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*Regulation of Hedge Fund Advisors: A Valid Exercise of Rulemaking Authority or the Promulgation of New Law?*

57 Admin. L. Rev. 595 (2005)

Abstract by Lisa Pettinati

The author highlights the 2003 SEC amendment to the Investment Advisers Act of 1940 and argues the potential illegality of enacting such a provision. The article begins with an explanation of the unique aspects of the hedge fund industry that can lead to difficulties in regulatory enforcement. Thus, despite Congressional intent to differentiate hedge funds from other investment type companies under the Safe Harbor Rule, the language of this new amendment effectively moves away from long standing policy applied to the industry.

The article addresses the legal implications of the SEC Safe Harbor Rule by identifying the new statutory definition of “client”, as well as considering the “look through” provision, both of which arguably exceed the original statutory authority of the Advisers Act. Because the 2003 provision forces hedge funds to identify each investor as a separate client, the SEC directly limits financial investment capabilities, while discouraging complex trading strategies that may yield high profits. As a result, the author suggests the SEC create alternative measures to protect hedge funds for sophisticated investors.

The first part of the article provides an overview of the hedge fund industry. The second part of the article analyzes the legislative intent behind the Advisers Act in order to explain how the Safe Harbor Act is outside the scope of SEC authority. The third part identifies the consequences of the current law. To conclude, the author puts forth more statutory consistent measures that the SEC should consider.