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June 13, 2019

BY ELECTRONIC MAIL

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *In the Matter of Och-Ziff Capital Management Group LLC, et al.*
File No. 3-17595 (Sept. 29, 2016)

Dear Mr. Henseler:

We write on behalf of our client Och-Ziff Capital Management Group LLC, OZ Management LP, and their affiliates (collectively, "Och-Ziff", the "Company" or the "firm") to request a waiver of any disqualification from relying on the exemption under Rule 506 of Regulation D resulting from the entry by the U.S. Securities and Exchange Commission ("Commission" or "SEC") of an administrative cease-and-desist order against the Company (the "Order"). The waiver would be limited to the Company's funds existing as of September 29, 2016 (the "Existing Funds"). The waiver is requested pursuant to Rule 506(d)(2)(ii). Prior to this matter, Och-Ziff has not made a request for any type of regulatory waiver in its 24-year history.

BACKGROUND

The Order, issued on September 29, 2016, resulted from a settlement with the Commission of an investigation primarily concerning violations of the Foreign Corrupt Practices Act ("FCPA"). The Company consented to the entry of the Order, which found that Och-Ziff Capital Management Group LLC violated Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), based on its involvement in a series of transactions and investments in Africa in which government officials received bribes. The Order finds that two former Och-Ziff employees in London – Michael Cohen and Vanja Baros[1] – knew that

[1] These individuals are identified in the Order as "Employee A" and "Employee B" but were identified by name in a subsequent Commission action against them. *See, e.g.* SEC Litigation Release No. 23728 (January 26, 2017), *Securities and Exchange Commission v. Michael L. Cohen and Vanja Baros*, Civil Action No. 1:17-cv-00430 (E.D.N.Y. filed January 26, 2017), available at: https://www.sec.gov/litigation/litreleases/2017/lr23728.htm. In July 2018, the U.S. District Court Eastern District of New York dismissed the SEC's complaint against Cohen and Baros based on the statute of limitations. *See Securities and Exchange Commission v. Michael L. Cohen and Vanja Baros*, Civil Action No. 1:17-cv-00430.

bribes would be paid by third parties with whom Och-Ziff did business in certain of those transactions.

The Order also finds that the Company's registered investment adviser, OZ Management LP ("OZ Management"), violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") by using managed investor funds in the payment of bribes and self-dealing in certain transactions. The Order also finds that OZ Management violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder by making material misrepresentations in certain disclosures to investors. Specifically, the Order states that OZ Management authorized the use of funds in transactions in which bribes were paid to foreign government officials to obtain or retain business for Och-Ziff and its business partners, and that Och-Ziff categorized these transactions as investments or convertible loans despite the fact that Cohen and Baros knew that investor funds would be used to pay bribes. The Order also finds that investor funds were used in self-dealing transactions to benefit Cohen, Och-Ziff's business partners, and Och-Ziff itself and that Cohen and Baros purposefully caused OZ Management to omit material facts to ensure that corrupt transactions would proceed and to engage in self-dealing. The Order states that OZ Management failed to disclose all material facts and conflicts of interest in its communications with investors in certain transactions or to adequately control the use of investor funds.

In addition, the Order finds that Daniel S. Och, the Company's then Chief Executive Officer, was a cause of recordkeeping violations with respect to two transactions, and that Joel Frank, the Company's then Chief Financial Officer, was a cause of recordkeeping and internal controls violations with respect to three transactions. While the SEC found that "neither Och nor Frank knew that bribes would be paid"[2] and that Mr. Och was told that it was not illegal to do business with the proposed counterparty in the two transactions, the Order finds that they authorized investments where there was corruption risk.

The Order requires Och-Ziff Capital Management Group LLC and OZ Management to (1) cease and desist from committing or causing any violations or future violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Sections 206(1), 206(2), 206(4), and Rule 206(4)-8 of the Advisers Act, respectively; (2) be censured; and (3) pay disgorgement of $173,186,178 and prejudgment interest of $25,858,989. The Order also includes a set of undertakings, including a three-year monitorship. As a result of entry of the Order, private funds managed by Och-Ziff (the "OZ Funds"), and other entities described below, were disqualified from offering securities in reliance on Rule 506 in connection with private offerings of limited partnership interests.

[2] Paragraph 6 of the Order.

Och-Ziff also entered into a deferred prosecution agreement with the Department of Justice ("DOJ") in which it acknowledged responsibility for conduct relating to certain of the findings in the Commission's Order, specifically, for two counts of conspiracy to violate the anti-bribery, books and records and internal controls provisions of the FCPA. The deferred prosecution agreement included an undertaking by Och-Ziff to retain a compliance monitor for three years (subject to early termination or extension).[3]

Additionally, a subsidiary of Och-Ziff, OZ Africa Management GP, LLC ("OZ Africa Management"), pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA in connection with certain of the transactions charged in the Order. This guilty plea did not result in disqualification of any issuers under Rule 506, because OZ Africa Management is not an "investment manager" of any OZ Funds that rely on Rule 506 and is not otherwise a covered person under Rule 506(d)(1) with respect to those funds or any other issuers.

