

Venture Capital Funds post-Dodd-Frank:  
Investment Adviser Registration and Reporting

**SEC Investment Adviser Registration Exemption**

Under the Securities and Exchange Commission's ("SEC") new rules enacted pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, a person who meets the definition of "investment adviser" under the Investment Advisers Act of 1940, and would otherwise be required to register as such with the SEC, will nonetheless be exempt from registration if its only clients are "venture capital funds."

**"Venture Capital Fund" Definition**

Generally speaking, under SEC Rule 203(1)-1, a "venture capital fund" is now defined as a private fund that (i) holds no more than 20% of the fund's capital commitments, excluding cash, cash equivalents, and money market funds, in "non-qualifying investments" (generally speaking, qualifying investments are equity securities; see below); (ii) does not borrow or otherwise incur leverage, excluding short-term borrowing; (iii) does not offer its investors redemption or similar liquidity rights except in extraordinary circumstances; (iv) holds itself out to investors as a venture capital fund; and (v) is not registered under the Investment Company Act and has not elected to be treated as a business development company.

For purposes of the Rule, "qualifying investments" are: (i) equity securities issued by a qualifying portfolio company (see below) that has been acquired directly by the venture capital fund from the qualifying portfolio company; (ii) any equity security issued by a qualifying portfolio company in exchange for an equity security described above; or (iii) equity securities issued by a company of which a qualifying portfolio company is a majority-owned subsidiary or a predecessor and is acquired by the fund in exchange for an equity security described above.

For purposes of the Rule, "qualifying portfolio company" is any private company that is not an affiliate of a public company and does not borrow in connection with the fund's investment and distribute to the fund the proceeds of such borrowing in exchange for the fund's investment.

**State Investment Adviser Registration**

Although an investment adviser may be eligible for the venture capital fund 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.*

## Reporting Requirements

Investment advisers relying on the venture capital fund 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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