

This article first appeared in the October 2005 issue of *Eurekahedge*.

Structuring Hedge Funds for Non-US Managers: US Tax and Regulatory Considerations

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Introduction

An alternative asset manager faces a number of critical decisions when forming a new fund, among them choosing the best-suited domicile for their fund entities, the entity type and overall structure. There are many factors to consider in making these decisions, such as tax implications for the various investors and the management team based on their respective locations and the nature of the investments that will be made by the fund. These considerations are getting increasingly complex as more and more managers operate out of multiple offices, investment strategies get more complex or converge on private equity-type strategies, and as investors are sought from a greater number of countries than ever before. In addition, these factors are interdependent and optimised solutions are harder to come by. Many managers do not put much value on the effort to optimise fund structures and view cynically the supposed benefits of spending time, effort and money upfront to plan for the future. These managers are, understandably, focused on costs and want to do whatever was done before—they want to follow the template of earlier funds and essentially clone

their earlier work or the work of others. Other managers, those planning for the long term, understand that flexibility and control over a structure are among the greatest benefits of these early efforts.

We do not want to underestimate the benefit of following precedent and replicating earlier efforts. There is usually a tremendous gain in efficiency and effectiveness, as well as mighty cost savings, from following earlier work. However, the opportunity cost in the form of lost benefit of not engaging in proper analysis at the commencement of a new fund, even for an experienced fund manager, may dwarf the cost savings of merely following precedent if the former approach would have yielded different results. Once this analysis has been done, precedents can still be used in many ways to gain efficiency.

One of the many factors that make structuring a new fund so complicated is that US tax law must be taken into consideration for any fund that either intends to admit US investors or will make any US investments. US tax considerations therefore have a profound impact on managers operating everywhere in the world and investing in many different



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strategies. The tax treatment of different types of income for different types of US investors can have significant tax benefits or adverse consequences, regardless of the income being related to investments outside the US. Most fund managers need to face these issues head on since US assets devoted to alternative investments is approximately one-quarter to one-third of assets invested in alternative assets globally and fund managers usually do not want to exclude US investors from their potential client base. Therefore, US tax considerations must be taken into account when formulating a fund structure. In addition, a fund that may make investments in US assets will have to consider the US tax implications of those investments on its non-US investors. As described in more detail below, there are certain types of income from US sources that non-US investors may need to avoid.

Besides the US tax factors that must be considered when structuring a new fund, issues related to compliance with US securities laws must be addressed. In particular, a new fund must be structured in a manner that avoids the requirement that the fund be registered under the US Investment Company Act of 1940 (Investment Company Act) and that the fund manager be subject to all of the obligations of a registered adviser under the US Investment Advisers Act (Advisers Act). The admission of one US investor in a fund can have a profound affect on the Investment Company Act analysis for that fund and the creation of a fund can have an affect on the Advisers Act analysis of a manager that managers other funds or accounts, even if no US investor is admitted to the new fund.

This article addresses some of the many US tax reasons driving fund structures and the required analysis under the Investment Company Act and the Advisers Act. Although we expect that US fund managers will benefit from more fully understanding the issues discussed here, it is likely that non-US managers will find this article most useful and, hopefully, greatly enlightening.

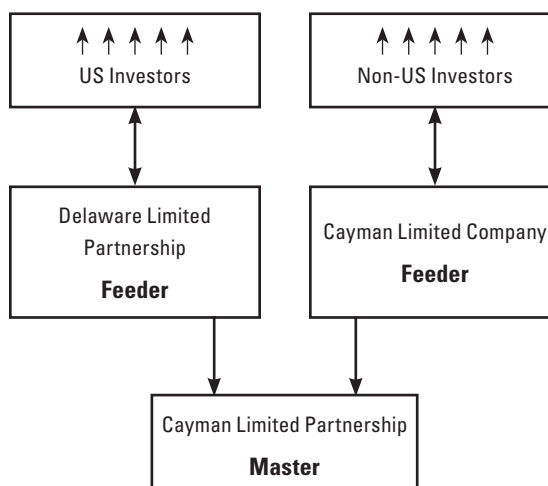
Base Case

Let us start by describing a very typical hedge fund structure and the benefits and detriments of

this structure. The base case is a master-feeder structure, in which one feeder fund is a Cayman Islands exempted-limited company, the other feeder is a Delaware limited partnership, and the master fund is a Cayman Islands entity. We prefer using partnerships here, rather than exempted-limited companies. In our base case, the investment manager is a non-US person. This structure can also accommodate European and Asian investors (in this context, the Asian investors would likely be based in Japan, Hong Kong and Singapore), to a greater or lesser extent. Fund investments are to be made in a wide range of securities and portfolio companies.