DISCUSSION

Och-Ziff understands that the issuance of the Order disqualified Och-Ziff Capital Management Group LLC, OZ Management, and certain affiliated issuers from relying on the exemption under Rule 506, because the Order finds violations of Section 206(1) of the Advisers Act and imposes limitations on the activities, function, or operation of an adviser pursuant to Section 203(e) of the Advisers Act. Under Rule 506(d)(2)(ii), the Commission can waive the Regulation D disqualification upon a showing that there is good cause and that it is not necessary under the circumstances that an exemption be denied. According to guidance from the Division of Corporation Finance (the "Division"), among the factors considered in deciding whether a waiver should be granted are: (i) whether the violation involved the offer and sale of securities; (ii) whether the conduct involved a criminal conviction; (iii) whether the conduct involved a scienter-based violation; (iv) who was responsible for the misconduct; (v) the duration and scope of the misconduct; (vi) the remedial steps the Company has taken; and (vii) the impact that would result from a denial of the waiver. In its guidance, the Division states that it will consider "the nature of the violation or conviction and whether it involved the offer and sale of securities. . . [and] whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."

[3] The undertakings to retain a monitor in both the Commission Order and the deferred prosecution agreement with DOJ are being fulfilled by the same monitor. The monitor began his work in January 2017, as described in Section E below.

A. Introduction

We believe that the factors discussed in this application demonstrate that Och-Ziff is fit to participate in exempt offerings conducted pursuant to the Regulation D safe harbor, particularly given the corporate governance, operational, internal control, policy and management changes described herein that have occurred since the entry of the Order. Indeed, none of the Company's 410 current employees[4] had any involvement in the matter underlying the Order. Och-Ziff has undertaken significant remedial measures and implemented important governance enhancements, including most recently appointing Richard G. Ketchum – former Chairman and CEO of FINRA, CEO of New York Stock Exchange Regulation, and Director of the SEC's Division of Market Regulation – to its Board of Directors and as Chair of the Board's Compliance Committee, and effective April 9, 2019, as Chairman of the Board of Directors. We are of the view that, taken together, the factors discussed in this application show that a waiver in this instance is consistent with the Division's long-standing guidance and that there is good cause for a waiver of the disqualification.

B. Nature of the Violations

1. Limited Conduct Involved the Offer and Sale of Securities

Most of the conduct described in the Order does not involve the offer or sale of securities. The Order focuses primarily on violations of the anti-bribery and recordkeeping and internal controls provisions of the FCPA, as well as violations of Sections 206(1) and 206(2) of the Advisers Act, by failing to prevent the misuse of investor funds in certain transactions by its business partner. Certain findings, however, concern false or misleading statements in disclosures to one outside limited partner investor in one fund (referred to in the Order as AGC II) and therefore to a very limited extent may be characterized as involving the offer and sale of securities.[5] Specifically, certain of the Africa investments made by AGC II (a fund established by an Och-Ziff joint venture) involved transactions with interested parties and therefore required the consent of the only outside limited partner in the fund. The Order finds that certain of the disclosures to that one outside limited partner omitted material facts, in violation of Section 206(4).

This should not weigh against a waiver. First, the conduct found to relate to the offer or sale of securities was very limited in scope. Rather than being a part of the disclosures in a typical "offering," the disclosures at issue related to three isolated investments by AGC II in 2010 and 2011, and involved representations made to one outside investor in connection with those investments. In addition, the relevant fund, AGC II, had its final close in 2009, is not offering

[4] Headcount as of February 1, 2019.

[5] Och-Ziff currently has approximately 3,620 limited partner accounts in approximately 70 funds.

securities, and is in the process of winding down its remaining investments. Second, as with the FCPA violations, the Section 206(4) violations arose from the intentional or reckless conduct of two former London-based employees, Cohen and Baros.[6] These findings do not relate to any widespread or continuous offering of securities in the United States and do not imply any risk to investors from the ongoing offer and sale of limited partnership interests in the OZ Funds.

2. The Conduct Involved a Criminal Conviction for an Och-Ziff Subsidiary, not Och-Ziff Itself

The resolution of this matter with DOJ included an agreement by OZ Africa Management to plead guilty. This should not weigh against a waiver. A conviction of OZ Africa Management does not result in disqualification under Regulation D of any issuer because OZ Africa Management is not an "investment manager" of any Och-Ziff fund that relies on Rule 506 to offer limited partnership interests and is not otherwise a covered person under Rule 506(d)(1) with respect to those funds or any other issuers. In addition, the criminal charge to which OZ Africa Management pleaded guilty involved a single count of conspiracy to violate the FCPA and did not involve the offer or sale of securities. OZ Africa Management has not made new investments since 2011 and will cease operations once existing investments can be sold. Furthermore, the conduct that gives rise to the criminal charge against OZ Africa Management stems largely from the actions of Cohen and Baros, who did not share information about their conduct with others at Och-Ziff.

