

October 3, 2008

MEMORANDUM TO OUR CLIENTS

**LEGISLATION REGARDING ELIMINATION OF FUTURE FEE
DEFERRALS BY INVESTMENT MANAGERS**

Earlier today, the House of Representatives passed, and President Bush signed into law, the “Emergency Economic Stabilization Act of 2008” (the “Act”), the primary purpose of which is to allow the Treasury Department to purchase up to \$700 billion in nonperforming loans from financial institutions in order to restore the health of the credit markets. (The Act had been passed by the Senate earlier this week.) The Act includes a provision effectively eliminating the ability of investment managers (“Managers”) of investment funds formed in foreign jurisdictions (“Offshore Funds”) to continue to defer the taxation of the fee income they derive from the performance of investment management services for Offshore Funds.

Many Managers who provide services to Offshore Funds pursuant to investment management agreements historically have relied upon the general rules governing the taxation of deferred compensation to defer the taxation of all or a portion of the fees payable to them by the Offshore Funds. The Act effectively eliminates the ability of Managers to defer their fee income derived from services performed for Offshore Funds by taxing such fee income at such time as there is no “substantial risk of forfeiture.” For this purpose, a Manager’s rights to receive compensation would be treated as subject to a “substantial risk of forfeiture” only if the Manager’s rights to such compensation are conditioned upon the performance of substantial future services by the Manager.

The Act will apply to amounts deferred which are attributable to services performed after December 31, 2008. Therefore, Managers of Offshore Funds with fiscal years ending on December 31 will not be eligible to make any future fee deferral elections.

The Act also provides that deferred amounts in respect of 2008 and earlier years effectively cannot be deferred beyond 2017. The Act directs the Treasury Department to issue, within 120 days of enactment of the Act, guidance providing a limited period of time during which a deferred compensation arrangement attributable to services performed before 2009 may be amended to conform the payment date of compensation to the date the compensation is required to be included in income. Presumably, such guidance would include guidance applicable to the Manager of an Offshore Fund with a fiscal year ending on June 30 who has already made a deferral election relating to the fiscal year ending June 30, 2009.

If you have any questions regarding this Memorandum, please contact Dan Murphy (212-574-1210), Peter Pront (212-574-1221), Jim Cofer (212-574-1688) or Ron Cima (212-574-1471) of our Tax Group.

Seward & Kissel LLP

To ensure compliance with Treasury regulations regarding practice before the Internal Revenue Service, we inform you that, unless expressly stated otherwise, any federal tax advice contained herein was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under United States federal tax law, or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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