

# A PRACTICAL GUIDE FOR EXEMPT REPORTING ADVISERS: A NEW CATEGORY OF INVESTMENT ADVISERS CREATED UNDER DODD-FRANK

By Bettina Eckerle, July 30, 2011

The Dodd-Frank Act created a new category of investment adviser, the “exempt reporting adviser”. Exempt reporting advisers do not have to register with the SEC, but are required to file and report certain information to the SEC, rather than register with the SEC. The rule becomes effective September 17, 2011.

Exempt reporting advisors must file a subset of items on Part 1A of Form ADV with the SEC between January 1 and March 30, 2012. An adviser that is currently registered with the SEC and switching to being an exempt reporting adviser must file a Form ADV-W to withdraw its SEC registration before submitting its first report as an exempt reporting adviser.

## Who is an Exempt Reporting Adviser?

- Investment advisers advising solely private funds and having aggregate assets under management in the United States of less than \$150 million that rely on the

private fund adviser exemption under the new rules; and

- Investment advisers advising solely venture capital funds that rely on the venture capital fund exemption under the new rules.

## What are the Reporting Obligations?

Exempt Reporting Advisers will be required to file, and update as necessary, a subset of items on Part IA of Form ADV, which include:

- Basic identification details about the adviser such as name, address, contact information, form of organization, the identity of its owners and affiliates and the exemption(s) that it is relying on to report, rather than register, with the SEC;
- Details about the private funds the investment adviser manages and about other business activities that the investment adviser and its affiliates are engaged in that present conflicts of interest that may

# ECKERLE LAW

Eckerle Law

41 Madison Ave, 31st Floor

New York, NY 10010

[bettina@eckerlelawyers.com](mailto:bettina@eckerlelawyers.com)

1 646 202 2518

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suggest significant risks to clients; and

- The disciplinary history of the adviser and its employees that may reflect on their integrity.

### **Will Exempt Reporting Advisers be Subject to SEC Examinations?**

Although the SEC has the autonomy to examine exempt reporting advisers, the implementing adopting release, as well as statements made by Chairman Shapiro, indicate that the SEC does not intend to conduct compliance examinations on a regular basis, but may do so if there are any indica-

tions of wrongdoing. Chairman Shapiro also indicated that the SEC will reconsider the types of information it has collected from exempt reporting advisers in 2013 to determine whether the type of information collected is appropriate.

The new rules indicate that the recordkeeping requirements of exempt reporting advisers will be addressed in a future release. Dodd-Frank provides that the SEC require exempt reporting advisers to maintain records as the SEC deems appropriate in the public interest for investor protection. We will keep you apprised as the new rules come out.

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Please place questions concerning the topics discussed in this memorandum to Bettina Eckerle at [bettina.Eckerle@eckerlelawyers.com](mailto:bettina.Eckerle@eckerlelawyers.com).

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