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# Title 17

## § 275.202(a)(30)-1 Foreign private advisers.

- (a) **Client.** You may deem the following to be a single client for purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)):
- (1) A natural person, and:
    - (i) Any minor child of the natural person;
    - (ii) Any relative, spouse, spousal equivalent, or relative of the spouse or of the spousal equivalent of the natural person who has the same principal residence;
    - (iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and
    - (iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;
  - (2)
    - (i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and
    - (ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.
- (b) **Special rules regarding clients.** For purposes of this section:
- (1) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization, provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;
  - (2) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;
  - (3) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;
  - (4) You are not required to count a private fund as a client if you count any investor, as that term is defined in paragraph (c)(2) of this section, in that private fund as an investor in the United States in that private fund; and
  - (5) You are not required to count a person as an investor, as that term is defined in paragraph (c)(2) of this section, in a private fund you advise if you count such person as a client in the United States.

### Note to paragraphs (a) and (b):

These paragraphs are a safe harbor and are not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)).

(c) **Definitions.** For purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)):

- (1) **Assets under management** means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter).
- (2) **Investor** means:
  - (i) Any person who would be included in determining the number of beneficial owners of the outstanding securities of a private fund under section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)), or whether the outstanding securities of a private fund are owned exclusively by qualified purchasers under section 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(7)); and
  - (ii) Any beneficial owner of any outstanding short-term paper, as defined in section 2(a)(38) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(38)), issued by the private fund.

Note to paragraph (c)(2):

You may treat as a single investor any person who is an investor in two or more private funds you advise.

(3) **In the United States** means with respect to:

- (i) Any client or investor, any person who is a U.S. person as defined in § 230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a person in the United States by a dealer or other professional fiduciary is in the United States if the dealer or professional fiduciary is a related person, as defined in § 275.206(4)-2(d)(7), of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

Note to paragraph (c)(3)(i):

A person who is in the United States may be treated as not being in the United States if such person was not in the United States at the time of becoming a client or, in the case of an investor in a private fund, each time the investor acquires securities issued by the fund.

(ii) Any place of business, *in the United States*, as that term is defined in § 230.902(l) of this chapter; and

(iii) The public, *in the United States*, as that term is defined in § 230.902(l) of this chapter.

(4) **Place of business** has the same meaning as in § 275.222-1(a).

(5) **Spousal equivalent** has the same meaning as in § 275.202(a)(11)(G)-1(d)(9).

(d) **Holding out.** If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public in the United States as an investment adviser, within the meaning of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)), solely because you participate in a non-public offering in the United States of securities issued by a private fund under the Securities Act of 1933 (15 U.S.C. 77a).