SEWARD & KISSEL LLP

January 13, 2005

Memorandum to Our Investment Management Clients and Friends

Implementation of the February 10, 2005 Requirements:
Hedge Fund Adviser Registration Rule and Related Rule Changes

Introduction

Our memorandum dated December 6, 2004[1] discussed recently adopted Rule 203(b)(3)-2 and amendments to certain other rules under the Investment Advisers Act of 1940 (the "Advisers Act") that will require many hedge fund advisers that have $30 million or more under management and 15 or more clients to register with the SEC as investment advisers by February 1, 2006. While the registration compliance date is not until February 1, 2006, ***rule changes relating to the ability of a registered adviser to charge a performance fee and the maintenance of records for past performance will go into effect as of February 10, 2005*.**

Amendments to the Performance Fee Rule

Under the Advisers Act, a registered investment adviser is permitted to charge performance fees only to those clients that are "qualified clients" within the meaning of Rule 205-3 under the Advisers Act or as otherwise permitted. "Qualified clients" are persons who at the time of entering into the relationship with the adviser have at least $750,000 under the adviser's management or a net worth that exceeds $1.5 million. "Qualified purchasers" and certain "knowledgeable" employees of the adviser are also considered to be qualified clients.

Pursuant to "grandfathering" amendments to Rule 205-3, any hedge fund adviser that was exempt from registration with the SEC under Section 203(b)(3) of the Advisers Act prior to February 10, 2005, but that will be required to register because of new Rule 203(b)(3)-2, will (following its registration) still be able to charge performance fees to non-qualified clients in its private funds or with whom it has managed accounts, provided that such persons first became investors or clients prior to February 10, 2005. These grandfathered persons will also be permitted to make subsequent investments. *If the adviser will be registering by February 1, 2006, each post-February 9, 2005 client will generally be required to meet the qualified client standard.*

Accordingly, any hedge fund adviser charging a performance fee and operating prior to February 10, 2005 that anticipates registering with the SEC because of new Rule 203(b)(3)-2 may wish to consider asking each person that first becomes a client of the adviser on or after February 10, 2005, through the establishment of a managed account or as a result of an investment in any of the adviser's 3(c)(1) hedge funds, to complete, execute and return the Form of Qualified Client Status Certificate annexed hereto as Exhibit A.[2] Alternatively, an unregistered adviser who does not wish to elicit

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[1] The memorandum may be found on the web at http://www.sewkis.com/Documents/attachments/660.pdf.

[2] An adviser to a non-U.S. fund that relies on Section 3(c)(1) with respect to U.S. persons should only obtain the Certificate from the post-February 9, 2005 investors in such fund that are U.S. persons; however, an adviser to a U.S. 3(c)(1) fund open to both U.S. person and non-U.S. person investors should obtain the Certificate from all of the post-February 9, 2005 investors in such fund.

"qualified client" information from its clients until registration, may instead elect to redeem those investors who do not satisfy Rule 205-3 following the adviser's registration.

Amendments to the Recordkeeping Rule

The SEC also adopted "grandfathering" amendments to the recordkeeping rule under the Advisers Act. An adviser that is required to register under the new rule 203(b)(3)-2 will be permitted to market its performance from periods prior to registration, even if the adviser has not kept documentation that is required under SEC rules. Each such adviser is required to retain whatever pre-February 10, 2005 records that support the performance earned prior to such time, but is excused from the recordkeeping rule to the extent those records are incomplete or otherwise do not meet the requirements of Rule 204-2.[3] *However, when such adviser registers with the SEC, it will be required to keep and maintain appropriate books and records as dictated by Rule 204-2 attributable to post-February 9, 2005 performance and, if such performance is not in compliance, it cannot be used.*

If you have any questions regarding the foregoing or if you would like us to assist you with investment adviser registration or compliance issues, please contact your primary attorney in the Investment Management Group at Seward & Kissel LLP.

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[3] Under Rule 204-2(a)(16), a registered adviser that makes claims concerning its performance track record must keep "[a]ll accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph."

Exhibit A

Form of Qualified Client Status Certificate

The undersigned acknowledges that, in accordance with Rule 205-3 under the U.S. Investment Advisers Act of 1940, as amended (the "Advisers Act"), the adviser or its affiliate will receive compensation based, in part, upon an increase in the value of the portfolio and, in connection therewith, the undersigned represents and warrants as to its status as a "Qualified Client" that, as of the date hereof it is a check off one of the following:

____ (i) natural person who (A) together with such person's spouse, has a net worth in excess of $1,500,000, or (B) immediately after entering into this agreement, will have at least $750,000 under the management of the investment adviser; or

____ (ii) corporation, partnership, limited liability company or other entity that is a (A) registered investment company under the Investment Company Act of 1940 (the "1940 Act"), (B) business development company under the Advisers Act, or (C) company excepted from the definition of "investment company" under Section 3(c)(1) of the 1940 Act ((ii)(A)-(C) shall each be defined as an "Excluded Company"), then each equity owner of such Excluded Company is a natural person or non-Excluded Company satisfying the Qualified Client criteria set forth herein; or

____ (iii) corporation, partnership, association, joint-stock company, trust or any organized group of persons, whether incorporated or not (other than an Excluded Company described in section (ii) above) that (A) has a net worth in excess of $1,500,000, or (B) immediately after entering into this agreement, will have at least $750,000 under the management of the investment adviser; or

____ (iv) "qualified purchaser" as defined in Section 2(a)(51) of the 1940 Act (i.e., generally, individuals and certain family vehicles with at least $5 million in net investments and entities with at least $25 million in net investments); or

____ (v) natural person or entity for which none of the above applies (further information may be requested).

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Name:
Title:
Date:

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