3. The Conduct Involved Limited Scienter-Based Anti-Fraud Violations

The majority of the scienter-based anti-fraud violations in the Commission's Order are violations of Section 206(1) of the Advisers Act, for failing to prevent the use of investor funds in corrupt transactions by a business partner. Two other violations of Section 206(1) are based on findings of omissions from disclosures to the one outside limited partner in AGC II of conflicts of interest in transactions between AGC II and related parties. In one transaction, the disclosure omitted that Och-Ziff would receive repayment of a loan from a South African business partner following the purchase of shares by AGC II from the South African business partner. In the other transaction, the disclosure omitted the interests of Cohen and the South African business partner in the transaction. Both violations are based on the conduct of Cohen and Baros.

The Section 206(1) violations should not weigh against a waiver. These violations are largely derivative of the FCPA violations and are based on the findings that bribes were paid by a business partner from portions of Och-Ziff investments on behalf of OZ Funds. As with the FCPA violations, the Section 206(1) violations arise from the intentional or reckless conduct of two former employees, Cohen and Baros. The criminal case does not involve any violations of

[6] As described in the Order, the former employees provided intentionally false or misleading information to the Company so that certain transactions would be approved.

Section 206 of the Advisers Act, or any other anti-fraud provision of the securities laws. Further, the only individuals charged with acting with scienter are no longer with the firm – former employees Cohen and Baros.

C. Duration and Scope of the Violations

The conduct charged in the Order is focused primarily on the investment in the OZ Funds by the Libyan Investment Authority in 2007 (over eleven years ago), and on certain investments by Och-Ziff managed funds in Africa between 2007 and 2011 (which concluded more than seven years ago).

Even though the findings in the Commission's Order are serious and the violations occurred over a multi-year period, the misconduct was not pervasive within the Company or continuous – rather it was limited and episodic. The Order references six discrete transactions in which corrupt payments were made between 2007 and 2011, and three transactions in the time period between 2010 and 2011 in connection with which OZ Management made material misrepresentations or omissions or engaged in self-dealing. In addition, the conduct at issue related only to a small fraction of Och-Ziff's business at the time. At their peak, private investments in Africa represented less than 2% of Och-Ziff's invested capital in a given year. Och-Ziff ceased making private investments in Africa and has not made new investments since 2011.

D. Responsibility for the Violations

In subsequent actions following the issuance of the Order, the SEC has concluded that the "masterminds"[7] and "driving forces"[8] of the violative conduct underlying the enforcement action were two former employees, Cohen and Baros, who separated from the firm over four years ago. Among the allegations against the former employees are knowing participation, along with third parties, in the payment of bribes to foreign government officials. The Order finds numerous examples of Cohen and Baros withholding material information related to their corrupt conduct from others at Och-Ziff (*see, e.g.*, Order ¶¶ 24, 52, 56, 60, 77, 80, 86-88, 90). The SEC's own charging documents for Cohen and Baros are replete with references to the fact that those individuals actively concealed their violative conduct from the firm and that no one else at Och-Ziff was aware that bribes were paid (*see, e.g.*, SEC Complaint ¶¶ 7, 55, 58, 75, 77, 106, 129, 172). This conduct was inconsistent with the Company's anti-corruption policies and procedures, training, annual certifications, and the Company's Code of Ethics. As described in

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[7] SEC Press Release, *SEC Charges Two Former Och-Ziff Executives With FCPA Violations* (Jan. 26, 2017), available at: https://www.sec.gov/news/pressrelease/2017-34.html.

[8] SEC Complaint, *SEC v. Michael L. Cohen and Vanja Baros* (E.D.N.Y.,filed Jan. 26, 2017), available at: https://www.sec.gov/litigation/complaints/2017/comp-pr2017-34.pdf ("SEC Complaint").

the Order, the Company's liability arises from the conduct of Cohen and Baros, as well as the absence of internal controls sufficient to identify and prevent such misconduct.

The resolution with the SEC includes cease-and-desist orders against Daniel S. Och, the Company's then Chief Executive Officer, and Joel Frank, the former Chief Financial Officer, on a neither-admit-nor-deny basis, for being a cause of the Company's violation of the recordkeeping and internal controls provisions of the Exchange Act in connection with certain of the transactions that violated the FCPA. Unlike Cohen and Baros, neither were charged with FCPA or fraud violations. Rather, Mr. Och received a lesser charge of causing a books and records violation, and Mr. Frank was charged with causing violations of the books and records and internal controls provisions.[9] The Order expressly finds that "neither Och nor Frank knew that bribes would be paid." Rather the Order finds that they were aware of a high risk of corruption in certain transactions, and that nevertheless Mr. Och approved and Mr. Frank authorized Och-Ziff to enter into those transactions in which bribes were later paid.

Mr. Frank resigned as Chief Financial Officer and as a Board member at the end of 2016. Och-Ziff has appointed a new chief financial officer and gave the duties of principal operating officer and principal accounting officer to other executives at the firm. None of these current executives – Thomas Sipp (Chief Financial Officer), Wayne Cohen (President and Chief Operating Officer), and Erez Elisha (Chief Accounting Officer) – had any involvement in the FCPA-related conduct described in the Order.

