

SEC Issues Advisers Act Antifraud Rule Release

August 8, 2007

On August 3, 2007, the SEC issued its release relating to the adoption of Rule 206(4)-8 under the Investment Advisers Act of 1940 (Advisers Act), which prohibits advisers to pooled investment vehicles from making false or misleading statements to investors or prospective investors in those pools, or otherwise defrauding those investors or prospective investors. The rule also gives the SEC the ability to bring an enforcement action against advisers that defraud investors or prospective investors in pooled investment vehicles. The SEC adopted the rule as proposed.

The SEC release largely reiterates the points that were articulated in the release proposing Rule 206(4)-8, including the following:

- The rule applies to both registered and unregistered advisers.
- The rule applies to investment advisers that advise “pooled investment vehicles” such as hedge funds, private equity funds, venture capital funds, and other types of privately offered pools that invest in securities, as well as to investment companies registered under the Investment Company Act of 1940.
- The rule prohibits advisers to pooled investment vehicles from making any false or misleading statements to investors in the pool regardless of whether the pool is offering, selling, or redeeming securities.
- The rule makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser to a pooled investment vehicle to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.
- Investors will not have a private right of action under the rule.
- The SEC would not need to demonstrate scienter in an enforcement action against an adviser to establish a violation of the rule.

The effective date of the rule is September 10, 2007.

[Click here to access the Final Rule Release.](#)

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