

Financial Regulation of Private Equity and Debt Funds

Last summer your business became a lot more complicated. On July 21, sweeping new regulation on private equity and debt fund managers became law. Although the new law exempts small business investment companies, firms managing other, non-SBIC assets may become subject to the new requirements, and even exempt managers will become subject to related new rules such as pay-to-play rules and new record keeping requirements.

Foley Hoag has broad experience in representing investment managers in all matters relating to registration and compliance with the Securities and Exchange Commission, including hedge funds, funds of funds, onshore and offshore funds, onshore and offshore managers, **as well as private equity firms already registered with the SEC under the old rules.** We represent hundreds of investment advisors with combined assets under management in excess of \$100 billion.

Firms managing non-SBIC assets will require guidance with respect to possible qualification under new exemptions. Firms that are not exempt will require guidance concerning the following:

- **Registration:** Firms subject to the new rules will be required to register as an investment advisor with the SEC and make periodic filings.
- **Offering Materials:** During SEC compliance audits, offering materials such as private placement memoranda and investor meeting “pitch books” typically receive close scrutiny, with SEC disclosure standards imposed on registered advisors more rigorous than market norms.
- **Compliance Policies and Record Keeping:** Compliance manuals and more robust record keeping will be required. We provide templates and work closely with clients to develop the necessary compliance policies. The SEC is currently reviewing to what extent new record-keeping requirements also will be imposed on exempt investment managers.
- **Compliance Monitoring:** Compliance systems will be required to be checked internally for effectiveness, with specific responsibility for compliance functions assigned.
- **Fiduciary Standards and Incentive Fees:** Greater fiduciary standards will be imposed, affecting related party transactions, incentive fee structures, new pay-to-play rules (also imposed on exempt investment managers), and other matters.
- **Regulatory Audits and Enforcement Actions:** In an environment of strict enforcement, we have deep experience working with SEC auditors and enforcement officers to achieve satisfactory resolution.

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To learn more:

To learn more about Foley Hoag and our Private Equity practice visit us at foleyhoag.com.

