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August 5, 2015

By Email and Overnight Courier

Sebastian Gomez Abero, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *In the Matter of Guggenheim Partners Investment Management, LLC,*
Administrative Proceeding No. 3-16735 (August 10, 2015)

Dear Mr. Gomez Abero:

We are writing on behalf of Guggenheim Partners Investment Management, LLC (“GPIM”) in connection with the anticipated settlement with the Securities and Exchange Commission (“SEC” or “Commission”) relating to *In the Matter of Guggenheim Partners Investment Management, LLC*. The settlement would result in an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”) against GPIM.

On behalf GPIM, we hereby respectfully request a waiver of any disqualification that will arise pursuant to Rule 506 of Regulation D under the Securities Act of 1933 (the “Securities Act”) with respect to GPIM or any of its affiliates as a result of the entry of the Order.

BACKGROUND

GPIM has engaged in settlement discussions with the Division of Enforcement in connection with the above-captioned administrative proceeding. As a result of these discussions, GPIM has submitted an Offer of Settlement that will agree to the Order, which will be presented by the staff to the Commission.

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GPIM is a registered investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”) and is a subsidiary of Guggenheim Partners, LLC (“Guggenheim” or “Guggenheim Partners”), a private financial services firm.

The Order arises out of a breach of fiduciary duty and Advisers Act violations by GPIM, as follows:¹ First, GPIM breached its fiduciary duty by failing to disclose that one of its then senior executives (the “Executive”) approached an advisory client and received a loan in order for him to participate personally in an acquisition led by Guggenheim. The loan created a potential conflict of interest whereby GPIM might then place that client’s interests over those of GPIM’s other clients. GPIM failed to disclose the senior executive’s loan when it then invested certain of its other clients in two transactions in which the client who made the loan also invested but received different terms. Second, GPIM violated the Advisers Act when it inadvertently billed a client for asset management fees on non-managed assets. GPIM had inaccurately coded these non-managed assets on its books and records, leading to their inclusion in the calculation of asset management fees for the investments GPIM actually did manage for that client. Finally, GPIM failed to implement certain of its compliance policies and procedures, enforce its code of ethics, and maintain certain required books and records.

The Order finds that GPIM willfully violated (i) Section 206(2) of the Advisers Act, (ii) Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, (iii) Section 204 of the Advisers Act and Rule 204-2(a)(3) and 204-2(a)(5) thereunder, and (iv) Section 204A of the Advisers Act and Rule 204A-1 thereunder.

GPIM has submitted an Offer of Settlement (the “Offer”) that will be presented to the Commission. Without admitting or denying the findings in the Order, except as to the Commission’s jurisdiction over GPIM and the subject matter of the proceeding, GPIM has agreed to consent to the issuance of the Order and to (i) cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, 206(2), and 206(4) of the Advisers Act and Rules 204-2, 204A-1, and 206(4)-7 thereunder, (ii) be censured, (iii) pay a civil money penalty in the amount of \$20 million, and (iv) comply with certain undertakings enumerated in the Order, including the undertaking to retain an independent consultant within 30 days of the date of entry of the Order.

DISCUSSION

GPIM understands that the entry of the Order will disqualify it, affiliated entities, and certain other issuers from relying on Rule 506 of Regulation D under the Securities Act. GPIM

¹ The background information in this request is based on the Order. GPIM has consented to the entry of the Order; however, it neither admits nor denies the findings in the Order, except as to the Commission’s jurisdiction over GPIM and the subject matter of the proceeding.

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is concerned that, if it or its affiliates are deemed to be an issuer, predecessor of an issuer, affiliated issuer, general partner or managing member of issuer, or promoter of securities, or if it is deemed to be acting in any other capacity described in Rule 506 for purposes of Rule 506(d)(1), then GPIM, its affiliates, and third parties that engage GPIM and its affiliates to act in (or otherwise involve GPIM in) one of the listed capacities in connection with their securities offerings would be prohibited from relying on Rule 506.

The Commission has the authority to waive this disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances.² GPIM requests that the Commission waive any disqualifying effects that the Order will have under Rule 506 as a result of its entry as to GPIM, on the following grounds:

1. *The Violations in the Order Do Not Arise out of the Offer or Sale of Securities*

The Order arises solely out of the duties of a registered investment adviser, not the offer or sale of securities. Accordingly, the violations in the Order are solely violations of the Advisers Act and the rules thereunder, not the Securities Act or the rules thereunder. Specifically, GPIM's conduct, as described in the Order, related to the nondisclosure of certain potential conflicts of interest, the inadvertent overbilling of a customer due to inaccurate system coding, the failure to enforce its code of ethics, the failure to implement certain of its compliance policies and procedures, and the failure to maintain certain books and records.

