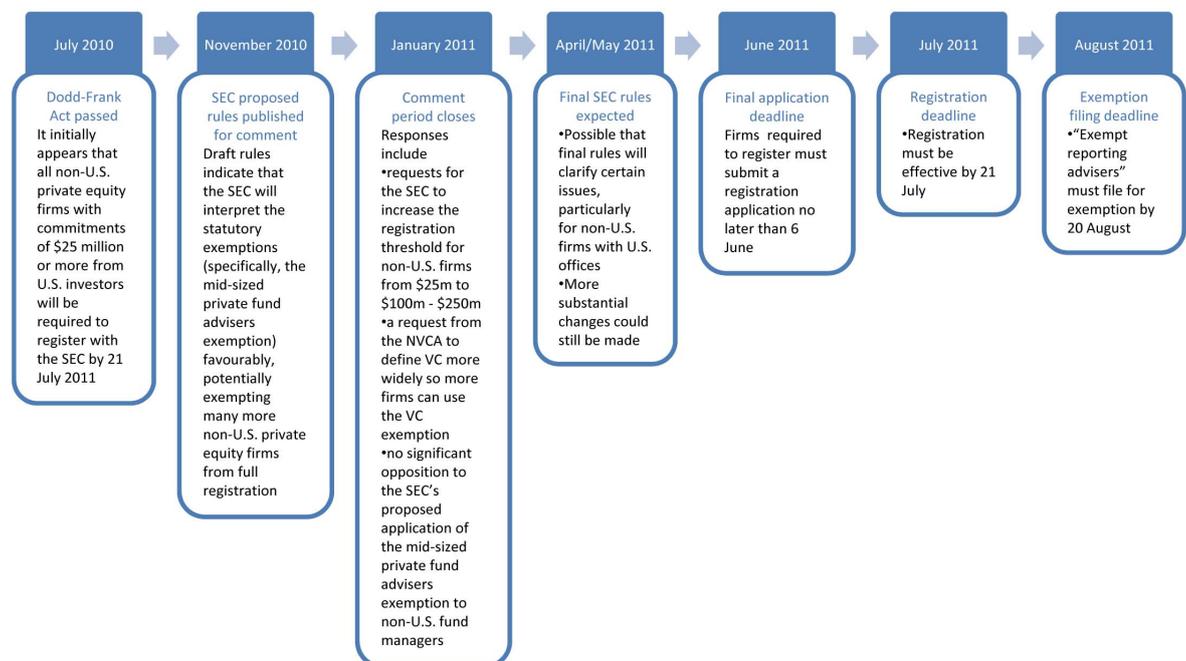


SEC Registration Update

The final Dodd-Frank Act rules are not expected to be published until April 2011, but it currently appears that only firms with U.S. offices will be required to register with the SEC.

The implementation of the U.S. Dodd-Frank Act has been something of a roller coaster ride for non-U.S. private equity firms. When the Dodd-Frank Act was passed in July 2010, it seemed that any non-U.S. firm with total commitments of US\$25 million or more from U.S. investors would be required to register with the SEC by 21 July 2011. Then, in November 2010, the SEC published draft rules indicating that it will interpret the “mid-sized private fund advisers” exemption in a way favourable to non-U.S. firms, exempting all firms with no U.S. office from full registration.

The position will become certain only when the SEC publishes its final rules. These are expected no earlier than April, which leaves relatively little preparation time for any firm unexpectedly required to register, as reflected in the timeline below.



At present, it seems that non-U.S. firms will likely fall into one of four broad categories under the proposed rules:

Firms exempt under the Foreign Private Advisers Exemption

These firms have no place of business in the U.S., fewer than 15 U.S. investors (and other U.S. clients, if any) and less than US\$25m of commitments in aggregate attributable to U.S. investors (and other U.S. clients, if any).

Firms that are able to rely on the Foreign Private Advisers Exemption would not be required to register with the SEC and would have no other filing or compliance obligations.

