



# California Corporate & Securities Law

## Must A Fund's General Partner Be Registered?

Posted In [California Securities Laws](#), [Investment Advisers](#)

10-22-2010

The typical responsibilities of a general partner of an investment limited partnership are to handle the business and administrative aspects of the fund. In return, the general partner is compensated – often, based on a percentage of the assets under management. This structure, of course, creates the question whether the general partner must be registered as an investment adviser.

In the “olden days”, some practitioners relied on the proposition that the general partner was in effect advising itself and thus had no clients. For authority, they cited Commissioner’s Policy Letter No. 151 (April 2, 1971). However, Commissioner Dale Bonner withdrew Policy Letter No. 151 “as not reflecting either the correct or the Commissioner’s interpretation of the definition of ‘investment adviser’ under Corporations Code Section 25009”. [Commissioner’s Release No. 110-C](#) (April 9, 1998). This resulted in considerable consternation within both the hedge fund and venture capital industries. General partners of these funds typically did not register as investment advisers under the Investment Advisers Act of 1940 based on the the fewer-than-fifteen clients exemption in Section 203(b)(3). Having avoided federal registration, they did not want to be subject to state registration. Ultimately, the Commissioner adopted Rule 260.204.9 to address those concerns. [Note – the Dodd-Frank Wall Street Reform and Consumer Protection Act eliminates the fewer-than-fifteen client exemption effective next July.]

What if the general partner does not actually provide investment advice to the fund and instead designates a state registered investment adviser having common ownership to provide those services? This week, Commissioner DuFauchard issued this [interpretive opinion](#) answering that question. In considering the question, the Commissioner looked to this [response](#) from the SEC staff to substantially the same question from the American Bar Association Subcommittee on Private Investment Entities. Although the Commissioner responded favorably to the request, the letter must be read carefully as the opinion is conditioned upon compliance with a number of specific assurances by the requester.

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