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# Registration of Investment Managers With SEC

## Introduction

The Private Fund Investment Advisers Registration Act of 2010 (Act) was recently signed into law in the U.S. as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, resulting in changes to registration, reporting and recordkeeping requirements for both U.S. and non-U.S. investment managers.

Most notable is the elimination of the "private adviser" exemption, to be replaced with a number of narrower exemptions, which means that non-U.S. investment managers who have aggregate assets under management of greater than US$25 million attributable to U.S. clients may be required to register with the Securities and Exchange Commission (SEC).

## The "Foreign Private Adviser" Exemption-Non-U.S. Investment Managers

According to the narrowly drawn "foreign private adviser" exemption, starting from 21 July 2011, a non-U.S. investment manager is required to register with the SEC unless it satisfies ALL of the following requirements:

1. it has no place of business in the U.S.;
2. it has, in total, fewer than 15 clients and investors in the U.S. in private funds advised by the investment manager;
3. it has aggregate assets under management attributable to clients in the U.S. and investors in the U.S. in private funds managed by the investment manager of less than US$25 million; and
4. it neither holds itself out generally to the public in the U.S. as an investment manager, nor acts as (i) an investment manager to any investment company registered under the Investment Company Act of 1940 or (ii) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940.

## U.S. Investment Managers

Starting from 21 July 2011, an investment manager which has a principal office and place of business in the U.S. will be required to register with the SEC if it has US$100 million or more of assets under management. This rule applies regardless of the number of clients the investment manager may have.

A U.S. investment manager with assets under management between US$25 million and US$100 million will be required to register with the securities commissioner of the state in which it maintains its principal office and place of business. If the U.S. investment manager is required to register with 15 or more states under the Act, it will be permitted to register with the SEC instead.

The SEC will issue rules requiring each investment manager to a private fund to file reports containing such information as the SEC deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

## Other Possible Exemptions

1. Investment managers of venture capital funds

* An investment manager that acts as an investment manager solely to one or more venture capital funds may be exempt from registration. The term "venture capital fund" and the registration requirements thereof will be defined by the SEC no later than 21 July 2011.

1. Investment managers of private funds

* Any investment manager of private funds that acts solely as an investment manager to private funds and has assets under management in the U.S. of less than US$150 million will be exempt from registration.

The SEC will however require exempted investment managers of venture capital funds or private funds to maintain such records and provide to the SEC such annual or other reports as the SEC determines necessary or appropriate in the public interest or for the protection of investors.

## Timeframe for Registration

Investment managers who are not currently registered with the SEC and do not fall into the ambit of registration exemptions must register with the SEC no later than 21 July, 2011.

Rules relating to form and content of the reports required to be filed with the SEC are still to be promulgated by the SEC and the Commodity Futures Trading Commission, and will be made public prior to 21 July 2011.

*Charltons are only qualified to provide Hong Kong legal advice and this information is given for general guidance purposes only. We recommend that non-U.S. investment managers should seek U.S. legal advice with regards to the above.*

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