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Economic Growth, Regulatory Relief and Consumer Protection Act's Impact on Investment Management Industry

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On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (Growth Act) was signed into law. Although much of the Growth Act focuses on rolling back certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), it also contains four provisions that will affect both registered and unregistered funds:

- Section 3(c)(1): The Growth Act amends Section 3(c)(1) of the Investment Company Act of 1940 (1940 Act) to include a new exemption from the definition of investment company for a "qualifying venture capital fund" with up to $10 million in capital and fewer than 250 investors;
- Closed-End Funds: The Growth Act directs the SEC to propose and implement rules allowing certain registered closed-end funds to use securities offering and proxy rules otherwise available to non-investment companies that report under the Securities Exchange Act of 1934 (Exchange Act), "subject to conditions the [SEC] determines appropriate";
- U.S. Possession Funds: The Growth Act removes the exemption from registration under the 1940 Act for investment companies organized under the laws of Puerto Rico, the U.S. Virgin Islands or any other U.S. commonwealth, possession or territory; and
- Volcker Rule Naming Restriction: The Growth Act removes the Volcker Rule restriction prohibiting hedge funds and private equity funds advised by a "banking entity" from having the same name or a variation of the same name as the banking entity.

Expansion of Section 3(c)(1) Exemption

Section 3(c)(1) of the 1940 Act generally exempts from registration private funds that are beneficially owned by no more than 100 investors. The Growth Act expands this exemption to apply to "qualifying venture capital funds" beneficially owned by no more than 250 persons. A qualifying venture capital fund is a venture capital fund, as is defined in the Investment Advisers Act of 1940,1 with no more than $10 million in aggregate commitments. The $10 million limit will be indexed for inflation by the SEC once every five years.

Offering and Proxy Rules Applicable to Closed-End Funds

The Growth Act mandates SEC rulemaking efforts intended to bring about "parity for closed-end companies regarding offering and proxy rules." Specifically, the Growth Act requires the SEC to propose by May 24, 2019, and finalize by May 24, 2020, rules to permit closed-end funds that either (1) have equity securities listed on a national securities exchange or (2) are interval funds pursuant to Rule 23c-3 of the 1940 Act to use securities offering and proxy rules available to non-investment companies that are required to file reports under Section 13 or Section 15(d) of the Exchange Act.

The expansion of such securities offering and proxy rules to closed-end funds will be "subject to conditions the [SEC] determines appropriate." During the rulemaking process, the SEC is directed to consider the availability of information to investors, including what disclosures are appropriate for designation of a closed-end fund as a "wellknown seasoned issuer." In the event the SEC fails to finalize such rules within the prescribed time frame, exchangelisted and interval closed-end funds will be automatically deemed "eligible issuers" under the SEC's 2005 Securities Offering Reform release.

Registration of "Possession Funds"

Section 6(a) of the 1940 Act formerly exempted from registration investment companies organized or otherwise created under the laws of, and having their principal place of business in, Puerto Rico, the U.S. Virgin Islands or any U.S. possession. The Growth Act removes this exemption, requiring an investment company organized under the laws of any U.S. commonwealth, possession or territory to register as an investment company by May 24, 2021—three years from the enactment of the Growth Act. In its discretion, the SEC may extend this deadline for an additional period of up to three years.

Volcker Rule Private Fund Naming Restrictions

The Bank Holding Company Act of 1956, as amended by Dodd-Frank, generally prohibits hedge funds and private equity funds from having the same name or a variation of the same name as a "banking entity" that is an investment adviser. The Growth Act amends this restriction to allow such naming conventions, provided that: (1) the investment adviser is not an insured depository institution or its control company, or a company that is treated as a bank holding company under the International Banking Act; (2) the investment adviser does not share a name with an insured depository institution or a bank holding company; and (3) such name does not contain the word "bank."

The full text of the Growth Act is available at:
https://www.congress.gov/115/bills/s2155/BILLS-115s2155enr.xml

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The Investment Advisers Act of 1940 defines a "venture capital fund" as any fund that (i) represents to investors that it pursues a venture capital strategy, (ii) holds no less than 80% of its capital in private operating companies, (iii) limits leverage to 15% of the fund's capital, (iv) limits redemption rights and (v) would be an investment company but for the exceptions provided under Sections 3(c)(1) or 3(c)(7) of the 1940 Act.

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