Private Equity Regulatory Update

May 25, 2017

Rules and Regulations

- SEC Proposes Amendments to Advisers Act Rules to Reflect Changes Made by the FAST Act
- House Financial Services Committee Approves Revised Financial CHOICE Act

Rules and Regulations

SEC Proposes Amendments to Advisers Act Rules to Reflect Changes Made by the FAST Act

On May 3, 2017, the SEC proposed amendments (the "**Proposed Amendments**") to the definition of venture capital fund under Rule 203(l)-1, as well as to the private fund adviser exemption under Rule 203(m)-1, under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), to reflect changes made by Title LXXIV, Sections 74001 and 74002, of the Fixing America's Surface Transportation Act of 2015 (the "**FAST Act**").

According to the Proposed Amendments, Title LXXIV, Section 74001, of the FAST Act amends Section 203(l) of the Advisers Act, which provides an exemption from investment adviser registration for any adviser solely to one or more "venture capital funds" by deeming "small business investment companies" to be "venture capital funds" for purposes of the exemption. Consequently, according to the Proposed Amendments, the SEC has proposed to amend the definition of "venture capital fund" to include "small business investment companies," as described in Section 203(b)(7) of the Advisers Act (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to Section 54 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**")).

Further, according to the Proposed Amendments, Title LXXIV, Section 74002, of the FAST Act amends Section 203(m) of the Advisers Act, which provides an exemption from investment adviser registration for any adviser solely to "private funds" with less than $150 million in assets under management by excluding the assets of "small business investment companies" when calculating the $150 million registration threshold. The SEC has thus proposed, according to the Proposed Amendments, to amend the definition of "assets under management" in the private fund adviser exemption to exclude the assets of "small business investment companies."

The SEC has requested comments regarding the Proposed Amendments by June 8, 2017. Comments may be submitted:

(i) through the SEC's internet comment form (**https://www.sec.gov/rules/proposed.shtml**);

(ii) by email to **rule-comments@sec.gov**;

(iii) via the Federal eRulemaking Portal (**http://www.regulations.gov**); or

(iv) via mail to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

- See a copy of the Proposed Amendments

House Financial Services Committee Approves Revised Financial CHOICE Act

On May 4, 2017, the U.S. House Financial Services Committee approved the Financial CHOICE Act (the "**Act**"), setting the stage for broader consideration on the House floor in the coming weeks. As we reported last month, the Act would make sweeping changes to the Dodd-Frank Wall Street Reform and Consumer Protection Act and other financial regulatory laws.[1] Among other things, section 858 of the Act would amend the Advisers Act to exempt private equity fund advisers from the registration and reporting requirements of the Advisers Act. The Act does not define the term "private equity fund," but rather requires the SEC to define the term by issuing final rules within six months of the enactment of the relevant section of the Act. The Committee's vote to approve the Act was divided along party lines, a reminder of the Act's uncertain future in the closely divided Senate.

- See a copy of the Act

[1] For a recent summary of the major provisions of the CHOICE Act as currently proposed, see ***Financial CHOICE Act 2.0 Passes House Financial Services Committee*** on the Davis Polk Financial Regulatory Reform website.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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