In addition, Mr. Och has stepped down as the Company's Chief Executive Officer effective as of February 5, 2018 and resigned as Chairman of the Board effective as of March 31, 2019.[10] Further, Mr. Och has submitted his irrevocable resignation with respect to his Board seat, effective at the next annual shareholder meeting, which is scheduled to take place on July 2, 2019.[11] If the waiver is granted so as to permit the Existing Funds to engage in Regulation D offerings, Mr. Och will not participate in, or have any role, or be involved in any way in Regulation D activities that the Existing Funds will pursue.

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[9] *See* Order, Exchange Act. Rel. No. 78989, Advisers Act Rel. No. 4540 (September 29, 2016).

[10] This is pursuant to a January 27, 2018 agreement entered into between Mr. Och and the independent directors of the Company's Board that sets forth certain governance changes, which was filed with the Company's January 30, 2018 Form 8-K.

[11] This is pursuant to a December 6, 2018 strategic plan announced by the Company and closed on February 7, 2019. Details of the transaction can be found in a Form 8-K filed by the Company on February 11, 2019 (the "Recapitalization Plan"). Specifically, subject to certain closing conditions, Mr. Och has agreed to resign his board seat at the next annual shareholder meeting that is at least 30 days following completion of certain redemptions of his investments in OZ Funds, which annual meeting is expected to take place in July 2019. Other related changes, including acceleration of the date that Mr. Och will relinquish his proxy under the Class B Shareholders Agreement and disband the Class B Shareholder Committee, are expected to take place not later than the date of the annual shareholder meeting.

Mr. Och was immediately succeeded as CEO by Robert Shafir. Mr. Shafir, who previously served as the CEO of Credit Suisse Americas and Co-Head of Private Banking & Wealth Management, joined the firm at the time he succeeded Mr. Och and therefore had no involvement in the conduct described in the Order. Mr. Shafir has an unblemished record spanning a 35-year career in the financial services industry. Mr. Shafir serves on the Board of Directors, chairs the Company's Executive Operating Committee, which is described below, and serves on the Risk and Business Initiatives Committees. As noted above, Mr. Och was succeeded as Chairman of the Board of Directors by Richard G. Ketchum. Mr. Ketchum is an expert in market regulation who brings a long track record of heralded senior regulatory experience to the Och-Ziff Board.

Even prior to this management transition, Mr. Och had ceded significant day-to-day responsibilities to others, in part to de-centralize decision-making authority. Specifically, there are two main aspects of overseeing the Company's affairs: (1) operational management of the Company, and (2) overseeing the Funds' investment decisions. As to operational management, the firm currently has a Partner Management Committee (PMC) and an Executive Operating Committee (EOC). The PMC is comprised of nine members, including Mr. Och as chairman[12] and the firm's new CEO, Mr. Shafir, and is responsible for approving the Company's business strategy and key operating decisions. However, day-to-day corporate management and operational decision-making is the responsibility of the EOC, which was established in October 2014 and serves as a sub-committee of the PMC. The EOC is chaired by Mr. Shafir and Mr. Och is not a member of this Committee. The EOC is comprised of five members: Mr. Shafir; James Levin (Chief Investment Officer); Wayne Cohen (President and Chief Operating Officer); Thomas Sipp (Chief Financial Officer); and David Levine (Chief Legal Officer). In light of the CEO transition noted above, the PMC and EOC are being combined into one management committee that will be chaired by Mr. Shafir and be comprised of the current members of the EOC. Mr. Och will not be a member of such committee. Notably, (1) none of these individuals had any involvement in the conduct underlying the Company's SEC settlement; and (2) the presence of the Chief Legal Officer on both the EOC and the new management committee underscores the Company's commitment to operating in strict compliance with all laws, rules and regulations.

As to investment decisions, the Company has established a Portfolio Committee, comprised of senior investment professionals, that is responsible for managing the firm's multi-strategy funds and conducting a review of the Funds' investment portfolios on a regular basis. Mr. Och is not a member of the Portfolio Committee or the Commitments Committee (which approves private investment transactions). In his capacity as Chairman and founder, Mr. Och does provide his knowledge and views on portfolio positioning, overall Company strategy and geography

[12] Pursuant to the Recapitalization Plan, Mr. Och will resign as Chairman of the PMC and all other Company and Board committees simultaneous with his resignation from the Company's Board of Directors.

allocation, and on industry trends, economic outlook and geographic factors. Also, again to disperse authority, Mr. Och is not a member, and does not participate in meetings of, the Business Risk Committee.

Lastly, the settled actions do not render either Mr. Och or Mr. Frank "bad actors" and do not trigger disqualification under Rule 506. Neither is the subject of any criminal action. The settled actions against each also do not include any violation under the Advisers Act, which triggered the Regulation D disqualification.

