

PUBLICATION

SEC Clarifies Cash Solicitation Rule for Managers of Investment Pools

August 6, 2008

On July 15, 2008, the United States Securities and Exchange Commission (SEC) rendered clarification of Rule 206(4)-3 of the Investment Advisers Act of 1940 (Cash Solicitation Rule) with respect to 3(c)(1) or 3(c)(7) funds (e.g., hedge funds) that are managed by a registered investment adviser. In summary, the SEC's no-action provides as follows:

- The Cash Solicitation Rule **does not** apply to an investment adviser's cash payment to a person solely to compensate that person for soliciting or referring investors to an investment pool managed by the investment adviser.
- The SEC stated that the Cash Solicitation Rule (a) appeared to lack the intent to include investment pools within its purview; (b) was intended to apply to solicitations and referrals of clients to an investment adviser (as opposed to a fund); and (c) used terms such as "client" and "prospective client," both of which would indicate an intent to address contracts with investment advisers themselves and not the funds that they manage.
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This recent guidance from the SEC should provide clarity in area of concern to many fund managers and streamline fundraising efforts. Investment professionals should note, however, that this recent no-action guidance does not address the application of the Cash Solicitation Rule with respect to broker-dealer regulations, state securities regulations or applicability to funds which are managed by wholly unregistered entities. Accordingly, a fund should (a) seek to fully understand the registration of the salespersons and solicitors it utilizes in its marketing efforts, and (b) review solicitation agreements and fund distribution agreements to insure that those marketing efforts are being conducted in a compliant manner.