Tax Considerations

From a tax perspective, the playing fields of investors in a global hedge fund are not seeded with the same turf. US taxable, US tax-exempt and non-US investors have seemingly competing interests, and hedge fund managers must balance their sometimes conflicting needs while devising a structure that is not overly burdensome administratively. With proper planning, a manager should be able to meet each type of investors' basic needs while optimising its own tax and economic position.



US federal income tax considerations are often critical in determining the structure of a global hedge fund seeking to attract US capital. This is why a fund manager will find itself juggling the varying interests of the different types of investors the manager is seeking

as clients. This section addresses the three main categories of investors in a global hedge fund from a US perspective (US taxable, US tax-exempt and non-US investors), the tax characteristics each type of investor will seek with respect to its investment in a hedge fund and considerations with respect to selecting a jurisdiction for the fund and feeder entities.

US Taxable Investors

Tax Treatment of Entity

US taxable investors generally prefer to invest in hedge funds that are treated as partnerships for US federal income tax purposes. With partnership treatment, US taxable investors will benefit from flow-through treatment of capital gains and losses and deductions and credits. If the fund is organised in a non-US jurisdiction, partnership treatment also will enable the US taxable investor to avoid certain anti-deferral regimes (e.g. passive foreign investment company and controlled foreign corporation rules) that may be applicable to non-US entities that are treated as corporations for US federal income tax purposes.

Jurisdictional Issues

A manager will find that US taxable investors typically prefer to invest through a US entity. Non-US entities that are treated as partnerships for US federal income tax purposes, either by default or as a result of a so-called check-the-box election, may also be used; however, if the vehicle is set up solely for US taxable investors, such investors are generally accustomed to investing through US partnerships, such as Delaware limited partnerships. Certain US taxable investors may be wary of investing through a feeder entity set up in a tax haven jurisdiction, such as the Cayman Islands, because of concerns that the US taxing authorities may view such investments with higher scrutiny.

US Tax-Exempt Investors

Tax Treatment of Entity

In contrast to their taxable counterparts, US tax-exempt investors will prefer to invest through an entity that is treated as a corporation for US federal income tax purposes, but, of course, one that is not actually subject to tax in any jurisdiction. To

understand this distinction, it is important to know how US tax-exempt entities are taxed for US federal income tax purposes. In general, US tax-exempt investors are not subject to US taxation on their income, so such investors will not be concerned about having flow-through treatment of capital gains or losses and deductions and credits, nor will such investors be troubled by the potential anti-deferral regimes applicable to certain non-US corporations. However, US tax-exempt investors may be subject to US tax (currently at a rate of 35%) to the extent that they generate unrelated business taxable income (UBTI). UBTI generally is defined as gross income derived by a US tax-exempt entity from any unrelated trade or business regularly carried on by it, less certain deductions.

Certain types of income are exempt from UBTI, including dividends, interest and gains from the disposition of investments that generate such income—income typically generated by hedge funds. Notwithstanding these exclusions, income generated from certain debt-financed property will be included in UBTI, so US tax-exempt investors are typically careful to avoid any borrowing to acquire property held for the production of income.

Entities treated as partnerships for US federal income tax purposes carry with them the risk that the US tax-exempt investor will generate UBTI. This is because any debt incurred by a partnership will be treated as having been incurred by the US tax-exempt investor. For this reason, US tax-exempt investors prefer to invest through an entity treated as a corporation for US federal income tax purposes because a corporation will ‘block’ any potential for UBTI, assuming the US tax-exempt investor has not borrowed to acquire its interest in such corporation, and any borrowing by the corporation will not be attributed to the US tax-exempt investor.

Jurisdictional Issues

Because the anti-deferral regimes briefly described above under US Taxable Investors do not apply to US tax-exempt investors unless such investors borrow to acquire their interests in the fund, US tax-exempt investors generally prefer to invest in an offshore entity organised in a tax haven jurisdiction, such

as the Cayman Islands. Assuming the entity is not treated as engaged in a US trade or business for US federal income tax purposes and is not otherwise subject to US tax on a net income basis, it would be inefficient to structure the feeder entity for US tax-exempt investors as a US corporation because it would be subject to US corporate income tax currently at a maximum rate of 35%.

