

COURT OF APPEALS VACATES HEDGE FUND ADVISER REGISTRATION RULE

Last Friday, the United States Court of Appeals for the District of Columbia Circuit vacated Securities and Exchange Commission rules that required hedge fund advisers to register with the Commission under the Investment Advisers Act of 1940 if the funds they advise had 15 or more shareholders, limited partners, members or beneficiaries (the “Hedge Fund Adviser Rule”). The Hedge Fund Adviser Rule had required hedge funds advisers to register by February 1, 2006.

The Circuit Court held that the Hedge Fund Adviser Rule was an “arbitrary rule” and found that the Commission’s interpretation of the word “client” “falls outside the bounds of reasonableness.” The Circuit Court found further that “the Commission’s interpretation of the word ‘client’ comes close to violating the plain language of the statute” and that “there is a disconnect between the factors the Commission cited and the rule it promulgated.”

In an order also filed last Friday, the Circuit Court delayed the effect of its decision until seven days after disposition of any timely petition for a rehearing or a petition for a rehearing en banc. If the Commission seeks a rehearing, any disposition on the petition may take several months; if the Commission does not seek a rehearing and the parties do not request an earlier effective time, the Circuit Court will issue a mandate in accordance with last

Friday’s decision seven days after the last day the Commission may seek a rehearing, which is August 7, 2006.

If the Hedge Fund Adviser Rule is deemed vacated, it is unclear as to the effect it would have on hedge fund advisers who, but for the Hedge Fund Adviser Rule, would not have registered with the Commission. The Commission will likely have to consider how as a matter of administrative procedure it will handle the de-registration, if any, of those hedge fund advisers who registered solely because of the adoption of the Hedge Fund Adviser Rule.

If you have any questions concerning the court’s decision or its application to your firm, please contact your regular Tucker Ellis & West LLP attorney or any of the following:

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