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
952.697.4126

-----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

> Michael I. Stolzar, Esq.
> Karlen & Stolzar, LLP
> 445 Hamilton Avenue - Suite 1102
> White Plains, New York 10601
> (T): (914) 949-4600; (914) 949-9644 > (F): (914) 931-7006 > mistolzar@karlenstolzar.com > > On 4/15/2013 4:41 PM, Eric C Marshall wrote:
> 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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> Thank you for your continued interest in this list. A summary of your discussion list subscriptions, including BL-PEVC, can be found at http://apps.americanbar.org/elistserv/home.cfm .   This new List Subscription Page allows you to manage your lists - unsubscribe from existing or join others.
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> If you have any issues you may either contact the list owner via email: BL-PEVC-request@mail.americanbar.org, or the ABA Service Center at phone: 1-800-285-2221 or email: service@americanbar.org .
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