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