E. The Company's Remedial Measures

Och-Ziff has revamped its corporate governance and internal control framework as a result of the underlying investigation. The enhanced control framework is particularly strong and is designed so that the violative conduct is unlikely to recur.

Further bolstering confidence in the strength of the control framework is a review by an independent monitor that Och-Ziff was required by the Commission and DOJ to engage as part of the settlement. Specifically, both the Commission Order and the deferred prosecution agreement with the DOJ require the monitor to evaluate the effectiveness of Och-Ziff's internal accounting controls, record-keeping, and financial reporting policies and procedures as they relate to Och-Ziff's compliance with the FCPA and other applicable anti-corruption laws, including an assessment of the Board of Directors' and senior management's commitment to the corporate compliance program. The Commission Order further requires the monitor to evaluate OZ Management's related disclosure and compliance issues under the Advisers Act, and to make recommendations reasonably designed to improve the effectiveness of these policies and procedures.

The monitor began his work in January 2017 and is tasked with conducting three reviews over a three-year period. The first review has been completed and the Monitor submitted his second year report to the government on December 21, 2018. As a condition/limitation on being awarded a waiver, Och-Ziff proposes the retention of an independent compliance consultant who would be tasked with overseeing the Company's Regulation D policies and procedures.

The discussion below provides an overview of the Company's remediation to date and planned or proposed additional steps to enhance the Company's compliance program.

1. Corporate Governance Enhancements

a) Creation of a New "Corporate Responsibility and Compliance" Board Committee

The Company created a new board committee in September 2016 – the Corporate Responsibility and Compliance Committee ("Compliance Committee"). This committee

oversees management's efforts to ensure a culture of ethical business practices within the Company and to sustain an industry-leading legal and regulatory compliance program. The Compliance Committee is chaired by Richard Ketchum, who joined the Board in July 2018 and became Chairman of the Board on April 9, 2019. Mr. Ketchum has significant experience in the financial industry with extensive time in senior roles with various regulatory agencies, including having served as Chairman and CEO of FINRA, CEO of New York Stock Exchange Regulation, and Director of the SEC's Division of Market Regulation. The Company also recently filled a vacancy on the Board and the Compliance Committee with Marcy Engel, a new director with in-depth knowledge and experience in financial services regulation, legal and compliance, risk management and controls. In addition to this role, Ms. Engel is currently the lead independent director.

b) Creation of the Executive Operating Committee ("EOC")

In November 2014, Och-Ziff created the EOC which is responsible for day-to-day corporate management and operational decision making. The EOC reflects an evolution of the Company's decision-making model away from one centered primarily on the chief executive officer to one that is more dispersed among senior management, including the new Chief Executive Officer. Och-Ziff sees the EOC as part of a mature and robust system of checks and balances that also has compliance benefits, particularly through having the Chief Legal Officer as one of the committee members. As discussed above, the PMC and the EOC will soon be combined into one committee. That committee will run in the same manner, and bring the same benefits, as the EOC.

c) Enhanced Audit Committee Oversight and Internal Audit Function

Och-Ziff has enhanced reporting to the Board's Audit Committee to include regular reports from Compliance in addition to the previously existing Legal and Internal Audit reports, as well as reports on all investment proposals reviewed by the Business Risk Committee. In addition, as of April 2018, Och-Ziff outsourced its Internal Audit function to KPMG. Engaging KPMG bolsters the Internal Audit-function by utilizing eight KPMG professionals, along with other support from KPMG specialists in information technology and other areas. Additionally, KPMG makes regular presentations to the Company's Board of Directors and participates on a monthly call with the Chair of the Company's Audit Committee.

d) *Elevation of the Compliance Department*

As with many firms, at Och-Ziff, Compliance historically reported to the Chief Legal Officer and the same person served as Chief Legal Officer and Chief Compliance Officer. In September 2015, the Company separated the roles and hired a fully dedicated Chief Compliance Officer. In addition, in January 2017, the Company put Compliance on the same

organizational chart plane as Legal and changed the Chief Compliance Officer's reporting line so that Compliance reports directly to the President and COO, with a second reporting line to the Board's independent directors. Och-Ziff has made a substantial investment in the Compliance function – with 16 Compliance officers globally (of whom 7 are lawyers), out of 410 staff.[13]

2. Investment Governance Enhancements

a) Creation of the Business Risk Committee

Based on lessons learned from the investigation, Och-Ziff created a Business Risk Committee ("BRC") to provide a mandatory review of proposed transactions that present significant or atypical risks, whether legal or reputational. All of the transactions at issue in the settlement would today have been subject to review by the BRC. The BRC plays a central role in ensuring that no person acting unilaterally or without proper control group input can put the Company at risk. The BRC, which began operating in January 2015, is chaired by the Chief Legal Officer. The four other members are: the Chief Compliance Officer, the Chief Financial Officer, the President and Chief Operating Officer, and the firm's Chief Investment Officer. Mr. Och is not a member, and does not participate in meetings of, the BRC.

