

SEC ADOPTS RULES TO REQUIRE HEDGE FUND ADVISERS TO REGISTER UNDER INVESTMENT ADVISERS ACT

In July 2004 we reported that the Securities and Exchange Commission had proposed that advisers to hedge funds be required to register under the Investment Advisers Act of 1940. Today the Commission voted 3-2 to adopt that proposal.

Under new rule 203(b)(3)-2, hedge fund advisers would no longer be allowed to count just the fund itself as a client. Instead, each hedge fund adviser would be required to count each fund investor toward the maximum of 14 clients that an adviser may have in a 12-month period without registering.

The registration requirement will only apply to advisers with assets under management in excess of \$30 million. The new rule also contains special provisions for advisers located outside the United States designed to limit the extraterritorial application of the Advisers Act to offshore advisers to offshore funds that have U.S. investors.

The Commission has justified the new rule on the basis that registration of advisers to hedge funds would permit the Commission to:

- Collect and provide to the public basic information about hedge funds and hedge fund advisers, including the number of hedge funds operating in the United States, the amount of assets, and the identity of their advisers.
- Improve disclosures made to hedge fund investors.

- Require hedge fund advisers to adopt basic compliance controls to prevent violation of the federal securities laws.
- Examine hedge fund advisers in order to identify compliance problems early, limit the harm to investors, and deter questionable practices.
- Prevent individuals with criminal or other serious disciplinary records from managing hedge funds.

Advisers will not be required to comply under the new rule until February 1, 2006. Various transition rules have been adopted to “grandfather” investors who are already in a hedge fund but would not be an eligible investor in the fund after the adviser is required to register.

Questions concerning the new rule and the transition rules may be directed to any to the following Tucker Ellis & West LLP attorneys:

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