

D.C. Circuit Court Vacates Hedge Fund Adviser Registration Rule

In a decision issued this morning, June 23, 2006, the United States Court of Appeals for the District of Columbia, in *Phillip Goldstein, et al., v. Securities and Exchange Commission*, vacated the Securities and Exchange Commission's (the "Commission") new rule, Rule 203(b)(3)-2, under the Investment Advisers Act of 1940 (the "Advisers Act"), requiring certain hedge fund advisers to register with the Commission under the Advisers Act. Central to the ruling was the court's determination that the new rule was arbitrary in nature because it interpreted the word "client" as used in the Advisers Act to include investors in a hedge fund solely for purposes of determining whether the hedge fund adviser was required to register. The court concluded that it was not reasonable for the Commission to have concluded that investors were clients under the statute for these purposes and not for others.

The rule was originally adopted by a 3-2 vote of the Commission on December 2, 2004. Since that time, the composition of the Commission has changed, and it is not clear whether a majority of the current SEC Commissioners support the rule. SEC Chairman Christopher Cox has instructed the Commission's professional staff to evaluate promptly the court's decision and to provide a set of alternatives for consideration, but he has not made clear whether the Commission intends to appeal the decision. Ropes & Gray will continue to monitor the SEC's response to the court's ruling.

For the full text of the court's decision, please [click here](#).

Contact Information

If you have any questions or would like to learn more about the issues raised by the court's decision, please contact the Ropes & Gray lawyer who normally represents you or one of the attorneys listed below.

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