Exhibit 23

From: Peter Stamos [pstamos@SterlingStamos.com]
Sent: Monday, November 15, 2004 8:19 AM
To: J. Ezra Merkin
Subject: RE: SRZ Client Alert: SEC ADOPTS RULE REQUIRING HEDGE FUND MANAGER REGISTRATION; COMPLIANCE DATE SET FOR FEBRUARY 1, 2006

Importance: High
Dear Ezra,

Thank you. Sorry to have hit you with so many 'urgent' messages on Friday. We had a tough conversation with our attorneys on Thursday evening that will have several implications for our investments with our friend in the Lipstick building. Hence, the calls.

I will call you later today to fill you in on some of the details, but we may have to significantly ***decrease*** or ***increase*** our exposure to options arbitrage (i.e., Ascot and Ariel). I need your counsel.

I hope and trust that you and your family are well, Ezra. I very much look forward to seeing you on Wednesday. It has been far too long.

As always,

Peter

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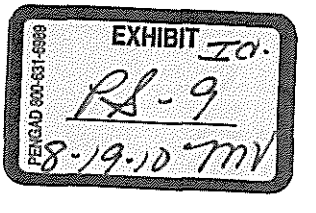
-----Original Message-----
From: J. Ezra Merkin [mailto:JEMerkin@gabrielcapital.com]
Sent: Sunday, November 14, 2004 9:48 PM
To: Peter Stamos
Subject: SRZ Client Alert: SEC ADOPTS RULE REQUIRING HEDGE FUND MANAGER REGISTRATION; COMPLIANCE DATE SET FOR FEBRUARY 1, 2006

Peter,

Please make sure you have read this (it is not very long or difficult) by the time we see each other Wednesday evening.

Just as background, I have sent this to and been over this with our friend in the lipstick building. Please treat that completely confidentially.

I look forward to seeing you Wednesday. I have a long list, even by our customary standards.



-----Original Message-----
From: Koupal, Shawn [mailto:Shawn.Koupal@srz.com]
Sent: Wednesday, October 27, 2004 6:29 PM
To: User, wwwmail
Subject: SRZ Client Alert: SEC ADOPTS RULE REQUIRING HEDGE FUND MANAGER REGISTRATION; COMPLIANCE DATE SET FOR FEBRUARY 1, 2006

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ALERT

SEC ADOPTS RULE REQUIRING HEDGE FUND MANAGER REGISTRATION;

COMPLIANCE DATE SET FOR FEBRUARY 1, 2006

The SEC voted yesterday to adopt Rule 203(b)(3)-2 and amend related rules under the Advisers Act. These actions will require certain hedge fund managers to register with the SEC by February 1, 2006. In substance, newly adopted Rule 203(b)(3)-2 requires an investment adviser to any "private fund" to count as a single client each investor in the fund (and to look through and count as a single client generally each investor in a fund that invests in the adviser's fund). The effect of this rule is to require advisers to hedge funds having 15 or more investors to register with the SEC.[1][1] The rule also contains special provisions for (i) advisers located outside the U.S. and (ii) advisers to certain funds with two-year lock up provisions, including private equity and venture capital funds.

The information contained in this Alert is based on the proposed rule and related release and discussion held during yesterday's SEC meeting, including a statement that the rule is being adopted substantially as proposed. The text of the new rule and the related release are not expected to be issued for at least two or three weeks. We will provide additional clarifying information at that time.

A. Background

Under Section 203(b)(3) of the Advisers Act, an investment adviser is not required to register with the SEC if it: (i) has fewer than 15 advisory clients in any 12-month period; (ii) does not hold itself out generally to the public as an investment adviser; and (iii) does not advise an SEC registered investment company or business development company. Prior to yesterday's action, Rule 203(b)(3)-1 permitted an investment adviser to count a pooled investment vehicle, such as a hedge fund, as a single client (rather than count each investor as a single client), provided that the fund received investment advice based on its overall investment objectives rather than the individual investment objectives of the fund's investors. Accordingly, an adviser

could manage up to 14 hedge funds without being required to register with the SEC.

B. Rule 203(b)(3)-2: Application of the New "Look-Through" Provision

New Rule 203(b)(3)-2 now requires advisers to "private funds" to look through each of those funds and count each investor in the funds as a single client. Accordingly, an adviser to private funds that have in the aggregate 15 or more investors[1][2] during the course of any 12-month period[1][3] must register with the SEC. For purposes of the new rule, a "private fund" includes a company that:

- Would be an investment company but for the exclusions from registration of Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940;
- Permits owners to redeem their ownership interests in the company within two years of purchase; and
- Is offered based on the investment advisory skills, ability or expertise of the investment adviser.

