

Bullet Point ®

Revisions to “Qualified Client” Thresholds ¹

On July 12, 2011, the Securities and Exchange Commission (“SEC”) published an order (Release No. 3236) raising the monetary thresholds that determine whether an investment adviser can charge performance fees to investors. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) directed the SEC to adjust these thresholds to account for inflation by July 21, 2011 and also requires these SEC to readjust the thresholds every five (5) years thereafter.²

Rule 205-3 of the Investment Advisers Act of 1940, as amended (the “Advisers Act”) permits a registered investment adviser (an “RIA”) to charge performance fees if (among other things) an investor is a “qualified client.” Prior to the effective date of these revisions, an investor was considered to be a “qualified client” if it had at least \$750,000 in assets under management with the RIA immediately after entering into an advisory contract, or if the RIA reasonably believed that the investor had a net worth of more than \$1.5 million at the time of entering into an advisory contract. Pursuant to the order, the “qualified client” thresholds have been increased such that an investor must have at least \$1 million in assets under management with the RIA or have a net worth of more than \$2 million in order to be considered a “qualified client.”³

The new “qualified client” threshold levels are effective as of September 19, 2011. RIAs will not have to re-qualify their existing investors based on these new threshold levels to ensure that these investors would still be considered “qualified clients.” However, these thresholds will apply to investors at the time of entering into, extending or renewing an advisory contract with the RIA or at the time an investor makes an additional investment in a fund advised by an RIA. As such, all offering and subscription documents should be updated accordingly to reflect these changes.

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Should you have any questions regarding this order or the new “qualified client” threshold levels and their implications, please feel free to contact us.

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¹ This memorandum provides general information on the subject matter described, should not be relied on for legal advice in any jurisdiction and may constitute attorney advertising.

² The SEC has also proposed rules to exclude the value of an investor’s primary residence from the net worth test for whether that investor is considered a “qualified client,” but this rule has yet to be finalized.

³ As directed by the Dodd-Frank Act, the SEC rounds these threshold levels to the nearest \$100,000 based on the inflation rate.