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SBA Excludes Hedge Funds and Private Equity Firms from PPP Loan Eligibility

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The U.S. Small Business Administration ("SBA") recently released a supplemental Interim Final Rule answering a number of additional questions regarding the Paycheck Protection Program ("PPP"). The rule (the "Interim Rule") can be found here:

Most notably for fund managers, the SBA for the first time took the position that hedge funds and private equity firms are categorically not eligible for PPP relief:

> **2. Clarification Regarding Eligible Businesses**
>
> > **a. Is a hedge fund or private equity firm eligible for a PPP loan? No. Hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan. The Administrator, in consultation with the Secretary, does not believe that Congress intended for these types of businesses, which are generally ineligible for section 7(a) loans under existing SBA regulations, to obtain PPP financing.**

This new guidance will cause many firms to re-evaluate their PPP financing activity and to consider whether they should return PPP loan proceeds. As a reminder, the date to return loan funds under the safe harbor without potentially incurring a penalty has been extended until May 14, 2020.

The guidance provided by the Interim Rule itself raises a number of questions. It is expected that further guidance will be forthcoming as things develop. However, in light of the Interim Rule and the other guidance released to date on the PPP program specific to the investment industry, firms should continue to examine their use of the PPP loans including whether it makes sense to take advantage of the safe harbor by returning funds by May 14, 2020.

If you need assistance with any such matters please reach out to a Rich May attorney for assistance.

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Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Thomas Bilodeau III, Scott Stokes, David Glod, or Matthew Sweet.