



# SEC Registration

The U.S. Securities and Exchange Commission (SEC) regulates “investment advisers” under the U.S. Investment Advisers Act of 1940 (the ‘Advisers Act’). Alternative fund managers located in the U.S. or having U.S. clients or investors will generally be considered investment advisers and, unless an exemption applies, will be required to register with the SEC as investment advisers.

## Who is this relevant for?

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An entity that is an “investment adviser” is required to register with the SEC unless they meet the requirements for an exemption from registration. An “investment adviser” is, among other things, any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing, purchasing or selling securities. It should be noted that this definition will capture both discretionary investment managers and non-discretionary investment advisors as those terms are understood elsewhere in the world. Certain exemptions to the investment adviser requirements may be available to investment advisers to “private funds”.

A “private fund” is an entity that would be an “investment company” under the U.S. Investment Company Act of 1940 but for the application of either Section 3(c)(1) or Section 3(c)(7) of that Act. If relying on Section 3(c)(1), there must be no general solicitation, the fund must be limited to 100 investors and, subject to a limited exception, all investors must be “accredited investors”. If relying on Section 3(c)(7), there must be no general solicitation and all investors must be “qualified purchasers”. Provided certain specific requirements are met, a general solicitation may be permissible notwithstanding the general prohibition.

For AIMA members, the two most relevant exemptions from the requirement to register as an investment adviser will be the exemptions for ‘foreign private advisers’ and for ‘private fund advisers’.

The “foreign private adviser” exemption may be available if the adviser (i) has no place of business in the United States; (ii) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the adviser; (iii) has less than \$25 million in assets under management attributable to clients in the U.S. and investors in the U.S. in private funds advised by it; and (iv) neither holds itself out generally to the public in the U.S. as an investment adviser nor acts as an investment adviser to any registered investment company or as a business development company.

The “private fund adviser” exemption applies to U.S.-based investment advisers who (i) act as an adviser solely to one or more ‘qualifying private funds’ and (ii) manage private fund assets of less than \$150 million. Non-US investment advisers will be able to utilise the private fund adviser exemption if (i) the adviser has no client that is a U.S. person except for ‘qualifying private funds’ and (ii) all assets managed by the adviser at a U.S. place of business are solely attributable to private fund assets and have a value of less than \$150 million.

## What does it cover?

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An investment adviser relying on the “foreign private adviser” exemption will not be required to notify the SEC that it is relying on an exemption to registration. However, an investment adviser relying on the “private fund adviser” exemption must apply to be an “exempt reporting adviser” by submitting a Part 1 of Form ADV. Exempt reporting advisers are subject to a subset of the requirements of the Advisers Act and the rules thereunder including, but not limited to, the obligation to comply with the anti-fraud provisions of the Advisers Act.

An investment adviser that is unable to rely on an exemption to registration with the SEC must register on Form ADV and will be subject to the full requirements of the Advisers Act and the rules thereunder which include rules requiring the adoption of a compliance programme, a code of ethics and insider trading policies and procedures, periodic reporting on Forms ADV and PF and recordkeeping. Other rules place requirements around things like custody of client accounts, proxy voting and solicitations. Registered investment advisers are also required to comply with the anti-fraud provisions of the Advisers Act.

## Where can I find more information?

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Please contact AIMA’s [asset management regulation team](#) for more detail on current proposals affecting alternative fund manager with U.S. clients..