

Fallon-Houle, Nancy

From: Private Equity and Venture Capital Committee <BL-PEVC@MAIL.AMERICANBAR.ORG> on behalf of Jeffrey Erb <jerb@WSCM.NET>
Sent: Tuesday, April 16, 2013 9:03 AM
To: BL-PEVC@MAIL.AMERICANBAR.ORG
Subject: Re: Performance Fee charged to accredited investors

The test are different, and each must be met. "Qualified client" is under the Investment Advisors Act (so assumes that manger is a registered investment advisor), and includes investors that have invested at least \$1 million. If the qualified client test is met, then the investor would most likely also be an "accredited investor" under the Securities Act. This all assumes the private fund is relying on Section 3(c)(1) under the Investment Company Act and will have less than 100 investors, otherwise all investors must be "qualified purchasers," a much higher threshold.

The three test are all slightly different. It is important to find the lowest common denominator in them given the fund structure. I think the article saying it was retail based is just headline news.

Of course, now if the fund wants to market into the EU, there is a whole new set of rules to address.

Jeff Erb
Waterstone Capital Management, LP
General Counsel
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-----Original Message-----

From: Private Equity and Venture Capital Committee [mailto:BL-PEVC@MAIL.AMERICANBAR.ORG] On Behalf Of Michael Stolzar
Sent: Tuesday, April 16, 2013 7:34 AM
To: BL-PEVC@MAIL.AMERICANBAR.ORG
Subject: Re: Performance Fee charged to accredited investors

I agree. It is my understanding also that performance fees may only be charged if all investors are qualified investors, not just accredited investors.

Michael

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> (T): (914) 949-4600; (914) 949-9644 > (F): (914) 931-7006 > mistolzar@karlenstolzar.com > > This message is intended only for the use of the individual or entity to > which it is addressed, and may contain information that is PRIVILEGED, > CONFIDENTIAL, and exempt from disclosure under applicable law. If the > reader of this message is not the intended recipient, or the employee or > agent responsible for delivering the message to the intended recipient, > you are hereby notified that any dissemination, distribution or copying > of this communication is strictly prohibited. If you have received this > communication in error, please notify us immediately by telephone, and > delete the original without making a copy. Although this email and any > attachments are believed to be free of any virus or other defect that > may affect any computer system into which it is received and opened, it > is the responsibility of the recipient to ensure that it is virus free > and no responsibility is accepted by the undersigned or by Karlen > & Stolzar, LLP for any loss or damage arising in any way from its use.

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> I was surprised to read about the CPG Carlyle Private Equity Fund in Morningstar. Designed as a private equity fund "for the masses" - it will be sold to accredited investors, and charge a 20% carried interest. I might not be up to date on some elements of Dodd-Frank, but I thought performance fees could only be charged to funds that include only "qualified

clients" or "qualified purchasers." Clearly, I'm missing something, but what IA exemption am I missing that allows a performance fee to be charged to accrediteds? Thanks.

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