

July 12, 2007

SEC Unanimously Adopts Pooled Investment Vehicle Antifraud Rule

At an open meeting on July 11, the Securities and Exchange Commission (the “SEC” or “Commission”) voted unanimously to adopt Rule 206(4)-8 (the “Rule”) under the Investment Advisers Act of 1940, as amended, which will prohibit advisers of pooled investment vehicles from making false or misleading statements or otherwise defrauding investors or prospective investors. The Rule is a renewed effort by the SEC to regulate advisers to pooled investment vehicles, having had a previous regulation invalidated by the U.S. Court of Appeals for the District of Columbia Circuit.

SEC Chairman Christopher Cox characterized the Rule as an effort to look through the investment vehicle to individual investors, and thus create parity in accountability between investment advisers to pooled investments and those of other investment vehicles. Chairman Cox also acknowledged the wide scope of the Rule, noting that it will apply not only to hedge funds, but also to private equity funds, venture capital funds, and mutual funds as well.

Robert Plaze, an Associate Director of the Division of Investment Management, stated that the Rule does not create new obligations for pooled investment vehicles. Rather, it clarifies the enforcement authority of the SEC with regard to pooled investment vehicles, which had been in doubt following the decision by the D.C. Circuit Court last year.

The text of the final Rule and interpretive guidance have not yet been published, therefore the descriptions in this report are based on statements made by commissioners and staff at the open meeting. As originally proposed, the Rule:

- prohibits investment advisers from communicating to current or prospective investors in pooled investment vehicles untrue statements of material fact, or omitting material facts in such communications that are necessary to ensure that other statements are not misleading;
- prohibits any practice or course of business by an investment adviser to a pooled investment vehicle that is fraudulent, deceptive, or manipulative with respect to any current or prospective investors; and

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- defines a “pooled investment vehicle” as any investment company under Section 3(a) of the Investment Company Act of 1940, as amended (the “1940 Act”), and any company that would be an investment company but is excluded under Sections 3(c)(1) or 3(c)(7) of that act. Most hedge funds are not registered under the 1940 Act as a result of these exclusions.

The Rule becomes effective 30 days after it is published in the *Federal Register*. Publication is expected within the next few weeks.

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