



**STATE OF WASHINGTON**  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**  
**SECURITIES DIVISION**

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**NOTICE TO HEDGE FUND MANAGERS**  
**September 22, 2005**

Any hedge fund manager with a place of business in Washington with less than \$25 million in assets under management must consider registering with the Securities Division as an investment adviser by February 1, 2006. Managers failing to register by that date may be subject to appropriate enforcement action in order to bring the manager into compliance.

The Securities Division requires that any hedge fund manager with a place of business in Washington that receives compensation for managing a fund containing securities be registered as an investment adviser with the State of Washington, unless the manager is registered with the SEC, excepted from the definition of investment adviser under RCW 21.20.005, or exempted from registration under RCW 21.20.040.<sup>1</sup>

This Notice should clarify any confusion relating to the treatment of hedge fund managers under Washington law. The treatment of hedge funds under federal law may have led to this confusion:

1. Federal law recognizes a “private adviser exemption” if an adviser: (i) has had fewer than 15 clients during the preceding twelve months, (ii) does not hold itself out generally to the public as an investment adviser, and (iii) is not an adviser to any registered investment company.<sup>2</sup>
2. In 1985, the SEC adopted a rule that permitted advisers to count each partnership, trust or corporation as a single client.<sup>3</sup>

Therefore, for many years, federal law allowed manager to advise up to 14 hedge funds, each of which could have a large number investors, without registering under the Investment Company Act of 1940.

Unlike federal law, Washington law does not have a private adviser exemption and the Division has consistently taken the position that each investor in a hedge fund should be counted as a

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<sup>1</sup> Pursuant to [RCW 21.20.040\(3\)\(b\)\(ii\)](#), hedge fund managers with no place of business in Washington and fewer than six Washington clients are exempt from the investment adviser registration requirements.

<sup>2</sup> See §203(b)(3) of the Investment Advisers Act of 1940.

<sup>3</sup> Under rule 203(b)(3)-1(a)(2)(i)[17 CFR 275.203(b)(3)-1(a)(2)(i)], an investment adviser may count a legal organization as a single client so long as the investment advice is provided based on the objectives of the legal organization rather than the individual investment objectives of any owner(s) of the legal organization. Rule 203(b)(3)-1(b)(3)[17 CFR 275.203(b)(3)-1(b)(3)] states that “[a] limited partnership is a client of any general partner or other person acting as investment adviser to the partnership.”

client of the adviser. As set forth in [SEC Release No. IA-2333](#), however, the SEC is changing the way it counts clients for purposes of its private adviser exemption. As amended, federal rule 203(b)(3)-2 will require investment advisers to count each shareholder, limited partner, member, beneficiary or owner of a private fund toward the threshold of 14 clients. With the adoption of this amendment, hedge fund investors will be counted as clients of the hedge fund advisor under both federal and Washington law, thereby eliminating this source of potential confusion. The February 1, 2006, deadline set forth in this notice is consistent with the deadline for federal registration as a result of the above-referenced amendment to rule 203(b)(3)-2.

Information on investment adviser and investment adviser representative registration requirements can be found on the Division's website at <http://www.dfi.wa.gov/sd/iachecksheet.htm>. Because the registration process takes time, which may include studying for and taking NASD administered examinations, managers are strongly urged to begin the registration process immediately in order to comply with the February 1, 2006, time frame set forth in this notice. Questions about the registration process can be directed to Pauline Cheung at 360-902-8746, or [pcheung@dfi.wa.gov](mailto:pcheung@dfi.wa.gov).

If you have any questions about the contents of this notice please contact Bill Beatty at 360-902-8723, or [bbeatty@dfi.wa.gov](mailto:bbeatty@dfi.wa.gov).