

## SBIC Exemption from SEC Registration under Dodd-Frank Act

Written by Robert G. Sawyer

July 18, 2011

The SEC's final rules on the implementation of SEC registration requirements for investment advisers under the Investment Advisers Act of 1940, as recently modified by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), were published in the Federal Register and will become effective July 21, 2011 (the "Rules"). The Rules define who will be exempt from SEC registration in terms of the venture capital exemption and the exemption for private funds with less than \$150 million in assets under management.

### SBIC Exemption

Advisers whose *sole* clients are one or more Small Business Investment Companies ("SBICs"), regardless of the amount of their assets under management, are exempt from SEC registration as mandated by the Dodd-Frank Act. Although the SBIC exemption was not captured under the Rules (the exemption is directly stated in the Dodd-Frank Act), the SEC's release accompanying the Rules provides guidance that is relevant to the application of the SBIC exemption.

### Use of Exemptions

It is important to note, absent further guidance from the SEC, that the Rules do not allow an investment adviser to combine multiple exemptions in order to avoid registration. As an example, an investment adviser solely to SBICs has no limit to the assets under management it is allowed to manage without SEC registration. Likewise, an investment adviser solely to venture capital funds (as such funds are defined by the Rules) has no limit to the assets under management it is allowed to manage without SEC registration. However, if an investment adviser manages both a venture fund and a SBIC (that is not a venture fund) then the investment adviser would not be able to rely on either the SBIC exemption or the venture capital exemption, and would instead need to rely on another exemption for an adviser to private funds with less than \$150 million in assets under management. For purposes of this \$150 million threshold, assets under management include the assets of a venture fund or SBIC, and are expected to be calculated as the gross asset value of the portfolio under management of the adviser (at fair market value and including the value of assets financed with leverage, without deduction for such leverage), plus the amount of any remaining unfunded commitments to any fund under the adviser's management.

#### RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)
- [Professional Services](#)

#### RELATED PRACTICES

- [SBIC](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