1. Exclusion for Funds with a Two-Year Lock Up Provision

Because new Rule 203(b)(3)-2 defines a "private fund" as a fund that permits its owners to redeem their interests within two years of their purchase, the rule excludes certain funds, including private equity and venture capital funds, from the look-through provision if they maintain a two-year "lock up." The two-year lock up period will be required only for new investors (or additional investments by existing investors) after the compliance date, February 1, 2006. The "lock up" must continue for two years, except that redemptions or withdrawals are permitted in the case of an extraordinary circumstance (*e.g.* for tax or regulatory reasons). Advisers to these funds may continue to rely on Rule 203(b)(3)-1 and count each of these funds as a single client.

2. Fund-of-Funds Look Through

The new rule contains a special provision for advisers to hedge funds in which a registered investment company invests. Hedge fund advisers are required to count the investors in the registered fund as its own clients for purposes of determining the 14-client registration threshold. According to the SEC, this provision will preclude the possibility of a hedge fund adviser providing its services to thousands of mutual fund investors through fourteen or fewer mutual funds, each of which could invest in the private fund, and each of which would count as a single client.

3. Non-U.S. Investment Advisers

The new rule applies to non-U.S. advisers on a limited basis. These advisers are not required to count as clients non-U.S. investors in any offshore funds they advise and generally are not required to count as clients any non-U.S. investors who, subsequent to investing in a fund, move to the United States. To determine the status of an investor as a U.S. client, an adviser will be required to look to the following at the time of investment: (i) the residence of any natural person; (ii) the location of the trustee for any trust; and (iii) the place of organization for any corporation or similar business entity. In addition, a non-U.S. adviser is not required to look through and count as clients any U.S. investors in publicly offered, registered offshore funds they advise (*e.g.*, investment vehicles such as UCITS).

A non-U.S. adviser that is required to register with the SEC because of the existence of a U.S. investor in an offshore fund will be subject to the Advisers Act only with respect to its U.S. investors, as outlined in the SEC's no-action letter to *Unibanco* (July 28, 1992) and similar letters issued by the SEC staff subsequent to *Unibanco*. Under these letters, a non-U.S. adviser is required to comply with limited provisions of the Advisers Act (including, as we understand, making available to the SEC certain of its records relating to U. S. clients) and is subject to SEC inspections with respect to its treatment of U.S. clients. (A full reading of the SEC rule and related release will be necessary to determine the full scope of Advisers Act requirements that will apply to non-U.S. advisers.)

C. Related Amendments to the Advisers Act

The SEC also voted yesterday to adopt amendments to various rules under the Advisers Act to accommodate hedge fund managers. The compliance date set for these amendments is February 1, 2006.

1. The Recordkeeping Rule - Use of Past Performance

The SEC has amended Rule 204-2 under the Advisers Act (*i.e.*, the "Recordkeeping Rule") to permit a newly registered hedge fund adviser to use performance information relating to the period prior to its registration without being subject to the normal requirement that it maintain records supporting that performance information. This amendment is intended to help ensure that hedge fund advisers required to register as a result of Rule 203(b)(3)-2 are not deprived of the ability to use performance information for periods prior to their registration. (We remind our clients that there are important issues other than recordkeeping that must be considered before using investment performance information.)

The SEC also has amended the Recordkeeping Rule to clarify that the books and records of a hedge fund adviser registered with the SEC include records of the hedge funds for which the adviser or a related person (as defined in Form ADV) acts as general partner, managing member, or in a similar capacity.

2. The Performance Fee Rule - Grandfather Provision

The SEC has incorporated a "grandfather" provision into Rule 205-3 under the Advisers Act (*i.e.*, the "Performance Fee Rule"). This provision allows a registered hedge fund adviser that advises a Section 3(c)(1) fund to charge incentive fees and allocations to an investor in that fund who is not a "qualified client" if the investor invested in the fund prior to the adviser's registration. Generally, a "qualified client" is a person who, at the time of making an investment, has a net worth of more than $1.5 million or has at least $750,000 of assets under the management with the fund's investment adviser (which may include the amount of the investment and the value of any previous investments).

3. The Custody Rule - Extension for Delivery of Audited Financial Statements

The SEC amended Rule 206(4)-2 under the Advisers Act (*i.e.*, the "Custody Rule") to provide greater flexibility to investment advisers to funds of funds. Specifically, the amendment extends the time within which a registered adviser must deliver to investors the audited financial statements of a fund of funds it manages from 120 days to 180 days after a fund of funds' fiscal year-end. Prior to the compliance date, advisers to funds of funds may rely on the SEC staff's earlier no-action position that already provides for the extension to 180 days.

4. Amendments to Form ADV

The SEC has amended Form ADV to identify advisers to hedge funds. The current Form ADV collects information about advisers to pooled investment vehicles without distinguishing hedge fund advisers from other advisers. The SEC amended Item 7 B. of Part 1A and Section 7 B. of Schedule D to require advisers to "private funds," as defined in new Rule 203(b)(3)-2, to identify themselves as hedge fund advisers in Part 1A and Schedule D of Form ADV.

