

Possible Dodd-Frank Compliance Date Extension for Investment Advisers

The Securities and Exchange Commission (“SEC”) staff this week signaled that the SEC may extend the registration deadline for (i) investment advisers currently exempt from U.S. registration to register as investment advisers and (ii) investment advisers that are currently registered that will no longer be eligible for SEC registration to transition to state registration, for six months beyond the current compliance date of July 21, 2011.

As discussed in greater detail in a Kaye Scholer LLP client alert dated October 5, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”) requires U.S. investment advisers with assets under management of \$100 million¹ or more to register under the Investment Advisers Act of 1940 (the “Advisers Act”) with the SEC. Many such investment advisers previously benefited from the 14-or-fewer-clients exemption under the Advisers Act now eliminated by the Act.² A Non-U.S. investment adviser will be exempt from the registration requirements of the Advisers Act if it qualifies as a “foreign private adviser.”³

SEC Associate Director Robert Plaze, in an April 8, 2011 letter to the North American Securities Administrators Association,⁴ indicated that the SEC will consider providing additional time for investment advisers affected by the Act to become compliant. Specifically, Mr. Plaze indicated that the SEC will consider extending the compliance date until the first quarter of 2012. Mr. Plaze further noted that the SEC expects to complete its implementing rulemaking under the Act by July 21, 2011. The SEC has not issued a formal extension of the registration deadline beyond July 21, 2011. However, investment advisers may wish to take into consideration a possible extension of the compliance date when preparing registration materials and offering materials.

¹ This standard is raised to US\$150 million for Private Funds (generally entities that have an exemption from the definition of an “investment company” under the Investment Company Act of 1940) that do not meet the definition of a “venture capital fund”; please see our client alert “The Impact of the Dodd-Frank Act on Private Fund Managers and Other Investment Advisers” dated October 5, 2010.

² [Kaye Scholer Investment Funds Client Alert, “The Impact of the Dodd-Frank Act on Private Fund Managers and Other Investment Advisers,” October 5, 2010.](#)

³ A “foreign private adviser” is defined in the Act as any adviser that: (1) has no place of business in the United States; (2) has fewer than 15 clients in the U.S., including individual U.S. investors in any offshore fund; (3) has less than US\$25million aggregate AUM (assets under management) from U.S. clients; and (4) does not represent itself to the U.S. public to be an investment adviser.

⁴ Available at <http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf>

Chicago Office
+1.312.583.2300

Frankfurt Office
+49.69.25494.0

London Office
+44.20.7105.0500

Los Angeles Office
+1.310.788.1000

New York Office
+1.212.836.8000

Palo Alto Office
+1.650.319.4500

Shanghai Office
+86.21.2208.3600

Washington, DC Office
+1.202.682.3500

West Palm Beach Office
+1.561.802.3230