

## SEC Increases Performance Fee Thresholds

Written by Jeffrey D. Collins, Robert G. Sawyer

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As noted in a **previous alert**, the Securities and Exchange Commission has now issued an Order, effective as of **August 15, 2016** (the "Effective Date"), which amends SEC Rule 205-3 (the "Performance Fee Rule") under the Investment Advisers Act of 1940 by increasing the net worth threshold by which an advisory client or private fund investor may be considered to be a "qualified client" that is eligible to be charged a performance fee. As a result of the Order, a "qualified client" will mean:

- (i) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than **\$2,100,000**, excluding the equity value of such person's primary residence, and
- (ii) A natural person who, or a company that, immediately after entering into the contract has at least \$1,000,000 under the management of the investment adviser.

The Order is effective as to an advisory contract, including a subscription to a private fund, entered into on or after the Effective Date, but will not apply to advisory contracts entered into prior to the Effective Date, provided that such advisory contract complied with the Performance Fee Rule as it was in effect at the time that such advisory contract was entered into. The full text of the Order is **available here**.

All investment advisers with performance or incentive fee arrangement should, if they have not done so already, review and update their forms of advisory contracts, including subscription and offering materials for new subscribers to private funds, in order to comply with the revised standards noted above.

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