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## SEC registration reminder with Feb. 14 deadline - new set of registration criteria that may affect your company

In June 2011, the Securities and Exchange Commission (SEC) adopted new rules and rule amendments to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Title IV of the Dodd-Frank Act eliminated the private adviser exemption on which certain advisers to hedge funds, private equity funds and venture capital funds had relied and created a new set of criteria under which these advisers will be required to register.

The SEC provided a window of time for advisers who previously were exempt from registration by relying on the old rule to meet the new registration requirement and other reporting obligations. If these advisers are required to register with the SEC pursuant to the new rules, they must do so by March 30, 2012.

The SEC's approval process can take up to 45 days, advisers should file their applications, including Part 1 of Form ADV and a brochure meeting the requirements of Part 2 of Form ADV, by Feb. 14, 2012. In general, advisers may avail themselves of the following exemptions from registration:

- Advisers solely to Private Funds with less than \$150 million in Regulatory assets under management (AUM) in the United States (Regulatory AUM essentially represents gross assets under management without reduction for any liabilities).
- Advisers solely to venture capital funds
- Advisers solely to family offices
- Certain foreign private advisers

Advisers relying on either the private funds adviser or venture capital fund adviser exemption are still subject to certain limited reporting requirements as exempt reporting advisers (ERA). In addition, all advisers registered under the old rules must file updated ADV forms to show they are still eligible to be registered with the SEC, and that they do not have to transition to state registration.

### State registration and states with no registration or examination programs

Generally, an adviser with Regulatory AUM between \$25 and \$100 million (Mid-size Adviser) is not required to register with the SEC if they are registered with the state in which they have their principal office, and if that state has an adviser examination program. Since, New York, Wyoming and Minnesota do not currently have an adviser examination program, advisers in those states would be required to register with the SEC, with the following exception:

- Advisers in states such as New York, which has a registration process but does not have an examination program, and which advisers include only private funds as clients, will generally be able to avail themselves of the private fund adviser exemption.

If, however, the adviser's clients include one or more separately managed accounts, then the adviser would be required to register with the SEC

Each state has its own rules regarding adviser registration and regulation. Advisers should refer to their respective state rules. We strongly recommend that advisers consult with their legal counsel and other professionals, since the rules regarding SEC and state registration and regulation can be complex.

### For more information

If you have any questions about these issues, please contact [Kislay \(Sal\) Shah](#), 212.372.1201, [Simon Lesser](#), 312 634 4604, [Martin Lax](#), 212.372.1208 or your local McGladrey & Pullen financial services representative.

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