A number of consultation respondents asked the SEC to exercise its discretion to increase the US\$25 million threshold to between US\$100 million and US\$250 million. There is no indication at present that the SEC intends to do so. However, firms with less than US\$100 million of commitments from U.S. investors may want to wait and see whether the SEC's final rules increase the scope of this exemption before preparing to file for the Mid-Sized Private Fund Advisers Exemption or, if necessary, full registration.

Firms exempt under the Mid-Sized Private Fund Advisers Exemption

These firms advise only private funds (broadly meaning funds that have been offered to U.S. investors on a

private placement basis) and have fund assets under management (AUM) in the U.S. of less than US\$150 million.

Where a firm has no U.S. office or place of business, the SEC's proposed rules indicate that the firm will be treated as having no assets under management in the U.S. Therefore, the firm will be exempt from registration. However, the position will not become certain until the final SEC rules are published.

If the firm has a U.S. office, the availability of the exemption will depend on the extent to which (if at all) the firm's AUM will be treated as managed "in the U.S.", and it is recommended that firms seek individual advice on this point.

Firms relying on this exemption will be "Exempt Reporting Advisers" (ERAs). Although exempt from SEC registration, ERAs are required to claim exemption from registration by filing a Form ADV Part 1 with the SEC by 20 August 2011. This filing must be updated annually and whenever a material change occurs, and is publicly available on the SEC website.

Firms exempt under the Venture Capital Fund Advisers Exemption

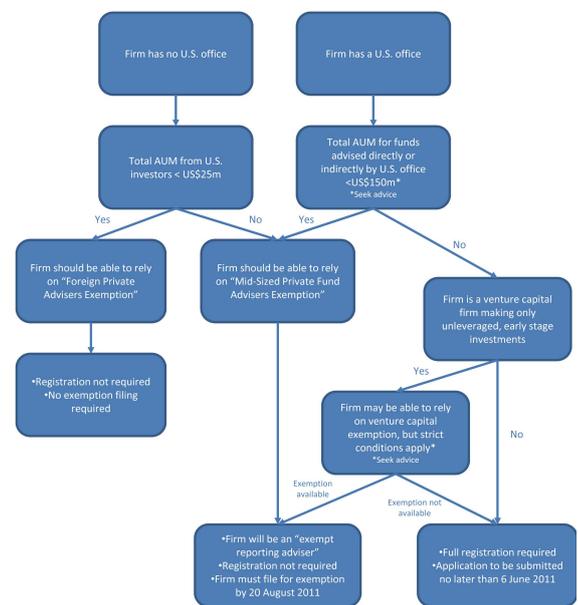
If a firm is not eligible for the Mid-Sized Private Fund Advisers Exemption but makes only early stage, unleveraged investments, it may be possible for the firm to rely on the Venture Capital Fund Advisers Exemption. The SEC's proposed definition of 'venture capital fund' is narrow, so even firms that would ordinarily be considered as 'venture firms' may well struggle to satisfy all the necessary conditions. However, it is possible that the final definition may

be more favourable. Firms relying on this exemption will also be ERAs and so will also need to claim exemption by filing Form ADV Part 1 with the SEC.

Firms required to register with the SEC

A number of firms will not be eligible for any exemption and will be required to register with the SEC. Any such firm should start preparing now, as the application must be filed no later than 6 June 2011 (and ideally by mid-May) and the firm must have a full SEC compliance programme in place at the time registration becomes effective.

The chart below is a high level summary of the exemptions, their availability, and certain related timing requirements.



Should you have any questions about the matters addressed in this *KirklandPEN*, please contact the following Kirkland authors or your regular Kirkland contact.

Scott A. Moehrke, P.C.
<http://www.kirkland.com/smoehrke>
 +312-862-2199

Lisa Cawley
<http://www.kirkland.com/lcawley>
 +44 20 7469 2140

Stephanie Biggs
<http://www.kirkland.com/sbiggs>
 +44 20 7469 2235

Kirkland & Ellis International LLP
 30 St Mary Axe
 London, EC3A 8AF
 United Kingdom

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