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Client Alert: SEC Sends Warning to General Partners of Funds Receiving Finders' and Other Fees

On June 1, 2016, the SEC sent a warning to general partners of private investment funds (including private equity funds, hedge funds, venture capital funds and leveraged buyout funds) by entering into a settlement agreement with a private equity fund advisory firm, Blackstreet Capital Management, and its principal, Murry Guntz. Blackstreet Capital Management and Murry Guntz were required to pay more than \$3.1 million to settle charges that they engaged in brokerage activity and charged transaction-based brokerage fees without registering as a broker-dealer with the SEC.

In addition to certain other violations for which it was fined, the advisory firm performed in-house brokerage services rather than using investment banks or broker-dealers to handle the acquisition and disposition of portfolio companies for a pair of funds they advised. The advisory firm fully disclosed to the investors in the private equity funds that it would be receiving advisory fees that would not be shared with the funds, but did not register with the SEC for the receipt of such fees.

The receipt of transaction or success fees is common practice with many private investment funds. While certain larger funds have formed in-house broker-dealers that are registered with the SEC, many firms have not. However, all parties receiving transaction or success fees (or other types of fees that might be viewed as

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brokerage fees) should consult with their counsel as to whether the receipt of such fees is permissible and whether an in-house broker-dealer operation should be established.