

COLE-FRIEMAN & MALLON LLP

Investment Adviser Registration Overview 2012

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IA Registration for Hedge Fund Managers

- **Overview of Laws**
- **Who has to register?**
- **Registration Exemptions**
- **Registration Deadlines**
- **Form ADV and Part 2**
- **Registration Timeline**
- **Registration Costs**
- **Compliance Overview**
- **Post-Registration Compliance**
- **Other Issues**

Overview of Laws

- **Investment Advisers Act of 1940**
 - Requires registration of investment advisers
 - Anti-Fraud Provisions
 - Limits performance based compensation
 - Provisions to coordinate federal and state regulation
- **State Securities Laws**
- **Regulatory Agencies**
 - SEC
 - State Securities Commission
- **New Laws and Regulations Post Dodd-Frank Act**
 - Registration required for “private fund” managers (Section 3(c)(1) and Section 3(c)(7) funds)
 - Generally will include private equity fund managers
 - Regulatory Assets Under Management (AUM)
 - All assets on a gross basis and
 - Uncalled capital commitments

Who Has to Register?

- **SEC / State Jurisdiction**

- SEC Jurisdiction
 - Previously \$25M
 - \$100M or more AUM
 - New York (\$25-\$100M AUM), Wyoming
- State Jurisdiction
 - Less than \$100M AUM
- \$10M “buffer” each way

- **New Registration Requirements**

- Under \$100M AUM → state registration (unless exempted by state)
- \$100M or more AUM w/ SMA clients → SEC registration
- \$100M to \$150M AUM w/ only hedge fund client(s) → no SEC registration (Exempt Reporting Adviser)
- \$150M or more AUM → SEC registration
- \$25M to \$100M AUM located in New York → SEC registration (unless SEC exemption applies)
- Located in Wyoming → SEC registration (unless SEC exemption applies)

- **Exempt Reporting Advisers**

- Venture Capital Fund Managers
- Private Fund Managers w/ AUM of \$100M to \$150M
- Subject to “registration lite” (not registered)

Registration Exemptions

- **SEC Registration Exemptions**

- Section 203(b)(3) “private adviser” exemption no longer available (as of July 21, 2011)
- New registration exemptions include:
 - Private Fund Adviser
 - Foreign Private Adviser
 - Venture Capital Adviser
 - Family Office Adviser

- **State Registration Exemption**

- New York – exempt if fewer than 5 clients
- California
 - Current Exemption – advisers w/ less than 15 clients and more than \$25M AUM (expires April 19, 2012)
 - Proposed Exemption
 - No AUM threshold
 - Exempt if provides advice to 3(c)(1) and 3(c)(7) funds only (no SMA clients)
 - No non-accredited investors (grandfathering provision for current funds)
- Connecticut – exempt if providing advice solely to a “private fund” (no SMA clients).
- Illinois – exempt if fewer than 5 clients.
- Florida – exempt if fewer than 15 clients over last 12 months; no holding out to public.

**** IMPORTANT – STATE LAWS MAY CHANGE ****

Registration Deadlines

- **SEC Registration (if previously exempt)** → March 30, 2012
- **State Registration** → Immediate, unless exempted by state
- **Exempt Reporting Advisers** → March 30, 2012
- **Transition from SEC to State Registration** → Must withdraw SEC registration by June 28, 2012

**** To meet the March 30, 2012 deadline, managers need to submit Form ADV through the IARD system no later February 14, 2012. ****

Form ADV and Part 2

- **Form ADV**

- Publicly available
- Major Items
 - Basic Information – name, address, form of organization
 - Client types
 - Compensation structures
 - Advisory services provided
 - Other business activities & industry relationships
 - Disclosures about potential conflicts
 - Direct & Indirect owners (not publicly available)
 - Disclosures – regulatory, civil, bankruptcy, etc
- New Items for Private Funds
 - Private fund identification number
 - Information about fund (master/feeder, fund of funds, Regulation D, etc)
 - Beneficial owners of fund
 - Fund service providers

