

Securities and Exchange Commission

§ 275.203(b)(3)-1

NOTE TO PARAGRAPH (b): FINRA will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

[65 FR 57449, Sept. 22, 2000; 65 FR 81738, Dec. 27, 2000, as amended at 68 FR 42248, July 17, 2003; 73 FR 4694, Jan. 28, 2008]

§ 275.203(b)(3)-1 Definition of “client” of an investment adviser.

Preliminary Note to § 275.203(b)(3)-1. This section is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act. Under paragraph (b)(6) of this section, the safe harbor is not available with respect to private funds.

(a) *General.* You may deem the following to be a single client for purposes of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)):

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special rules.* For purposes of this section:

(1) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory

services you provide to the legal organization, *provided, however*, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization’s assets or similar matters;

(3) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

(4) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

(5) If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;

(6) You may not rely on paragraph (a)(2)(i) of this section with respect to any private fund as defined in paragraph (d) of this section; and

(7) For purposes of paragraph (b)(5) of this section, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client’s investment in the fund.

(c) *Holding out.* If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public as an investment adviser, within the meaning of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)), solely because you participate in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

(d) *Private fund.* (1) A private fund is a company:

(i) That would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided

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from that definition by either section 3(c)(1) or section 3(c)(7) of such Act (15 U.S.C. 80a-3(c)(1) or (7));

(ii) That permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests; and

(iii) Interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser.

(2) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it permits its owners to redeem their ownership interests within two years of the purchase of such interests only in the case of:

(i) Events you find after reasonable inquiry to be extraordinary; and

(ii) Interests acquired through reinvestment of distributed capital gains or income.

(3) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it has its principal office and place of business outside the United States, makes a public offering of its securities in a country other than the United States, and is regulated as a public investment company under the laws of the country other than the United States.

[69 FR 72087, Dec. 10, 2004]

§ 275.203(b)(3)-2 Methods for counting clients in certain private funds.

(a) For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)), you must count as clients the shareholders, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner") of a private fund as defined in paragraph (d) of section 275.203(b)(3)-1, unless such owner is your advisory firm or a person described in paragraph (d)(1)(iii) of section 275.205-3.

(b) If you provide investment advisory services to a private fund in which an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) is, directly or indirectly, an owner, you must count the owners of that investment company as clients for purposes of section 203(b)(3) of the Act (15 U.S.C. 80b-3(b)(3)).

(c) If you have your principal office and place of business outside the

United States, you may treat a private fund that is organized or incorporated under the laws of a country other than the United States as your client for all purposes under the Act, other than sections 203, 204, 206(1) and 206(2) (15 U.S.C. 80b-3, 80b-4, 80b-6(1) and (2)).

[69 FR 72088, Dec. 10, 2004]

§ 275.203A-1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration—(1) Threshold for SEC registration—\$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least \$30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1).

(2) *Exemption for investment advisers having between \$25 and \$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least \$25,000,000 but less than \$30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64); or

(ii) You are eligible for an exemption described in § 275.203A-2 of this chapter.

NOTE TO PARAGRAPHS (a)(1) AND (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between \$25 and \$30 million of assets under management.

(b) *Switching to or from SEC registration—(1) State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating