

#19 Received via email

RE: "NPRM-Section 352 Unregistered Investment Company Regulations"

Dear Sir or Madam:

We write regarding the proposed rule on anti-money laundering programs for unregistered investment companies. Please accept our apologies for not writing prior to the deadline. We would be highly grateful though if you would consider our question.

Our question relates to the proposed rule (31 CFR 103) to bring "unregistered investment companies" within the scope of the Bank Secrecy Act (the Act) and determining whether a non-U.S. fund selling exclusively to non-U.S. persons would be subject to the Act. Upon reading the rule, it seems that a fund would have to fall within the definition of "unregistered investment company" before applying the offshore fund limitation analysis articulated in the proposed rule. Please clarify. The rule provides three definitional descriptions of "unregistered investment company." With respect to (i) of the proposed rule (i.e. "an issuer that would be an investment company but for the exceptions provided in Sections 3(c)(1) or 3(c)(7) of the 1940 Act, it is not clear if the rule considers non-U.S. funds that are not making public offers in the U.S. or to U.S. persons to be issuers relying on the 3(c)(1) or 3(c)(7) exemptions. It is our understanding that the aforementioned exemptions are generally relied upon by domestic private investment funds such as hedge funds, venture capital funds, and private equity funds. Please clarify. If you agree with our understanding, please clarify whether the offshore funds limitation of "is organized, operated, or sponsored by a U.S. person" would apply to a non-U.S. fund (i.e. organized outside of the U.S.) not relying on the 3(c)(1) or 3(c)(7) exemptions, and selling exclusively to non-U.S. persons.

We thank you in advance for your consideration of our question. Please feel free to contact me by telephone on 201-395-5292, by fax on 202-547-8219 or by e-mail at ccoleman@algerfund.com. Thank you.

Regards,
Carole Coleman
Associate General Counsel
Fred Alger & Company, Incorporated