- **“New” Form ADV Part 2**

- Part 2A – Firm Brochure
 - Discussion of advisory business & fees
 - Investment program & risks, client account reviews
 - Brokerage, Custody, Proxies
- Part 2A, Appendix 1 – Wrap Fee Program Brochure
- Part 2B – Brochure Supplement
 - Information on IA representative – education, business experience, disciplinary information, other business activities, additional compensation, supervision, state specific disclosures
- Provided to client
 - At beginning of relationship
 - Annually
 - Upon material change (e.g. disciplinary event)

- **ADV “lite”**

- Exempt Reporting Advisers
- Information includes – basic information, other business activities & industry relationships, potential conflicts disclosures, direct & indirect owners, disclosures

Registration Timeline

- **General timeline**
 - Gain access to IARD system
 - Complete & Submit Form ADV and ADV Part 2
 - Back and forth w/ SEC or State
- **SEC registration**
 - Custody - audit / surprise examination
 - No Exam Requirements
 - No Net Worth / Bonding Requirements
 - May come back with questions
 - Quick registration - 45 days to approve
- **State registration**
 - Custody
 - Exam Requirements / Other Designations
 - Net Worth / Bonding Requirements
 - Likely to come back with questions & comments on ADV & supplementary materials
 - Longer registration - generally 4-12 weeks, depending on state

Registration Costs

- **Legal & Compliance Program Implementation**
- **Expenses**
 - Firm IA Fees
 - SEC – \$40 / \$150 / \$225 (+ State Notice Filing)
 - Exempt Reporting Advisers – \$150
 - New York (Registration/Notice Filing) – \$200 / \$200
 - California (Registration/Notice Filing) – \$125 / \$125
 - Connecticut (Registration/Notice Filing) – \$315 / \$250
 - Illinois (Registration/Notice Filing) – \$400 / \$400
 - Florida (Registration/Notice Filing) – \$200 / \$200
 - Individual IAR Fees
 - SEC – \$0
 - New York – \$0
 - California – \$25
 - Connecticut – \$100
 - Illinois – \$150
 - Florida – \$50
- **Exam Fees (if required)**
 - Series 65 – \$135
 - Series 66 – \$128

Compliance Overview

- **Tailor Compliance to Firm Activities / Name Chief Compliance Officer (CCO)**
- **Compliance Manual/ Code of Ethics**
 - Professional standards of conduct (fiduciary duty)
 - Insider trading policies (protection of material, non-public information)
 - Personal trading policies
 - Privacy policy
 - Soft Dollars
- **Books & Records**
 - Records
 - Client/ Fund information
 - Firm financials
 - Employee Information
 - Advertising
 - Retention
 - May be maintained electronically – must be available for immediate and complete access
 - Maintained for 5 years, first 2 years in an easily accessible place
 - Preserve for 3 years after withdrawal
- **Common Deficiencies – GAO Report**
 - Registration Issues, Books & Records, Unethical Practices, Supervisory / Compliance
 - Hedge fund managers – valuation, cross-trading, preferential treatment

Post-Registration Compliance

- **Compliance Program**

- Email archiving
- Trade reviews / trade pre-clearance
- Best execution analysis
- Soft Dollars
- IPO Allocations
- Forms – Form 13D/G, Form 13F, Form 13H (Large Trader), Form PF (if applicable), Blue Sky Filings
- Regulatory Hot Buttons – Social Media, Expert Networks / Insider Trading, Pay to Play, Related Broker-Dealer

- **Updating Form ADV**

- Annually within 90 days of end of fiscal year
- Other than annually if changes in identifying information, form of organization, disciplinary information, control person information
- Registration renewal

- **Regulatory Examinations**

- SEC / State Examination
- Mock Audits
 - Preparing for exams
 - Learn latest best practices

Other Issues

- **Outsourced Compliance**
 - Ongoing Monthly Compliance
 - Full Named Outsourced CCO
- **Manager Specific Issues**
- **Futures Trading**
- **Further Rulemaking**

Contact Us

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