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## **SEC Adopts Final Rules Regarding Investment Advisers Act Amendments**

The Securities and Exchange Commission (the "SEC") recently adopted final rules and amendments (the "Final Rules") to implement the provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") in connection with the registration of investment advisers under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Specifically, the Final Rules, among other things, reallocate the regulatory responsibility for advisers between the SEC and the states. In addition, the SEC adopted certain amendments to Form ADV.

### Mid-Sized Advisers

Currently, advisers who do not advise any funds registered under the Investment Company Act of 1940 are required to have at least \$25 million in assets under management in order to be eligible for registration with the SEC. The Final Rules create a new category of "mid-sized" advisers and charge the state securities authorities with primary regulatory oversight of such group. An investment adviser that has between \$25 million to \$100 million in assets under management and is regulated or required to be registered with the state in which it maintains its primary place of business and is subject to examination as an investment adviser by such state, is prohibited from registering with the SEC. The amount of assets under management is based on gross assets under management and includes any proprietary assets, assets managed without compensation and assets of foreign clients, all of which an adviser may currently exclude from the calculation of amount of assets under management.

To provide for the general transition of mid-sized advisers to state registration, the Final Rules require that all advisers registered with the SEC file an amended Form ADV by March 30, 2012, indicating whether they are eligible to remain registered with the Commission. Advisers that are no longer eligible for SEC registration must withdraw their registration with the SEC by June 28, 2012. Mid-sized advisers registered with the Commission as of July 21, 2011, must remain registered with the SEC until January 1, 2012, unless an exemption from registration with the SEC is available.

Consequently, a number of advisers currently registered with the SEC will be required to withdraw their registrations with the SEC and register with the state in which they maintain their principal office and principal place of business.

### Revisions to Form ADV

The Final Rules amend Form ADV to require advisers to provide additional information regarding the following areas of operation:

- private funds the adviser advises;
- its estimated number of clients;
- the types of clients it advises and the portion of assets under management attributable to each type of client;
- activities and practices of the adviser that may result in conflicts of interest (such as the use of affiliated brokers, soft dollar arrangements and compensation for client referrals);

- percentage of foreign clients;
- non-advisory activity and financial industry affiliations; and
- other information that is intended to improve the SEC's ability to evaluate compliance risks.

In connection with each private fund an adviser manages, amended Form ADV will require basic organizational, operational and investment information about the such private funds, including information regarding:

- the gross asset value of the fund;
- investment strategies employed by the fund;
- number of beneficial owners of the fund and the percentage of the fund owned by the adviser and its affiliates;
- the minimum investment requirements for the fund;
- whether advisory clients are solicited to invest in the fund; and
- the identify of certain service providers of the fund, such as auditors, prime brokers, custodians, administrators and marketers.

If you have any questions regarding the amendments, please contact [Scott McGinness](mailto:smcginness@millermartin.com) at [smcginness@millermartin.com](mailto:smcginness@millermartin.com), [Lance Bridgesmith](mailto:lpbridgesmith@millermartin.com) at [lpbridgesmith@millermartin.com](mailto:lpbridgesmith@millermartin.com), [Tyler Hand](mailto:thand@millermartin.com) at [thand@millermartin.com](mailto:thand@millermartin.com) or any other member of [Miller & Martin's Investment Management Practice Group](#).

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