

## Foreign Private Advisers post-Dodd-Frank

### SEC Adopts Limited Foreign Private Adviser Exemption

Under the final rules and amendments under the Investment Advisers Act of 1940 adopted by the Securities and Exchange Commission ("SEC") following the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), certain foreign private advisers will continue to remain exempt from registration if the adviser: (i) has no place of business in the U.S.; (ii) has fewer than 15 U.S. clients (including investors in private funds domiciled outside the U.S.); (iii) has less than \$25 million in assets under management ("AUM") attributable to U.S. clients; and (iv) neither holds itself out as an investment adviser in the U.S. nor acts as an investment adviser to a investment company registered under the Investment Company Act of 1940 or a company that has elected to be a business development company under such Act.

Nevertheless, if a foreign private adviser has more than \$25 million in AUM attributable to U.S. clients, the adviser may be able to rely on the SEC's new private fund adviser exemption for advisers with less than \$150 million in AUM, but such adviser must count both U.S. and non-U.S. clients' assets towards the \$150 million threshold.<sup>1</sup>

If a foreign private adviser no longer meets the exemption criteria, SEC registration must be completed by March 30, 2012.

Previous to Dodd-Frank, foreign private advisers were not required to meet criteria (iii) above to be exempt from SEC registration.

### State Investment Adviser Registration

Although an investment adviser may be eligible for the foreign private adviser exemption from SEC registration, registration with one or more U.S. states may nonetheless be required for such adviser, subject to applicable state registration requirements and exemptions.

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<sup>1</sup> See Malik Law Group's *Private Advisers Post-Dodd Frank* memorandum for more information.

*For Further Information, please contact.*

## Reporting Requirements

Investment advisers relying on the foreign private adviser registration exemption must comply with new SEC reporting requirements for “exempt reporting advisers,” including the following: (i) identification of the manager, its owners and affiliates; (ii) disclosure of business activities of the manager that present conflicts of interest; (iii) financial industry affiliations of the manager; (iv) the disciplinary history of the manager and its employees; (v) organizational and operational information about the funds they manage, including general information about investment practices, types of investors, and investment advisory services; and (vi) identifying information for the funds’ auditors, prime brokers, custodians, administrators, and marketers.

*This Memorandum is intended to inform Malik Law Group’s clients of certain legal matters and is not intended as legal advice. You should consult a lawyer before taking any action based on the information contained above. Please contact Malik Law Group with any questions or comments you may have about this Memorandum.*

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