

Not Just the Banks: VC and Closed-End Funds Find Relief in Dodd-Frank Overhaul

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On May 24, 2018, President Donald J. Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Consumer Protection Act”),¹ which previously had been passed by the U.S. House of Representatives on May 22, 2018 and by the U.S. Senate on March 14, 2018. While the Consumer Protection Act’s main focus is to provide regulatory relief primarily to banks with less than \$250 billion in assets, the Consumer Protection Act amends the Investment Company Act of 1940 (the “Act”) in two notable ways and calls for the Securities and Exchange Commission (the “SEC”) to enact new rules for closed-end funds.

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- **Venture Capital Funds:** In support of “America’s innovators,” the Consumer Protection Act creates a new type of private fund under section 3(c)(1) for “qualifying venture capital funds”—that is to say, venture capital funds (as defined under the Investment Advisers Act of 1940) with no “more than \$10,000,000 in aggregate capital contributions and uncalled committed capital” that offer securities to no more than 250 persons. This new exemption will supplement the current exemption under section 3(c)(1) for private funds the securities of which are owned by no more than 100 persons. This amendment will obviously provide significant benefits to smaller venture capital funds.
- **Puerto Rico and U.S. Territories:** The Consumer Protection Act also eliminates a current exemption under the Act for “[a]ny company organized or otherwise created under the laws of and having its principal office and place of business in Puerto Rico, the Virgin Islands, or any other possession of the United States.”² In practice, this blanket exemption excludes from regulation under the Act any issuer with a private offering limited exclusively to Puerto Rico and the U.S. territories. The SEC’s staff has interpreted this exemption narrowly on a number of occasions, questioning the public policy around its original inclusion in the Act. The elimination of the exemption became effective on May 24, 2018, but the Consumer Protection Act

¹ Available at <https://www.congress.gov/bill/115th-congress/senate-bill/2155/text>.

² 15 U.S.C. 80a-6(a)(1).

provides a three-year safe harbor (with the option for the SEC to extend it an additional three years) for companies that are exempt as of May 24, 2018.

- **Closed-End Funds:** The Consumer Protection Act requires the SEC to propose rules within two years “to allow any closed-end company . . . to use the securities offering and proxy rule . . . that are available to other issuers.” In drafting these rules, the Consumer Protection Act requires that the SEC “consider the availability of information to investors, including what disclosures constitute adequate information.” While this move does not guarantee parity of treatment, the new rules are expected to lessen filing requirements and reporting costs by providing greater flexibility to use automatic shelf registrations and no longer requiring post-filing amendments for, among other things, financial statements and other nonmaterial changes.

While the legislation should not have much impact on private funds generally, the amendment to section 3(c)(1) will obviously provide more flexibility to smaller venture capital funds.

Please do not hesitate to contact us with any questions.

Jonathan Adler
Partner, New York
+1 212 909 6032
jadler@debevoise.com

Andrew M. Ahern
Partner, New York
+ 1 212 909 6081
amahern@debevoise.com

Kenneth J. Berman
Partner, Washington, D.C.
+ 1 202 383 8050
kjberman@debevoise.com

David J. Schwartz
Partner, New York
+ 1 212 909 6631
djschwartz@debevoise.com

Rebecca F. Silberstein
Partner, New York
+1 212 909 6438
rfsilberstein@debevoise.com

Gregory T. Larkin
Counsel, Washington, D.C.
+ 1 202 383 8064
gtlarkin@debevoise.com

Norma Angelica Freeland
Associate, New York
+ 1 212 909 6110
nafreeland@debevoise.com

Julie Baine Stem
Associate, New York
+ 1 212 909 6064
jbstem@debevoise.com