Transactions reviewed by the BRC must receive unanimous committee approval in order to proceed, meaning any of the five members (including the Chief Legal Officer and Chief Compliance Officer, each former senior regulators) can unilaterally veto a proposed transaction. All decisions by the BRC are final and cannot be overruled by the CEO or other members of management. In addition, the Audit Committee of the Board, which is comprised entirely of independent directors, is briefed on all matters reviewed by the BRC and the outcomes of the BRC's decisions.

The transactions subject to mandatory BRC review include:

- private investments in emerging markets;
- the initiation or acquisition of a significant new line of business;
- proposed investments in OZ Funds from government entities outside the U.S.;
- proposed investments in OZ Funds from entities incorporated or located in emerging markets;

[13] Headcount as of February 1, 2019.

- transactions that involve payments to persons for sourcing investors in OZ Funds or for sourcing transactions;
- transactions that may touch upon persons or entities subject to OFAC sanctions; and
- transactions involving parties who pose substantial reputational risks.

b) Creation of the Commitments Committee

Och-Ziff also created a Commitments Committee in late 2012 to review all proposed private investments, such as those at issue in the investigation, regardless of geographic location.[14] The Chief Legal Officer and Chief Compliance Officer, or their designees, sit on this committee. Other members include key investment professionals and the heads of Legal for the London and Hong Kong offices (Och-Ziff's main offices other than New York). The Commitments Committee reviews all aspects of a proposed transaction including the economics, risks, and any legal and compliance issues. Although a main focus of the Commitments Committee is investment-related, it serves as a control function as well. The committee structure ensures that no one person will have excessive influence on investment decisions involving heightened risk and that decisions will be made in a more formalized and structured manner. It also acts as a check on persons in remote offices who do not have the authority to act on their own. Finally, the membership of Legal and Compliance provides a mechanism for spotting issues that may not otherwise have surfaced during the investment process.

As a result of the creation of the Commitments Committee and the BRC (discussed above), the authority to approve proposed transactions is dispersed, and no one person can bind the firm to a transaction. This addresses a primary risk apparent in the underlying matter, where authority was vested in certain senior managers individually and decisions were sometimes made in a less than formal, structured manner.

3. Compliance Enhancements

Och-Ziff has continued to strengthen its compliance program in a number of ways in recent years. These enhancements were the result of a joint review of the compliance program by the Company and the Audit Committee, assisted by external counsel, with a view to addressing issues identified in the investigation.

[14] There is one exception. For real estate transactions, a separate committee conducts the review. The same type of safeguard exists for these transactions, as the General Counsel for Real Estate (*i.e.* a senior legal department lawyer specializing in this area) and the firm's Anti-Corruption Counsel sit on the committee.

In addition to redesigning the Compliance Department, the Company has revamped its anti-corruption compliance program to ensure that the violative conduct is unlikely to recur. Enhancements include:

- In April 2016, the Company hired a full-time dedicated anti-corruption counsel (a lawyer with 11 years' experience in the space), who reports jointly to the Chief Compliance Officer and Chief Legal Officer. In January 2018, the Company hired an attorney with anti-corruption experience into the compliance function based in the firm's London office; part of her role will entail assisting with the administration of the firm's anti-corruption and anti-money laundering programs.

- The Company has revised specific policies and procedures to address the type of conduct at issue in the settlement. Relevant revisions to the policies and procedures include:

    - prohibiting facilitation payments altogether;

    - requiring pre-approval by the Compliance department for meetings with government officials;

    - developing a web-based technology tool, Deal Manager, to manage compliance review and due diligence for all new private transactions;

    - requiring evidence of Compliance Department review and approval through Deal Manager prior to the release of payment by the firm's accounting functions in connection with a new private transaction;

    - only engaging placement agents who are regulated entities and approved in advance by the BRC;

    - assessing employee compliance in its annual review and compensation processes;

    - enhanced post-transaction monitoring, including conducting semi-annual compliance reviews of the entire private equity portfolio; and

    - requiring notification to governmental counterparties or business partners where a third party is used in connection with a government-related transaction.

4. Proposed New "Three Level of Review" Governance of Regulation D Offerings

As a condition to receiving the waiver, the Company will launch an industry-leading "Three Level of Review" control process governing Regulation D offerings. The process will work as follows:

- *First level of review*: A new "Regulation D Offering Review Committee" will be created and co-chaired by the Chief Legal Officer and Chief Compliance Officer. The committee will meet quarterly and review Regulation D offerings taking place during the previous quarter for compliance with all requirements. The committee will also review Regulation D offering plans and materials in advance of the offerings. Other members of the committee will include additional members of Legal and Compliance, as well as the Head of Investor Relations (who frequently interact with proposed investors and, as such, can provide information relevant to the review). The Regulation D Offering Review Committee will remain in operation at a minimum through the time period described in Rule 506(d)(1).

- *Second level of review*: The Regulation D Offering Review Committee will regularly report to the Board's Corporate Responsibility and Compliance Committee, which is comprised entirely of independent, non-executive directors.

