

DuaneMorris

Foreign Investment Advisers US Regulation

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Foreign Investment Advisers

- Non-U.S. investment advisers providing investment advice to United States persons (including private funds with U.S. investors) are subject to the Investment Advisers Act of 1940 (the “Advisers Act”)
 - Must register with the SEC unless eligible for an exemption
 - No minimum asset threshold
- Potential registration exemptions available for foreign advisers:
 - “Foreign private adviser”
 - Special exemption for foreign advisers
 - “Private fund adviser”
 - Available to both U.S. and foreign advisers who qualify
 - “Venture capital adviser”
 - Applies only if all clients, including non-U.S. clients, are venture capital funds

Foreign Private Adviser Exemption

- Foreign private adviser exemption
 - Covers a foreign adviser that:
 - Has no place of business in the U.S.
 - Has fewer than 15 clients in the U.S. and investors in the U.S. in private funds
 - Natural persons and any minor children, relatives sharing the same residence and related accounts and trusts are counted as a single client
 - Corporations, trusts and other legal entities are counted as a single client if advised separate and apart from the owners
 - Each investor in a private fund must be counted separately
 - No double counting of investors in multiple private funds
 - Feeder fund investors may need to be counted as investors in a master fund
 - Has less than \$25 million of assets under management attributable to U.S. clients and investors
 - Does not hold itself out to the U.S. public as an investment adviser
 - Does not advise SEC registered funds

Private Fund Adviser Exemption

- Private fund adviser exemption
 - Applies to any adviser that:
 - Manages only qualifying private funds
 - 3(c)(1) funds (100 or fewer beneficial owners)
 - 3(c)(7) funds (qualified purchasers only)
 - Has less than \$150 million in assets in the United States
 - Foreign advisers may exclude non-U.S. clients:
 - Only U.S. persons are considered toward the number or nature of investors in qualifying private funds
 - Asset limit applies only to assets managed at a location in the U.S.
 - Foreign private fund adviser without a place of business in the U.S. can manage an unlimited amount of private fund assets
 - Private fund advisers must file certain reports with the SEC

Other Regulations

- Registration not required of foreign affiliates of registered advisers, but Adviser Act rules and regulations could apply to foreign activities
- Foreign Corrupt Practices Act may extend to activities of foreign advisers conducted in the U.S.
- “Pay to Play” rules apply to foreign private advisers that advise U.S. state and local government funds
- Foreign funds with 300 or more security holders resident in the United States may have to register with the SEC under the Securities Exchange Act of 1934

Further Information

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