AKIN GUMP
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Investment Funds Alert

SEC Increases Thresholds to Charge Performance-Based Compensation

July 13, 2011

On July 12, 2011, the Securities and Exchange Commission (SEC) issued an order to increase the minimum amount of net worth or minimum amount under management that (i) a client of a registered investment adviser or (ii) an investor in a 3(c)(1) fund managed by a registered investment adviser must have in order to be charged performance-based compensation. The order sets the new qualification thresholds—pursuant to the SEC's rule on performance-based compensation charged by registered investment advisers (Rule 205-3 under the Investment Advisers Act of 1940)—at either $2 million in net worth (increased from $1.5 million) or $1 million in assets under management with the relevant investment adviser (increased from $750,000), measured at the time the client enters into an advisory contract, or the investor invests in the 3(c)(1) fund. Unlike the amendments to Rule 205-3 that the SEC proposed in May 2011, the order did not exclude the value of a client's or an investor's primary residence from the calculation of net worth nor did the order grandfather prior investors. The SEC will likely adopt at least some of these changes in a later rule amendment prior to the effectiveness of the new thresholds. The order will be effective as of September 19, 2011.

For a link to the order, please click **here**.

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