

## INVESTMENT FUNDS ALERT

### NEW SEC AREAS OF FOCUS: PREFERENTIAL REDEMPTIONS AND ACCOUNT HOLDINGS CONFIRMATIONS

In March of 2009, both the Securities and Exchange Commission (SEC) and its staff in the Office of Compliance Inspections and Examinations (OCIE) announced new focus areas related to hedge fund redemptions and advisers' statements to their fund investors.

#### PREFERENTIAL REDEMPTIONS

On March 20, 2009, Commissioner Elisse Walter testified before the House of Representatives Committee on Financial Services regarding recent enforcement actions and the SEC's enforcement focus for the upcoming year, including its efforts regarding hedge funds. In addition to the SEC's past focus areas of potential market manipulation, abusive short selling, valuation and insider trading by hedge funds, Ms. Walter stated, "[t]he huge number of liquidations and suspensions of redemptions by hedge funds in the past year have created particular concern as to whether hedge fund advisers may be favoring their own interests above others and whether principals, employees or favored investors of the hedge fund adviser may have received 'preferential redemptions' . . ." While she did not mention any specific examples or ongoing investigations, the SEC and its staff will likely target this area in examinations and enforcement inquiries in the coming year.

#### ACCOUNT HOLDINGS CONFIRMATIONS

In a letter to the Investment Adviser Association on March 9, 2009, Gene Gohlke, an associate director of OCIE, stated that OCIE staff members would begin contacting investors in investment funds in the ordinary course of SEC examinations to confirm that the information provided to investors matches the internal records of the funds in which they are invested. According to Mr. Gohlke, OCIE staff members will also request records of third parties in order to obtain independent corroboration of the accuracy of the information regarding the net assets of investment funds provided to OCIE staff members by an adviser.

## CONCLUSION

Both SEC-registered and unregistered advisers need to be mindful of their fiduciary duties to their clients given the SEC's and OCIE's focus on hedge funds and their activities during this financial crisis. Examinations will likely be much more involved and intrusive in the future as the SEC's resources and authority increase.

## CONTACT INFORMATION

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