

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PASHA S. ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendant.

Master File No. 09-cv-118 (VM)

This Document Relates To: All Actions

**DECLARATION OF HOWARD L. VICKERY
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO MOTIONS TO DISMISS OF
PRICEWATERHOUSECOOPERS ACCOUNTANTS N.V.,
PRICEWATERHOUSECOOPERS LLP, AND
PRICEWATERHOUSECOOPERS INTERNATIONAL LIMITED**

Exhibit 3

Implications of the Growth of Hedge Funds



Staff Report to the
United States Securities and Exchange Commission

September 2003

This is a staff report to the Commission. The Commission has expressed no view regarding the analysis, findings or conclusions herein.

Bahamas, Bermuda, the British Virgin Islands and the Cayman Islands.¹⁹⁴ These jurisdictions generally apply certain laws regulating the operations and conduct of investment pools and investment pool administrators to hedge funds and hedge fund administrators. These laws generally require fund administrators to be licensed, and three of the four jurisdictions require licensed fund administrators to have their accounts audited by an auditor approved by the regulator.¹⁹⁵ With respect to record keeping, each of these jurisdictions also subjects licensed fund administrators to anti-money laundering provisions. These provisions set forth client identification and record keeping requirements in addition to obligations to report any suspicious activity with respect to the funds they administer to the relevant authority in that jurisdiction.¹⁹⁶

4. Auditors

Unlike registered investment companies, there is no statutory or regulatory requirement that a hedge fund have its financial statements audited.¹⁹⁷ Whether a hedge fund undergoes an annual audit of its financial statements is a contractual matter between the hedge fund and its investors. The auditors of hedge funds that provide audited financial statements to their investors generally conduct independent audits of hedge funds pursuant to Generally Accepted Auditing Standards in the United States (“GAAS”),¹⁹⁸ and generally render an opinion on

¹⁹⁴ See generally The Bahamas Mutual Funds Act, 1995 (June 2001 Revision); Bermuda Monetary Authority Act 1969; Bermuda Companies Act 1981, Part XIA (Mutual Fund Companies); Bermuda Monetary Authority (Collective Investment Scheme Classification) Regulations 1998; British Virgin Islands Mutual Funds Act, 1996 (as amended 1997); and Cayman Islands Mutual Funds Law (2003 Revision).

¹⁹⁵ We understand that the fourth jurisdiction, Bermuda, has legislation pending that would require such audits.

¹⁹⁶ See generally Bermuda Proceeds of Crime (Money Laundering) Regulations Sections 4-6 (1998); British Virgin Islands Anti-Money Laundering Code of Practice (1999); Cayman Islands Proceeds of Criminal Conduct Law (Money Laundering Regulations) (2000); The Bahamas Financial Transactions Reporting Act (2001 Revision).

¹⁹⁷ Generally, the federal securities laws effectively prohibit any issuer, including registered investment companies, from offering or selling its securities publicly unless the issuer has filed a registration statement with the Commission which is required to include the issuer’s financial statements and an opinion from an independent accountant. This prohibition, however, does not apply to hedge funds because they do not publicly offer or sell their securities. See Sections 5 and 7 of the Securities Act.

¹⁹⁸ GAAS is generally comprised of the professional standards established by the American Institute of Certified Public Accountants (“AICPA”), including the industry audit and accounting guides. See *Implementation of Section 10A of the Securities Exchange Act of 1934*, Exchange Act Release No. 38387 (Mar. 12, 1997) (citing AU Section 150.02, AICPA Codification of Statements on Auditing Standards).

whether a hedge fund's financial statements are materially consistent with Generally Accepted Accounting Principles in the United States ("GAAP")¹⁹⁹ Depending on its agreement with its investors, the investment adviser may forward the independent accountant's report and the hedge fund's financial statements to investors upon the completion of the audit.²⁰⁰

A domestic hedge fund's engagement of an independent accountant to audit its financial statements is normally the responsibility of the fund's investment adviser. The selection of an independent accountant by domestic hedge funds, because they are typically organized as limited partnerships, is not subject to ratification or approval by a board of directors or other representative body of the investors in the hedge fund.²⁰¹