5. State Registration Requirements

The adoption of Rule 203(b)(3)-2 and related amendments to the Advisers Act do not directly change state investment adviser requirements. Accordingly, we remind unregistered advisers, particularly investment advisers with less than $25 million in assets under management, to check applicable state registration requirements. Moreover, it is possible that various states might seek to adopt rules similar to Rule 203(b)(3)-2 under which hedge fund advisers not registered with the SEC would be required to register in those states.

D. Compliance Date

As stated above, the SEC has adopted February 1, 2006, as the compliance date. By this date, any hedge fund adviser required to register with the SEC must have submitted its registration statement on Form ADV and be fully compliant with all applicable requirements arising out of the Advisers Act.

E. Suggested Action Steps

In order to assist our unregistered clients in becoming registered with the SEC and meet the new requirements that will be applicable to them, we recommend taking the following steps:

- Appoint a Registration Committee. Consider creating a "Registration Committee" consisting of the firm's general counsel and compliance officer (if a separate person), as well as possibly the firm's chief investment officer, head trader and chief financial officer, and assign persons with responsibility for (i) gathering information that will be necessary for completing a Form ADV and for compiling written compliance policies and procedures and (ii) seeing the registration process through to completion.

- Begin Completing the Form ADV. Download a copy of the Form ADV, the investment adviser registration form, from the SEC's Internet Website, which can be found at www.sec.gov/divisions/investment/iard/iastuff.shtml. Review the form and begin to collect the information necessary for its completion. Note that the process can take upwards of two or three months. For information on how to register with the SEC, see www.sec.gov/divisions/investment/iard/register.shtml.

- Understand the New Requirements Applicable Under the Advisers Act. A number of Advisers Act provisions and rules apply specifically to registered investment advisers, including rules on (i) insider trading and codes of ethics (Section 204A and Rule 204A-1); (ii) recordkeeping (Rule 204-2); (iii) performance fees (Rule 205-3); (iv) the assignment of advisory contracts (Section 205(a)); (v) advertising (Rule 206(4)-1); (vi) custody of client assets (Rule 206(4)-2); (vii) payments to solicitors (Rule 206(4)-3); (viii) special disclosures regarding any financial impairment and disciplinary events

(Rule 206(4)-4); (ix) proxy voting (Rule 206(4)-6); and, of course, (x) designating a chief compliance officer and maintaining written compliance policies and procedures (Rule 206(4)-7). For additional information about these requirements, see *An Overview of Advisers Act Requirements*, by SRZ Partner Terrance O'Malley, available at www.iinews.com/site/pdfs/JIC_Summer_2004_OMalley.pdf.

- Designate a Chief Compliance Officer. Identify and designate a Chief Compliance Officer by the date of registration and assign the person overall responsibility for administering the firm's compliance policies and procedures.

- Develop Written Compliance Policies and Procedures. Review any existing compliance policies and procedures and develop any additional policies and procedures that may be necessary to comply with Rule 206(4)-7, which requires a registered investment adviser to adopt policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted thereunder by the adviser or any supervised persons. Begin drafting a comprehensive set of written policies and procedures. Note that this process may take upwards of three to four months.

Finally, we remind advisers who will be required to register under the new rule that they may want to consider any previous decision not to accept ERISA money due to the requirement that a hedge fund containing more than 25% of its assets from accounts subject to ERISA must be managed only by an SEC registered adviser.

If you have any questions regarding this Alert, please contact ***Stephanie Breslow*** at ***(212) 756-2542***; ***Larry Eckert*** at ***(212) 756-2597***; ***David Efron*** at ***(212) 756-2269***; ***Steve Fredman*** at ***(212) 756-2567***; ***Kenneth Gerstein*** at ***(212) 756-2533***; ***Christopher Hilditch*** at **+44 207-081-8002**; ***Kelli Moll*** at ***(212) 756-2557***; ***David Nissenbaum*** at ***(212) 756-2227***; ***Terrance J. O'Malley*** at **(212) 756-2345**; ***Paul Roth*** at ***(212) 756-2450***; ***Phyllis Schwartz*** at ***(212) 756-2417***; ***George Silfen*** at *(212) 756-2131*; *Daniel Shapiro at* +44 207-081-8001; or ***Marc Weingarten*** at ***(212) 756-2280***. www.srz.com

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[1][1] In order to be eligible to register with the SEC, an adviser must have at least $25 million in assets under management. Otherwise, an adviser must look to the laws of the state in which the adviser has its principal office and place of business to determine whether or not state registration is required.

[1][2] Advisers to hedge funds are not required to count as clients the hedge fund adviser, executives and partners of the adviser (and certain of their family members) or certain employees of the adviser.

[1][3] The 12-month period will not begin to run until the compliance date.

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