

THE
NATIONAL LAW REVIEW

Amendments to the Venture Capital Fund Adviser and Private Fund Adviser Exemptions

Friday, April 29, 2016

Last month the SEC's Division of Investment Management issued a guidance update^[1] (Update) addressing recent amendments to the Advisers Act. These changes allow advisers that wish to rely on the private fund adviser or venture capital fund adviser exemptions to also manage an unlimited amount of assets attributable to small business investment companies (SBICs).

In December, the Fixing America's Surface Transportation Act (FAST Act) amended the venture capital fund adviser exemption (Section 203(l) and Rule 203(l)-1 thereunder) and the private fund adviser exemption (Section 203(m) and Rule 203(m)-1 thereunder) to include SBIC assets. Now, SBICs are deemed to be "venture capital funds" for purposes of the venture capital fund adviser exemption. In addition, advisers relying on the private fund adviser exemption may also have an unlimited amount of assets under management attributable to SBIC clients and still rely on the private fund adviser exemption, provided the other conditions of the exemption have been met, including the \$150 million assets under management cap for non-SBIC private fund assets. Previously, serving as an exempt adviser to SBICs could prevent an adviser from qualifying for either exemption.

The SEC is in the process of proposing amendments to Rules 203(l)-1 and 203(m)-1 to reflect the foregoing Advisers Act amendments. In the meantime, the Update states that the SEC staff would not object to an adviser relying on the FAST Act amendments to the venture capital fund adviser exemption or the private fund adviser exemption, provided the adviser files the requisite exempt reporting adviser filings as required under each exemption.



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[1] <https://www.sec.gov/investment/im-guidance-2016-03.pdf>

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