

**Private Advisers post-Dodd-Frank:  
the Private Adviser Exemption and the Private Fund Adviser Exemption**

**Dodd-Frank Eliminates Private Adviser Exemption**

Under the final rules and amendments (the “Rules”) 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, investment advisers to private funds with fewer than fifteen clients previously relying on the Section 203(b)(3) “private adviser” exemption from registration are now required to register with the SEC or one or more U.S. states, absent an alternative registration exemption. Now most private fund advisers will look to the new “private fund adviser” registration exemption created under the Rules to remain exempt from registration with the SEC.

Private advisers who previously relied upon the Section 203(b)(3) exemption and will not be able to rely on the new private fund adviser exemption have until March 30, 2012 to complete registration with the SEC.

**SEC Adopts Private Fund Adviser Exemption**

Under Rule 203(m)-1, any investment adviser solely to “private funds” that has less than \$150 million in assets under management is now exempt from SEC registration. Under the Rule, an adviser must aggregate the value of all assets of private funds it manages to determine if the adviser is below the \$150 million threshold.

“Private funds” is defined under the Investment Advisers Act of 1940 as “an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act.” Private funds also includes “fund of funds” that meet the foregoing definition.

**State Investment Adviser Registration**

Although an investment adviser may be eligible for the private fund 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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*For Further Information, please contact.*

### Private Fund Adviser Reporting Requirements

Investment advisers relying on the private fund 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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