

Client Advisory

June 30, 2006

Hedge Fund Manager Registration Rule Is “Dead” at SEC

The rules requiring hedge fund managers to register as investment advisers, which were vacated last week by the D.C. Circuit Court of Appeals, are “dead,” according to Securities and Exchange Commission member Paul S. Atkins.

Speaking at a conference sponsored by the American Society of Corporate Secretaries, Atkins said today that the SEC would not pursue rehearing at the D.C. Circuit Court of Appeals or review by the Supreme Court. Thus, when the Court of Appeals issues its formal mandate in *Goldstein v. Securities and Exchange Commission*, the entire package of rules adopted in December 2004 and set forth at 69 Fed. Reg. 72,054 (Dec. 10, 2004) is expected to be rescinded formally by the SEC.

In effect, the state of the law will revert to its status prior to the rulemaking, and hedge funds will be counted as a single client of their manager. A manager with fewer than 15 such clients during the preceding 12 months will be eligible to rely on the “small adviser” exemption from registration as an investment adviser. Under the now-vacated rules, managers had to look through their funds and count each investor as a client, with the effect that a manager who had 15 or more investors in the preceding 12 months had to register.

The D.C. Circuit ruled last week that the SEC’s redefinition of the term “client” in 2004 was “arbitrary” and contrary to the meaning of the statute. See our Client Advisory dated June 28, 2006, located on our [Web site](#), for more detail.

Certain members of Congress have announced their intention to introduce legislation that would give the SEC authority to regulate hedge fund managers. It is not clear whether such legislation is likely to be passed by both Houses and signed by the end of the year, when this Congress terminates. Even if such legislation were enacted, it would then likely be up to the SEC to determine how and to what extent to exercise the authority given by Congress.

More than 1200 managers registered as investment advisers under the rules. Each must soon decide whether to remain registered or to consider filing a Form ADV-W to withdraw from registration. Other managers implemented a two-year lock-up requirement for investors in order to avoid falling within the definition of “private fund” subject to the look through counting rule, and may soon consider eliminating the lock-up.

We Can Help

Please contact one of the following attorneys if you wish to discuss the ramifications of the *Goldstein* decision:

Attorney	Direct Dial	Email
Henry Bregstein	212.940.6615	henry.bregstein@kattenlaw.com
Daren R. Domina	212.940.6517	daren.domina@kattenlaw.com
Jack P. Governale	212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	312.902.5241	arthur.hahn@kattenlaw.com
Daniel F. Hunter	212.940.6783	daniel.hunter@kattenlaw.com
Robert M. McLaughlin	212.940.8510	robert.mclaughlin@kattenlaw.com
Janet R. Murtha	212.940.6469	janet.murtha@kattenlaw.com

William Natbony	212.940.8930	william.natbony@kattenlaw.com
Marilyn Selby Okoshi	212.940.8512	marilyn.okoshi@kattenlaw.com
Fred M. Santo	212.940.8720	fred.santo@kattenlaw.com
Peter J. Shea	704.444.2017	peter.shea@kattenlaw.com
Marybeth Sorady	202.625.3727	marybeth.sorady@kattenlaw.com
Morris N. Simkin	212.940.8654	morris.simkin@kattenlaw.com
Robert Weiss	212.940.8584	robert.weiss@kattenlaw.com
Lance A. Zinman	312.902.5212	lance.zinman@kattenlaw.com

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Katten

Katten Muchin Rosenman LLP

www.kattenlaw.com

401 S. Tryon Street
Suite 2600
Charlotte, NC 28202-1935
704.444.2000 tel
704.444.2050 fax

525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

5215 N. O'Connor Boulevard
Suite 200
Irving, TX 75039-3732
972.868.9058 tel
972.868.9068 fax

1-3 Frederick's Place
Old Jewry
London EC2R 8AE
+44.20.7776.7620 tel
+44.20.7776.7621 fax

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel
310.788.4471 fax

575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

260 Sheridan Avenue
Suite 450
Palo Alto, CA 94306-2047
650.330.3652 tel
650.321.4746 fax

1025 Thomas Jefferson Street, NW
East Lobby, Suite 700
Washington, DC 20007-5201
202.625.3500 tel
202.298.7570 fax

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