2. *GPIM Has Taken and Will Take Remedial Steps*

GPIM has taken substantial remedial steps to address the conduct at issue in the Order, and it will take additional remedial steps to comply with the undertakings in the Order.

First, since the time of the conduct at issue in the Order, Guggenheim has restructured and significantly enhanced its compliance functions, including enhancements to GPIM's overall compliance program. Among other changes, Guggenheim has more than tripled its legal and compliance personnel, and it has hired a new Chief Compliance Officer for GPIM and a new Head of Compliance with overall responsibility for Guggenheim's compliance program. GPIM has also revised several of its compliance policies and procedures and several of its operational procedures to address specific issues identified in the Order, including the following:

- The use of a SharePoint site for automated code of ethics disclosure, approval, tracking, and retention (including outside business activities and personal private investments);

² See Rule 506(d)(2)(i).

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- The formation of a Compliance Executive Committee to oversee and coordinate compliance initiatives;
- Enhancements to GPIM's processes related to private investments and potential conflicts of interest, including ongoing monitoring of brokerage and other investment accounts by the Compliance Department; periodic reporting to the Compliance Department related to such accounts; pre-clearance of personal investments, including privately negotiated transactions; submission of detailed information prior to investment in a personal private investment; analysis by the Compliance Department as to whether employee investment in a public or private investment contains the potential for a conflict of interest with GPIM, and periodic attestations by the employee that no material information regarding the investment has changed; analysis of how to manage any potential conflicts of interest; and specific policies and procedures related to loans in connection with personal activities;
- Clarifications to GPIM's policy related to private plane travel; and
- Amendments to GPIM policies and procedures to account for client-directed assets to ensure that GPIM's systems accurately distinguish the assets that are managed by GPIM from the assets that are only serviced by GPIM, including, but not limited to, specific notations in the GPIM databases to indicate which assets are non-managed/client-directed assets; redundant daily and weekly policies intended to quickly identify possible inconsistencies in how assets are labeled in the GPIM system; and billing procedures to provide an additional check on the accuracy of GPIM's invoices as they relate to the designation of certain assets as client-directed assets.

The Commission acknowledged in the Order that, “[i]n determining to accept the Offer, the Commission considered remedial acts promptly undertaken by GPIM and cooperation afforded the Commission staff.”

Second, with respect to the violations in the Order relating to inadvertently billing asset management fees on a client's non-managed assets, GPIM identified the issue internally and has corrected it with the client. The issue affected a single institutional client. GPIM internally identified possible discrepancies in client invoices in January 2013. After a preliminary review, GPIM determined in or around June 2013 that certain of the client's assets in GPIM's books and records were classified inaccurately. Those classifications, in turn, caused GPIM's accounting system to incorrectly interpret those assets as investments managed by GPIM on behalf of the

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client. During this time, GPIM worked internally to reconcile its classifications of the client's assets under management. In or around January 2014, GPIM corrected the technical issue, instituted procedural changes to its invoicing process, and informed the client of the issue. To avoid similar issues in the future, GPIM worked with the client to develop enhancements to existing procedures to validate the classification of the client's assets. GPIM and the client also worked together to review asset by asset GPIM's internal reconciliation of the asset classifications. That asset-by-asset review was completed in or around April 2014, at which time GPIM sent its final reconciliation report to the client. The client approved GPIM's final reconciliation report in October 2014. During this process, there were outstanding asset management fees that the client owed to GPIM that exceeded the net amount of any overbilling. In November 2014, GPIM and the client agreed to apply a credit to the outstanding management fees, and that credit was applied as agreed in November 2014.

