



## Relief! New Act Lifts Regulatory Burdens on SBICs

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Small Business Investment Company (SBIC) investment advisers will now have reduced registration requirements under the Investment Advisers Act of 1940 (Advisers Act), thanks to the recently enacted SBIC Advisers Relief Act.

The amendments contained within the SBIC Advisers Relief Act fall into three primary categories:

### Advisers Solely to SBICs Are No Longer Subject to State Registration Requirements

Perhaps the biggest win for SBICs under the new Act is the extension of the federal preemption of the exemption for SBIC-only advisers. Under the SBIC Advisers Relief Act, investment advisers who are exempt from federal registration because they only advise SBICs are no longer subject to state investment adviser registration requirements - any state requirements are now preempted by the federal exemption. This is similar to the preemption from state registration enjoyed by banks.

Prior to the passage of the SBIC Advisers Relief Act, SBIC fund advisers relying on this exemption from federal registration were still subject to state regulation. This meant complying with state exemption requirements, state regulatory reporting requirements and, in some cases, registration with state regulators, all of this even if the SBIC adviser is exempt at the federal level.

### SBIC Capital Is Now Excluded From Assets Under Management for the Private Fund Adviser Exemption

Investment advisers that advise both SBICs and non-SBIC private funds may now, pursuant to the SBIC Advisers Relief Act, exclude the SBIC assets from the calculation of regulatory assets under management for purposes of the \$150 million private fund adviser limit.

Previously, an adviser who advised private funds other than SBICs could still be exempt from SEC registration if the total regulatory assets under management of all of such funds together, including SBICs, was less than \$150 million. The regulatory assets under management of the SBIC in this calculation would include the gross asset value of all assets plus uncalled limited partner commitments, as well as the value of assets purchased with SBA leverage. Thus, very few SBIC advisers who also managed other funds were able to take advantage of the private fund adviser exemption. The SBIC Advisers Relief Act changes this rule to exclude the assets under management of an SBIC from the calculation.

Investment advisers who advise relatively large SBICs along with smaller private funds (including, for example, side car funds and funds which previously were SBICs which have surrendered their SBIC licenses during the fund wind-down process) will likely benefit from this exemption. Even if exempt under the federal private fund adviser exemption, these advisers may, however, still be subject to state regulation and will be subject to federal "exempt reporting adviser" reporting requirements. However, many states now have companion exemptions for a federal "exempt reporting adviser" relying on the private fund exemption.

### Advisers to SBICs and Venture Capital Funds May Now Use the Federal Exemption for Venture Capital Funds

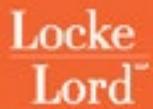
Investment advisers who only advise SBICs and venture capital funds are now able to rely on the exemption from federal registration available to advisors solely to venture capital funds.



Before passage of the SBIC Advisers Relief Act, although an adviser solely to SBICs was exempt from federal registration and an adviser solely to venture capital funds was also exempt, an adviser to both SBICs and venture capital funds (but not other funds) was not exempt. The SBIC Advisers Relief Act remedies this through an amendment that states that a venture capital fund includes an SBIC for purposes of the venture capital fund exemption. An adviser that is exempt from federal registration under this provision will be required to report as an “exempt reporting adviser” and will be subject to any applicable state regulation.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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