The qualifications of an independent accountant that may be used by a hedge fund are not as stringent as those used for registered investment companies. A hedge fund's independent accountant must comply with the general independence standards of the AICPA or of the individual State Boards of Accountancy where the independent accountant practices. In contrast, a registered investment company independent accountant must comply with the requirements of the Investment Company Act of 1940 and is required to follow certain regulations established under the Sarbanes-Oxley Act of 2002 and various Commission rules to ensure the independence

¹⁹⁹ A minority of domestic hedge funds and many offshore hedge funds prepare financial statements on a different comprehensive basis of accounting (e.g., tax accounting standards, international accounting standards (IAS) or local country generally accepted accounting principles (foreign GAAP)). If the financial statements are prepared in accordance with another comprehensive basis of accounting instead of GAAP, an audit may still be conducted under GAAS.

²⁰⁰ There are no time constraints on delivering the hedge fund's audited financial statements to investors unless specifically stated in the PPM or partnership agreement. But see Rule 206(4)-2 of the Advisers Act (registered investment adviser with custody of client assets is required to provide all limited partners or beneficial owners of the hedge fund with audited financial statements within 120 days in certain circumstances). In contrast, registered investment companies must transmit to shareholders audited financial statements within 60 days of their fiscal year end. See Rule 30e-1(c) under the Investment Company Act.

²⁰¹ The selection process used by domestic hedge funds contrasts with the selection of an independent accountant by a registered investment company. The Investment Company Act regulates both the selection process of the fund's accountant and the continuing oversight of a registered investment company's auditing processes by requiring an independent accountant to be approved by either a majority vote of the disinterested board members or the approval by the board's audit committee. See Section 32(a) of the Investment Company Act and Rule 32a-4 thereunder. There may be some oversight of the selection of the independent accountants by offshore hedge funds, because they are typically organized as corporations.

of auditors.²⁰² In addition, a hedge fund's independent accountant is not required to register with the Public Company Accounting Oversight Board ("PCAOB") unless if it also serves as the independent auditor for a public company.²⁰³ A hedge fund's independent auditor is not otherwise required to register with PCAOB, nor are its audits with respect to private issuers subject to PCAOB examination. As a result, the audits of hedge fund financial statements will not be subject to the examination process of the PCAOB in its oversight of registered accounting firms.²⁰⁴

5. *Consultants and Other Finders*

Hedge fund consultants are generally third parties who perform services for hedge fund investors and the hedge funds. Consultants offer investors educational and due diligence services to assist them in navigating the complexities of hedge fund investing.²⁰⁵ They also may provide hedge fund advisers with services, such as assisting those advisers to determine the eligibility of new investors. Many consultants manage their own proprietary hedge fund products for sale to investors.

Hedge fund consultants educate investors with respect to the type of information that should be sought in connection with any hedge fund investment.²⁰⁶ They may assess the

²⁰² Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002) ("Sarbanes-Oxley Act"). See also Article 2 of Regulation S-X (qualifications and reports of accountants).

²⁰³ PCAOB has jurisdiction over entities that are issuers pursuant to Section 3(a)(8) of the Exchange Act. PCAOB oversees the audits of financial statements of such public companies through registration, standard setting, inspection and disciplinary programs. See Sarbanes-Oxley Act, Sections 102-105, 108.

²⁰⁴ The independent audits of public companies, including registered investment companies, will be subject to PCAOB examination. PCAOB is in the process of establishing auditing, quality control and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports. The implementation of these standards may indirectly benefit audits of hedge funds to the extent that PCAOB-registered firms also perform audits of hedge funds and draw on the standards applicable with respect to public companies.

²⁰⁵ Hedge fund investors also frequently hire private investigator services to assist them in verifying the information provided by the investment adviser and its personnel. For example, these services may be called upon to verify a portfolio manager's educational or employment background as well as to confirm reported investment performance assertions. See Roundtable Transcript, May 15 (statement of Sandra Manzke), *supra* note 162.

²⁰⁶ Most hedge fund investors perform extensive due diligence prior to making initial and subsequent investments. According to a survey of institutional investors, 60 percent of institutional investors take between two to six months to complete due diligence on a hedge fund. Deutsche Bank Survey, *supra* note 158, at 7.