Third, GPIM has also agreed to settlement terms requiring the following:

- a. Within 30 days of the entry of the Order, GPIM will retain an independent consultant (the "Consultant") to conduct a comprehensive review of, and recommend corrective measures concerning, GPIM's compliance and other policies and procedures with respect to (i) GPIM personnel who are involved in the business transactions of Guggenheim Partners and its affiliates, and consideration of that involvement to GPIM's advisory obligations, including whether such policies and procedures effectively detail Guggenheim Partners' role; (ii) conflicts of interest; (iii) trade errors; and (iv) gifts and entertainment.
- b. GPIM will direct the Consultant to provide it with a written report (the "Report") describing the review performed, the conclusions reached, the Consultant's recommendations for changes in or improvements to policies and procedures for GPIM and a procedure for implementing the recommended changes in or improvements to the policies and procedures.
- c. GPIM will submit the Report to the Commission staff within 120 days of the entry of the Order.
- d. GPIM will adopt all recommendations contained in the Report or propose an alternative designed to achieve the same objective or purpose. In accordance with the terms of the Order, GPIM shall attempt in good faith to reach an agreement with the Independent Consultant within 180 days of the date of the entry of the Order, as to any recommendation with respect to GPIM's policies and procedures on which GPIM and the Independent Consultant do not agree.

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- e. GPIM will certify in writing its compliance with the undertakings in the Order no later than 60 days from the date of the completion of the undertakings.

GPIM thus has taken and will continue to take concrete steps to remediate the conduct at issue in the Order. The steps are designed to enhance GPIM's overall compliance program going forward. Accordingly, it is not necessary to disqualify GPIM and its affiliates from relying on Rule 506 in connection with an offering.

3. *GPIM Has Never Been the Subject of an SEC or State Enforcement Action*

GPIM has been in the advisory business for 14 years and has never been the subject of an SEC or state enforcement action.

4. *No Individuals Associated with GPIM Were Charged With Any Violations in Connection with the Order*

The Executive, who obtained a loan from the advisory client, was at the time a member of GPIM's senior management. The Executive is no longer associated with GPIM but remains within the Guggenheim Partners organization. Other senior individuals within Guggenheim Partners and GPIM were aware of the Executive's loan. Yet there was an insufficient compliance process in place, and none of these individuals at Guggenheim Partners and GPIM who knew of the loan communicated its existence to GPIM compliance staff.

The Commission has not charged any individuals associated with GPIM with violations in connection with the conduct underlying the Order, and we understand that no such charges are forthcoming.

5. *Nature and Duration of the Misconduct*

With respect to the breach of fiduciary duty for failing to disclose a potential conflict of interest, the violation involved a single potential conflict—one loan by one individual—in connection with two transactions. The two transactions occurred approximately three weeks and seven months, respectively, after the Executive's receipt of the loan.

The error in charging advisory fees on non-managed assets, along with the associated books and record violation, was inadvertent and resulted from inaccurate coding of investments in GPIM's computer systems. Although the incorrect billing occurred over several years, it involved only one institutional client. GPIM identified the issue internally, brought the matter to the attention of the client, and corrected the error via a credit on management fees owed.

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The violations related to GPIM's compliance program involved a small number of issues—the failure to disclose a single loan, failure to report certain items under GPIM's Gifts and Entertainment policy, and failure to properly document one trade error. While these violations occurred over the course of approximately three years, each was an isolated occurrence. GPIM has made substantial improvements to its compliance program, and the Order acknowledged the remedial acts that GPIM had promptly undertaken.

6. *Disqualification Would Have a Material and Disproportionate Impact on GPIM and its Clients*

GPIM's inability to engage in private placements pursuant to Rule 506 would be extremely damaging to GPIM and to GPIM's advisory clients that are pooled investment vehicles. GPIM sponsors and serves as manager, investment manager or collateral manager to many private pooled investment vehicles ("Private Funds"), a significant number of which raise capital in the United States in exempt offerings in reliance on Rule 506.³ Because of GPIM's role with respect to these vehicles, these Private Funds would be disqualified from relying on Rule 506 to raise new capital if the Order is issued and there is no waiver. Many Private Funds rely on an ongoing offering of interests to increase the amount of new assets that can be deployed, and investors in GPIM's Private Funds would be harmed if the Order is issued and there is no waiver for future capital raises. While Section 4(a)(2) of the Securities Act is theoretically available to these Private Funds, the compliance with state "blue sky" requirements in a 4(a)(2) offering can be costly and even prohibitive when timely access to new capital is needed. Market practice favors (and in some cases requires) the use of Rule 506 because it provides issuers and market participants with the benefit of a safe harbor, so GPIM's inability to participate in Rule 506 offerings could lead to the loss of numerous Private Fund opportunities.