Non-US Investors

Tax Treatment of Entity

Non-US investors generally prefer to invest in a non-US entity that is treated as a corporation for US federal income tax purposes. For a global hedge fund, such investors may invest through the same entity as the US tax-exempt investors, as their interests are generally aligned.

A primary tax objective of non-US investors is making sure that US taxing authorities will know about their investment in the fund. For a global hedge fund that will make some of its investments in US securities, US withholding tax rules come into play, and US brokers and issuers will require that certain informational US tax forms be provided to the last US paying agent in the chain in order to avoid US withholding and backup withholding taxes. If the fund vehicle is structured as a corporation for US federal income tax purposes, the fund itself, and not its investors, will need to provide such US tax forms to the US paying agent, enabling non-US investors to remain anonymous to the US Internal Revenue Service. Similarly, if a fund structured as a corporation for US tax purposes becomes subject to US tax because it is treated as being engaged in a US trade or business due to an investment in a US partnership that is so engaged or due to an investment in a 'US real property interest', it, and not its non-US investors (solely as a result of their investment in the fund), will be subject to US tax. In contrast, any US trade or business carried on by a fund entity that is treated as a partnership for US federal income tax purposes will be attributed to its partners, and any non-US partners will find themselves subject to US tax, required to file US tax returns and subject to the investigatory powers, including subpoena powers, of the US Internal Revenue Service. For some non-US investors, this is

the worst cut of all. This is why non-US investors will generally require that the fund vehicle in which they invest be a corporation for US tax purposes.

Jurisdictional Issues

As with respect to US tax-exempt investors, non-US investors will not want to invest in a US corporation because it will be subject to the US corporate income tax, thereby reducing the overall return to the investor. It may also cause concern to non-US investors who are seeking to avoid disclosure to US taxing authorities. Non-US investors may wish to invest through a tax haven jurisdiction that will provide anonymity and low or zero tax in the jurisdiction of organisation. However, managers should be aware that certain non-US investors may be adverse to investing in a tax haven entity because their resident taxing jurisdiction may view such investment as suspect or may impose a higher or penalty tax with respect to such investment.

The Fund Manager's Allocation

Structuring the master fund as a partnership permits the fund manager or an affiliate to receive an incentive-based allocation of partnership profits (sometimes called a carried interest). If structured properly, the receipt of such carried interest will not be taxable to the fund manager or an affiliate for US tax purposes. Further, an allocation to the fund manager or an affiliate in respect of its carried interest of partnership gains results in favourable tax treatment for the fund manager (compared with the receipt of performance-based compensation).

Other Concerns Particular to Non-US Investors

As described above, non-US investors may not want to invest in a partnership for tax reasons. Such investors may invest in the fund through a foreign 'feeder' corporation (organised in a tax haven jurisdiction, such as the Cayman Islands). Depending on where the investor is based, however, the non-US feeder entity may trigger with anti-tax haven legislation in the investor's home jurisdiction, cutting off beneficial tax treaty treatment the investor would otherwise enjoy. As a result, a manager should consider giving non-US

investors a choice, based on individual circumstances and concerns, to invest directly in a tax-transparent entity such as a partnership rather than through a corporate feeder vehicle.

Other Concerns Particular to US Investors

US investors largely will be indifferent to the place of organisation of the master fund. For that reason, when a fund is being run by a non-US manager and marketed to a mix of US and non-US investors, the master fund is almost always organised offshore in a tax haven jurisdiction. In a situation where the manager is a US-based organisation that will be investing in securities and US portfolio companies, the master fund might be structured as a Delaware limited partnership because of the developed body of Delaware partnership law. However, in the situation we have described above, a Delaware partnership would be a poor choice because the fund's manager is a non-US person, the investors are not all US-based and, as discussed below, the fund may not be suitable for investments in non-US portfolio investments.

If the Fund intends to invest in non-US corporations, use of a US partnership could be detrimental to US taxable investors and the fund manager. Understanding this issue requires an understanding of the US tax treatment of US shareholders of controlled foreign corporations (CFCs). A CFC is a foreign corporation of which more than 50% is owned (by vote or value and directly, indirectly or under applicable attribution rules) by US persons who each owns at least 10% of the corporation's voting power (a US shareholder). Gain recognised by a US shareholder on the sale of the shares of a CFC will be recharacterised and taxed as ordinary income (at higher rates than capital gains) to the extent of the CFC's accumulated earnings. For purposes of determining whether a foreign corporation is a CFC, *ie.* whether it has a majority of US shareholders, a US partnership is treated as a single US shareholder (irrespective of whether any of the partners in the partnership are US persons). By comparison, a partnership that is organised in a non-US jurisdiction will not itself be treated as a US shareholder for CFC determination purposes (even if all of the partners in such partnership are US persons); instead the US

ownership of a foreign portfolio company owned by a non-US partnership is determined at the partner level, as though each partner owned an interest in the portfolio company proportionate to its interest in the partnership. Thus, by organising the Fund as a non-US partnership, the likelihood that a foreign portfolio company acquired by the Fund would be classified as a CFC would be remote. (For technical reasons, the GP entity of the non-US partnership also should be organised as a non-US entity.)

