

THE REVIEW OF SECURITIES & COMMODITIES REGULATION

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 50 No. 4 February 22, 2017

THE SBIC ADVISERS RELIEF ACT

The SBIC Advisers Relief Act has eased regulatory burdens on advisers to SBICs, venture capital funds, and private funds by expanding certain exemptions from federal and state registration requirements. The author discusses the background and prior exemptions for advisers, and the changes effected by the act. He concludes by noting the opportunities and takeaways for advisers created by the act.

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On December 4, 2015, President Obama signed into law amendments to the Investment Advisers Act of 1940 (the “Advisers Act”), which eased registration and other regulatory requirements for investment advisers to Small Business Investment Companies (“SBICs”) and other private funds. The amendments were enacted pursuant to the SBIC Advisers Relief Act,¹ which modified requirements put into place by the Dodd-Frank Act.

The SBIC Advisers Relief Act resulted in the following changes to the Advisers Act:

1. Advisers solely to SBICs are no longer subject to state registration requirements.
2. Advisers solely to SBICs and venture capital funds may use the venture capital exemption from registration.

3. SBIC capital is now excluded from the calculation of regulatory assets under management for purposes of the private fund adviser registration exemption.

This article discusses (i) the historical impetus for the SBIC Advisers Relief Act, (ii) the amendments to the Advisers Act pursuant to the SBIC Advisers Relief Act, and (iii) practical takeaways for advisers to SBICs, venture capital funds and other private funds.

I. BACKGROUND ON SMALL BUSINESS INVESTMENT COMPANIES

An SBIC is a privately owned and managed investment fund, licensed and regulated by U.S. Small Business Administration (“SBA”), that makes debt and/or equity investments in qualifying small businesses.² For most SBICs, the primary motivation to

¹ The SBIC Advisers Relief Act was enacted pursuant to Title LXXIV of H.R. 22, the Fixing America’s Surface Transportation Act (also referred to as the “FAST Act”).

² Most SBICs are private investment funds structured in the same manner as other private equity funds; however, a smaller

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