Private Funds managed by GPIM are an integral part of its product offerings for investors. As of March 31, 2015, the business unit assets under management ("AUM") for GPIM was approximately \$147 billion, and of that amount the AUM associated with Private Funds was approximately \$16 billion—approximately 10.9% of GPIM's total AUM.⁴ GPIM manages 32 Private Funds that have relied on Rule 506. GPIM is also currently in the process of launching one or more Private Funds that it anticipates will rely on Rule 506.

³ Although GPIM may be able to rely on Regulation S for certain Private Funds involving non-U.S. investors, many deals involve U.S. investors for which other exemptions are necessary.

⁴ The AUM associated with Private Funds does not include the AUM of certain Private Funds that are customized investments for existing GPIM clients. For this reason, the AUM associated with Private Funds is greater than the approximately \$16 billion stated above. The total AUM associated with Private Funds stated above includes the AUM of certain offshore funds that do not rely on Rule 506. These offshore funds are often related to other Private Funds, typically as part of a master-feeder fund structure.

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The inability to participate in Rule 506 offerings would place GPIM at a competitive disadvantage compared to its peer firms that can engage in such activities, and it could put GPIM's Private Fund businesses in jeopardy. Moreover, as demonstrated above, GPIM's Private Fund business is a significant portion of GPIM's assets under management and contributes to GPIM's buy-side presence in the markets for various asset classes. This market presence benefits other GPIM clients (including those that are not Private Funds) because it enhances GPIM's access to the markets and allows GPIM to provide clients with additional investment opportunities.

6. *The Violations Are Not Criminal or Scier-er-Based*

The violations in the Order are not criminal in nature and are not scier-er-based.

7. *The Rule 506 Disqualification Is Triggered by the Undertakings in the Order, Not by the Violations*

The Rule 506 disqualification is not triggered by the violations in the Order but rather is triggered solely by the undertakings that GPIM has agreed to implement to further enhance its compliance program. As discussed above, GPIM will retain the Consultant to conduct a comprehensive review of, and recommend corrective measures concerning, GPIM's compliance and other policies and procedures with respect to (i) GPIM personnel who are involved in the business transactions of Guggenheim Partners and its affiliates, and consideration of that involvement to GPIM's advisory obligations, including whether such policies and procedures effectively detail Guggenheim Partners' role; (ii) conflicts of interest; (iii) trade errors; and (iv) gifts and entertainment. The Order requires GPIM to complete its undertakings within 180 days of the entry of the Order and submit its certification of compliance with the undertakings to the SEC within 60 days of completion of the undertakings.

8. *Disclosure of Written Description of Order to Investors*

If this requested waiver is granted, until GPIM provides to the Commission the certification described above and detailed in paragraph 50 of the Order, GPIM agrees to provide written disclosure to investors describing the nature of the Order in any offering relying on an exemption under Rule 506 of Regulation D.

REQUEST FOR WAIVER

GPIM's disqualification under Rule 506(d)(1) is unrelated to the misconduct at issue in the Order and is therefore not warranted in this case. GPIM will pay \$20 million in civil penalties, as required by the Order. In light of the nature of the violations in the Order, the enforcement remedies already obtained by entry of the Order, and the remedial measures GPIM

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has taken and will take, we do not believe that GPIM's disqualification from relying on Rule 506 is reasonable, necessary, or in the public interest. Under the circumstances, GPIM has shown good cause that relief should be granted.

Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii), to waive the disqualification provisions in Rule 506 under the Securities Act to the extent they may be applicable to GPIM and its affiliates as a result of the entry of the Order.⁵

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,



Elizabeth A. Marino

⁵ The Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. See *Merrill Lynch, Pierce, Fenner & Smith and Merrill Lynch Professional Clearing Corp.* (June 1, 2015); *BlackRock Advisors, LLC* (Apr. 20, 2015); *H.D. Vest Investment Securities, Inc.* (Mar. 4, 2015); *Barclays Capital Inc.*, Rel. No. 33-9651 (Sept. 23, 2014); *Wells Fargo Advisors, LLC*, Rel. No. 33-9649 (Sept. 22, 2014); *Dominick & Dominick LLC*, Release No. 33-9619 (July 28, 2014); *Jefferies LLC*, (Mar. 12, 2014); *Credit Suisse Group AG* (Feb. 21, 2014); *Instinet, LLC* (Dec. 26, 2013). GPIM is not requesting waivers of the disqualifications from relying on Regulation A or Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. GPIM understands that it may request such waivers in a separate request if circumstances change.