US Investment Company Act Considerations

The US Investment Company Act of 1940, as amended (Investment Company Act) is the US law regulating the activities of investment companies (as defined in the Investment Company Act) and in certain cases, requires their registration. A registered investment company in the US is generally referred to as a mutual fund. The restrictions relating to the operation of a mutual fund are antithetical to the operation of a hedge fund. Furthermore, it is very difficult for non-US managers of funds to successfully register non-US investment funds. Typically for both reasons, hedge fund managers spend a great deal of time and effort making sure that their investment companies do not have to register with the US Securities and Exchange Commission (SEC). Many fund structuring considerations are raised in the process of seeking to avoid registration of an investment company under the Act.

Section 3(a)(1) of the Investment Company Act defines an investment company as, among other things, any person that is primarily engaged in the business of investing and reinvesting in securities, as well as any person engaged in the business of investing or holding investment securities and more than 40% of whose assets consist of investment securities. An investment company operating in the US in almost any capacity (or simply using the post, telephone lines, or other parts of the US infrastructure) will be required to register or meet an exemption from registration. This is especially important for non-US investment companies, which, as noted above, generally cannot register with the SEC. Sections 3(c)(1) and 3(c)(7) of the Investment

Company Act provide the two primary exemptions from registration for investment companies.

Before discussing the particulars of the exemptions from registration, let us discuss some broader principles. First, every entity needs an exemption from registration under the Investment Company Act or else it must register. This seems counter-intuitive in certain cases. For example, why would a non-US investment company with no US investor need to seek an exemption? The answer is that because a non-US investment company cannot use the US 'jurisdictional means' (*ie.* the post, the Internet, the phone) to conduct any business in the US (such as trading or contacting investors) unless it is in compliance with the Investment Company Act. Fortunately this situation is easily resolved since the SEC has agreed that non-US persons invested in a non-US fund do not have to be tested for purposes of Sections 3(c)(1) or 3(c)(7), as discussed below. Second, look-through and integration principles apply that make structuring around the exemptions challenging. Third, the interplay between the two exemptions has to be carefully monitored so that you do not run afoul of the principles referred to in the second point above.

Section 3(c)(1)

Section 3(c)(1) of the Investment Company Act exempts from the investment company definition those investment companies whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and that has not made, and is not making, a public offering of its securities. As discussed below, most companies avoid engaging in a public offering by privately placing their securities according to the provisions of Rule 506 of Regulation D promulgated under the US Securities Act of 1933, as amended (Rule 506). (A public offering outside the US would not affect this requirement if the offering complies with Regulation S under the Securities Act.)

The following is a summary of further principles relating to the reliance on Section 3(c)(1) for an exemption from the Investment Company Act:

Beneficial Ownership of Securities by Persons.

To qualify for the Section 3(c)(1) exemption, the

securities must be 'beneficially owned' by not more than 100 persons. The SEC and its staff interpret the beneficial ownership threshold very broadly, although they generally regard a company as a single holder of securities for purposes of the counting rule, subject to the look-through rules, below. Some of the most common questions we received from non-US fund managers relate to the manner of 'counting' of investors. Investment clubs, entities, associations of investors who agree, orally or in writing, to invest together, family offices, nominee arrangements and trusts, are common situations. These arrangements must be disregarded for purposes of counting investors if they are formed for the purpose of making the investment, which is often the case. One cannot aggregate investors in a vehicle or other arrangement in order to reduce the number of investors in a fund. Entities (or relationships or engagements) formed for the purpose of holding or making an investment will not be counted as one investor, but rather as such number of investors with indirect beneficial rights in the investment.

