

April 11, 2011

On Friday, April 8, 2011, the Securities and Exchange Commission (the "SEC") released a letter to the North American Securities Administrators Association which provides guidance that the SEC will postpone the release of final rules defining "venture capital funds" and other "private fund advisers" for purposes of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). The anticipated date for the final rules is "in advance of" July 21, 2011. The SEC rulemaking calendar has been updated to show a May-July timeframe.

The letter also provides the SEC staff's guidance that in connection with the approval of the final rules, the SEC is expected to consider extending the deadline for registration and other compliance for advisers newly subject to the Investment Advisers Act of 1940 (the "Advisers Act") until the first quarter of 2012.

Although not addressed directly in the letter, the timing of the final rules requiring exempt fund sponsors to report certain information on Form ADV (the so-called "exempt reporting advisers" rules) also appears to be postponed until sometime before July 21.

The extension of the registration and compliance deadline to 2012 is helpful for advisers to private funds that expect to register under the Adviser Act. However, the postponement of the SEC's rulemaking continues to leave advisers to private funds that expect to rely on the venture capital or private fund exemptions facing uncertainty over portfolio investment decisions and other arrangements necessary to maintain these exemptions.

The letter also provides guidance that mid-sized advisers (i.e., certain advisers with between \$25 million and \$100 million of assets under management) will not need to transition to state registration until the first quarter of 2012.

The letter is posted on the [SEC's website](#).

If you have any questions about this *Alert*, please contact one of your Cooley team members. We will be sending an additional *Alert* upon the issuance of final rules, and as developments warrant in the meantime.

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