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 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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