The Impact of Dodd-Frank on Silicon Valley

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The Dodd-Frank Act

- Tightened “accredited investor” definition
    - DF Section 413
- Venture capital fund exemption from registration under the Advisers Act
    - DF Section 407
- The “Volcker Rule” and VC funds
    - DF Section 619

The Tightened “Accredited Investor” Definition

- DF 413 requires that an individual’s primary residence no longer be counted toward satisfying the $1 million in net worth standard for accreditation
- Rule 506
- Net worth standard, income standard
- Reduces from 9.04% to 6.55% of U.S. households
- What kinds of capital raising might be affected?

The VC Fund Exemption

- Dodd-Frank broadly requires registration under the Advisers Act for all “advisers” to private funds, but provides exemption for advisers solely to VC funds

- Policy rationale

- SEC proposed implementing rules

  – Definition of “VC fund”

  – “Exempt reporting advisers”

The VC Fund Exemption

- Proposed definition of VC fund generally requires:

- Owns solely equity

- In “qualifying portfolio companies”
  - Private operating company not controlled by a public company
  - No industry specificity

- Offers or provides significant guidance or counsel concerning management, or has control

- Does not borrow in excess of 15% of capital commitments

- No redemption rights

The VC Fund Exemption

- “Exempt reporting advisers”

- Form ADV “lite” to be filed with SEC
  - Portions of expanded Part 1; no Part 2 (i.e. no brochure)
  - Disclosures will require diligence

- Assertion of examination authority

- Cost estimates

The Volcker Rule

- Requires, inter alia, banks to divest themselves of, and not to invest in, hedge funds and “private equity funds”
- Private equity funds defined to include all which rely on 3(c)(1) or 3(c)(7)
- Definition should be more narrowly tailored, perhaps by cross-reference to definition of “VC fund” being developed by the SEC