Look-Through Rules. Section 3(c)(1) contains look-through rules pursuant to which the SEC will consider all beneficial owners of an investor company as investors in an investment company under certain circumstances. These rules make proper counting of investors, both direct and indirect, in an investment company critically important and challenging. Section 3(c)(1) allows the SEC to look through a private investment company that itself owns 10% or more of the voting securities of an investment company and count each beneficial owner of the investor private investment company. In addition, the staff has expressed concern that the Section 3(c)(1) exclusion might be manipulated to permit multi-tiered transactions in which a 3(c)(1) Company would be formed to invest in another 3(c)(1) Company. To combat this, the staff will look-through a private investment company, and count each of its shareholders toward the 100 beneficial owner limit of a 3(c)(1) Company, if it (a) invests more than 40% of its assets in a single 3(c)(1) Company or (b) as mentioned above, is formed for the specific purpose of investing in any single 3(c)(1) Company. This means that one generally does not look through private fund investors such

as pension plans, insurance companies, and bank holding companies.

The Integration Doctrine. The staff, when analysing multiple or related funds of the same manager or sponsor, for purposes of Section 3(c)(1) exemption, applies the integration doctrine, whereby investment companies deemed sufficiently similar will be regarded as a single 3(c)(1) Company. Essentially, the integration doctrine asks whether a reasonable purchaser, qualified to invest in both offerings, would view an interest in one as not materially different from an interest in the other. The SEC has provided no bright-line rule in this area, but factors such as sector emphasis, institutional versus individual participation and differing investment techniques all suggest that two offerings should not be integrated.

Individual Investors. Section 3(c)(1) will generally count each investor who is a natural person separately, although there are important exceptions. Rule 3c-5 under the Investment Company Act excludes so-called 'knowledgeable employees' from the limits of both Sections 3(c)(1) and 3(c)(7). These employees include officers, directors, trustees, general partners, advisory board members and other similarly situated individuals who are employees of the company or an affiliate. Rule 3c-6 provides that a donee, estate or related entity will be treated as a single investor, together with the donor or settlor. Also, spouses who hold the securities jointly will likely be counted as only one investor.

Section 3(c)(7)

Section 3(c)(7) of the Investment Company Act provides that an issuer need not register as an investment company if its securities are beneficially owned exclusively by one or more persons who were qualified purchasers (QPs) at the time the securities were acquired and if the issuer is not making, and does not at that time propose to make, a public offering of such securities. In the case of non-US issuers, the QP requirement applies only to its US security holders. Perhaps the most significant benefit of relying on Section 3(c)(7) in order to avoid registration under the Investment Company Act is so that the investment company can have more than 100 beneficial owners.

QP Requirements. Section 2(a)(51) of the Investment Company Act defines a QP as (a) an individual and certain family companies that have not less than US\$5 million in investments, (b) certain trusts if both the trustee or other person with investment discretion and all settlors or other contributors are QPs and (c) other persons that own and invest on a discretionary basis not less than US\$25 million in investments. The SEC's Rule 2a51-1 defines investments for this purpose and also provides that persons reasonably believed to be Qualified Institutional Buyers would be deemed to be QPs (with certain exceptions for dealers and employee benefit plans). Rule 2a51-3 provides that any company may be deemed a QP if its securities are beneficially owned only by QPs; any other company will not be deemed a QP if it was formed for the specific purpose of acquiring securities issued by Section 3(c)(7) companies. The most important point to note is that the existence of a single investor who is not a QP (or other very limited exceptions, like knowledgeable employees) will disqualify the investment company from relying on this exemption and the investment company must then be tested for compliance with the Section 3(c)(1) 100-person limitation test.

Secondary Market Transactions. The QP test is a continuing test that applies to resale as well as to initial sales of securities. This means that, in order for the issuer to continue to be eligible for the Section 3(c)(7) registration exemption, every buyer in the secondary market must be a person the issuer reasonably believes to be a QP. If a holder of investment company securities ceases to be a QP during the time it holds the securities, the investment company will not lose the exemption from registration, however.

Transfers. Investment Company Act Rule 3c-6 provides that securities that are owned by persons who received the securities from a QP as a gift or bequest or pursuant to a legal separation or divorce will be deemed to be owned by a QP for purposes of Section 3(c)(7).

Look-Through Provisions. Section 3(c)(7) does not impose the same challenging look-through provisions on its analysis, but fund managers do have to be wary. For example, an entity formed for the purpose

of investing in an investment fund must be made up entirely of QPs, but the 10% ownership look-through provision has been eliminated.