- *Third level of review*: The firm will engage an independent compliance consultant to conduct a review assessing its Regulation D policies and procedures. In addition, the independent consultant will be tasked with providing a report to Och-Ziff and Commission staff.

The sum total of this proposal is that each Regulation D offering will be reviewed from a control standpoint by the Chief Legal Officer, the Chief Compliance Officer and a committee of independent directors. In addition, Och-Ziff's governing policies and procedures will be reviewed by an independent consultant and the Commission will have greater visibility into these policies and procedures and their effectiveness.

5. Changes in Investment Strategy

As noted above, OZ Africa Management has not made new investments since 2011 and will cease operations once existing investments can be sold. Och-Ziff ceased making new private investments in Africa in 2011 and separated from its joint venture investment partner in Africa in 2012. In addition, under current policies and procedures, were any emerging market investment opportunity to arise again, it would be subject to all controls described above that would not permit similar events to recur.

F. Impact on Och-Ziff and its Investors if a Waiver is Denied

Through its registered investment adviser, OZ Management, Och-Ziff manages hedge funds and other private investment funds (collectively, "OZ Funds"), for the benefit of the OZ Funds' limited partner investors. Och-Ziff's continued ability to raise funds from limited partner investors is central to its business as an alternative investment management firm. The viability of an asset management business depends on the manager's ability to maintain a stable or growing amount of AUM to generate revenues for the business. In the normal course, the OZ Funds, like all hedge funds, provide their limited partner investors the right to redeem their investments. To meet redemptions, managers routinely liquidate a portion of fund assets, and the funds shrink, unless the manager takes in new limited partner investors or existing limited partner investors increase their investments. To maintain the viability of the funds, as well as advantages of scale, hedge fund managers must be able to obtain new investors to continue to replace assets that leave through periodic limited partner investor redemptions.

As discussed in more detail below, for an alternative asset manager, the critical need to be able to rely on Regulation D cannot be overstated. Like all fund managers, Och-Ziff has historically relied on Regulation D on a routine basis to offer its products.[15] As such, the impact of not having a waiver is much greater on Och-Ziff than on other types of issuers (such as corporates) that would have several other paths available when selling securities and other financial institutions (such as banks) that offer a much broader variety of financial services to generate revenue. Stated differently, for an alternative asset manager, Regulation D is truly a necessity, not a luxury.

Fall back reliance on Section 4(a)(2) is not a viable long-term solution. Several of Och-Ziff's largest investors have ceased doing new business with the firm due to its inability to rely on the Regulation D exemption. As the only major alternative asset manager that we are aware of without a Regulation D exemption, Och-Ziff also "looks different" than its peers as it stands alone in being required to present proposed investors with lengthy questionnaires to ensure compliance with Blue Sky laws. Potential clients do not understand or favor this.

The negative impact has been evident. Och-Ziff has faced significant obstacles to raising capital under Section 4(a)(2) and redemptions have been at historic highs. *See, e.g., "It Took Investors Just Four Months To Pull Nearly $7 Billion From Hedge Fund Giant*," Wall Street Journal May 2, 2017 (noting that Och-Ziff's assets under management ("AUM") – its only

[15] *See, e.g.* Vladimir Ivanov and Scott Bauguess, *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012* (July 2013 update of the February 2012 study) (noting that the largest issuers in the Regulation D market by amount sold are pooled investment funds, classified in Form D filings as hedge funds, venture capital funds, private equity funds, and other pooled investment funds, and that hedge funds are the largest fund issuer).

basis of revenue – declined by this amount during the first four months of 2017). The Company reported redemptions of approximately $10.5 billion during 2017 and AUM of $32.4 billion as of December 31, 2017, a 14% decrease from December 31, 2016. This followed material declines in AUM in 2016. Inflows increased slightly in late 2017 and into 2018, but continue to be difficult to obtain without the ability to rely on Regulation D. The risks to the firm and its public shareholders are meaningful – a firm which employs over 400 people and serves a client base principally comprised of pensions (43%) and foundations and endowments (7%), and whose shares are held by public investors and traded on the New York Stock Exchange.

1. Subscriptions Have Declined Due in Part to the Lack of a Regulation D Waiver and Will Continue to Decline

Subscriptions into the OZ Funds have declined meaningfully in recent quarters due in part to the lack of a Regulation D waiver. To illustrate this, over the period of 2012 through the settlement date, the OZ Funds on average received inflows of $1.1 billion per quarter. During the eight quarters following the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds received average subscriptions of only $122 million per quarter. The total subscriptions for the second quarter of 2017 were slightly higher; however, subscriptions to Och-Ziff's multi-strategy funds continue to be significantly lower compared to prior years, with average subscriptions over the last eight quarters of only $36.9 million compared to an average of $698.1 million per quarter during the period of 2012 through the settlement date. The increase in total subscriptions seen primarily in the second quarter of 2017 was mainly due to commitments made to Och-Ziff's first real estate credit fund, as well as its dedicated credit products and opportunistic credit funds.[16]

Prior to the entry of the Order, the real estate credit fund was offered and sold primarily under Regulation D, with a smaller percentage offered and sold to offshore investors under Regulation S. Following the entry of the Order, interests in the fund were sold primarily to offshore investors in reliance on Regulation S. Only 10% of the total interests in the fund

[16] The figures in the foregoing paragraph and elsewhere in this letter relating to average subscriptions over the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D do not include reinvestments by investors in OZ Funds that were put into wind-down earlier in 2018 into another OZ Fund in the second and third quarters of 2018.

since its inception were sold under the Section 4(a)(2) exemption from registration.[17] Similarly, since the entry of the Order, the large majority of the interests in Och-Ziff's dedicated credit products and opportunistic credit funds have been sold to offshore investors in reliance on Regulation S.

