Proxy Voting	X		
Rule 206(4)-7 Compliance Procedures and Practices	X		
Rule 206(4)-8 Pooled Investment Vehicles	X	X	X

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For more information, please contact the author, one of the attorneys listed, or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/financial_services.

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