Impact of Investment Company Act Considerations on Structure

In the context of hedge fund structuring, the complications that arise from Investment Company Act considerations are not always evident unless they are planned for. A fund manager that does not plan for the possible impact of Investment Company Act considerations may find itself scrambling before admitting certain investors, having to delay a closing or, worse yet, realizing that the fund does not have an exemption from registration available. What should a fund manager do? First, remember that each entity must have its own exemption from registration. Second, the fund manager should identify potential investors falling in the broad categories of US taxable investor, US non-taxable investor and non-US investor. Again, let us consider our base case described above. The US non-taxable investors and the non-US investors will be admitted to the non-US feeder fund. In addition to the tax reasons stated above regarding why investors would want this structure, now we have a reason for the fund manager to want to see this structure implemented, specifically, because the non-US investors do not have to be considered for purposes of ‘counting’ of beneficial owners under Section 3(c)(1) or of qualifying as QPs under Section 3(c)(7) of the Investment Company Act, it is easier to meet the tests of those sections. In this scenario, the fund manager should seek to have the offshore feeder fund qualify for the Section 3(c)(7) exemption. This gives the fund manager the flexibility to pursue the Section 3(c)(1) exemption for the US-domiciled fund. Remember, if the fund manager was managing two feeder funds through a master and both of those feeders were relying on the Section 3(c)(1) exemption, it is almost certain that they would be integrated, meaning that it might be more difficult to meet the test of 100 or fewer beneficial owners of the investment fund (and of entities integrated with the investment fund).

We have just discussed the treatment of the respective feeders. What about the master? It,

of course, needs its own exemption from the Investment Company Act. Here is where headcount issues may become unavoidable. Simply put, a company relying on Section 3(c)(7) must have all QPs. A single investor that is not a qualified purchaser or another person that need not be counted or tested for purposes of either exemption will cause the entire structure to be tested under 3(c)(1). In other words, the master must have 100 or fewer investors in the aggregate, looking through the feeders (pursuant to the look-through rules referred to above), in order for the master to be exempt under the Investment Company Act. This is a significant structural complication that experienced counsel can be invaluable in resolving.

Investment Advisers Act Concerns

Finally, the US has a law called the Investment Advisers Act (the Advisers Act) that regulates the activities of asset managers. Until recently, most hedge fund managers could easily avoid registration with the SEC under the Advisers Act. The Advisers Act requires investment advisers that manage over US\$30 million in assets to register with the SEC unless they fall under one of the exemptions provided in Section 203(b) of the Advisers Act. (Advisers can elect to register with the SEC once their assets under management reach US\$25 million. Many managers would rather be subject to SEC registration than to register under state or local regimes.) Section 203(b)(3) exempts from registration ‘any investment adviser who during the course of the preceding 12 months has had fewer than 15 clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company[.]’ For the purposes of Section 203(b)(3), only US residents count as clients.

Hedge fund advisers have been able to rely on the 203(b)(3) exemption because under Advisers Act Rule 203(b)(3)-1, an investment adviser can count each corporation, partnership or trust that it advises as a single client. Hedge fund structures have been developed around this exemption—under it, a fund manager can manage up to 14 funds without the need to register.

Effective 1 February 2006, most hedge fund managers will be required to register as investment advisers because of changes to the SEC rules—the so-called look-through provisions that will require fund managers to count each of the investors in the funds they advise as a single client. Fund managers will be required to file a Form ADV, submit to SEC inspections and comply with other Advisers Act reporting and record-keeping requirements.

Non-US fund managers are not exempt from the effect of the new SEC rule amendments. They must look through both US-based and non-US-based funds and count all US investors therein. There are two different regimes that non-US managers may be subject to: so-called ‘heavy’ compliance and ‘light’ compliance. If the non-US manager advises a US-domiciled entity, the manager will be subject to all of the compliance obligations of the Advisers Act. If the asset manager does not advise a US entity, then the manager must merely register with the SEC and meet certain anti-fraud requirements of the Advisers Act, provisions that an adviser with any US clients is already subject to anyway. The subject of mandatory hedge fund manager registration is far beyond the scope of this article. However, as with the Investment Company Act issues referred to above, knowledgeable counsel can usually navigate the landmines and either accomplish a manager’s registration and implementation of a compliance

regime, or take the necessary steps to remain unregistered under the Advisers Act.

Conclusion

As can be seen, adding US investors to a fund manager’s investor base can be quite rewarding economically, but the process of adding these investors and creating a structure that suits the web of tax and regulatory requirements and constraints is complex. This is truly an area where the saying ‘an ounce of protection is worth a pound of cure’ is accurate. Our advice is for fund managers to take the time and put in the effort to consider medium-term needs. To do less would be short-sighted.

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