The lack of a Regulation D waiver has acutely impacted Och-Ziff's limited partner investors' willingness and ability to invest. For example, the wealth management arms of large financial institutions ("private banks") and other intermediaries rely on Rule 506 for distribution of fund investments to their high net worth individual clients. Most of these intermediaries are not comfortable investing in or distributing OZ Funds without a Regulation D waiver on the part of Och-Ziff. In addition, although institutional and other types of investors are technically able to invest in offerings made in reliance on Section 4(a)(2), Och-Ziff has experienced significant hurdles with these investors as well.

a) Intermediaries

The harm caused by the lack of a Regulation D waiver is shown most directly by problems in distributing OZ Funds through private banks, which are the primary channels for sales of limited partner interests in the OZ Funds to high net worth individuals. These channels accounted for approximately 12% of Och-Ziff's investor base as of October 1, 2018, compared with 16% of the investor base as of April 1, 2016. To illustrate this, over the period of 2012 through the settlement date, OZ Funds on average have received inflows of $265 million per quarter from private banks. During the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds have received average subscriptions of only $16.4 million per quarter from private banks, almost all of which came from offshore investors in reliance on Regulation S.

The private banks consider the lack of a waiver from Rule 506 disqualification as a significant risk factor in their overall evaluation of the OZ Funds. Och-Ziff has been made aware that certain large private banks continue to be unwilling to participate in the fund offerings in the United States if a waiver of disqualification is not granted, due to legal uncertainties in connection with the OZ Funds' reliance on Section 4(a)(2). In addition, as some of the private banks have informed Och-Ziff that they likely cannot continue holding

[17] In addition, as of September 30, 2018, Och-Ziff reported a 38% increase year-over-year in AUM in its dedicated credit products business, driven by capital net inflows of $3.6 billion primarily due to the closing of additional collateralized loan obligations ("CLOs") and an aircraft securitization. Och-Ziff acts as collateral manager for such offerings. CLO offerings are not conducted under Regulation D; rather they are conducted under Securities Act Rule 144A through an initial purchaser and under Regulation S to offshore investors. We note, however, that although this demonstrates that alternative exemptions from registration are available for these limited CLO offerings, such inflows do not offset the impact of the Rule 506 disqualification on the OZ Funds overall. In addition, CLO offerings generate significantly less revenue than Och-Ziff's multi-strategy funds, in part because they are an entirely different product than hedge funds, carrying materially lower management fees.

client investments in a fund that they cannot make available to new U.S. clients, such private banks may choose to redeem all, or a material portion of, their remaining investments in OZ Funds if a Regulation D waiver is not obtained. As of October 1, 2018, private banks represent $2.3 billion in AUM.

The lack of a waiver from Regulation D disqualification also has had a negative impact on Och-Ziff's ability to develop and launch new products that are distributed through intermediaries. For example, Och-Ziff was preparing a new fund product designed to tap into a growing segment of the insurance market but has been unable to launch the product because the intermediary that would be used to offer the fund is not willing to offer the fund in reliance on Section 4(a)(2). The firm believes this product could have grown quickly in a relatively short period of time.

b) Other investors, including pension funds, family offices and individuals

Och-Ziff's Regulation D disqualification has also affected other potential sales channels for the OZ Funds' interests, even in cases where technical compliance with Section 4(a)(2) may be possible. For example, sales to institutional investors such as pension funds and sales to family offices and high net worth individuals, each of which participate directly in OZ Fund offerings, have declined since the entry of the Order. Most significantly, these investors include pension funds, which accounted for approximately 43% of Och-Ziff's investor base as of October 1, 2018. To illustrate this, over the period of 2012 through the settlement date, OZ Funds on average have received inflows of $346 million per quarter from pension funds. During the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds have received average subscriptions of only $14.0 million per quarter from pension funds, almost all of which came from offshore investors in reliance on Regulation S.

Och-Ziff believes this decline is attributable in large part to the absence of the Rule 506 safe harbor in general, as well as the resulting absence of state Blue Sky preemption. While other factors may also be contributing to the decline in inflows from these channels, we note that many of the consultants that work with large public pension funds are particularly focused on the risks of an offering under Section 4(a)(2), and other potential investors who are not generally conversant with Section 4(a)(2), also have concerns about participating in such offerings. It would be expected that their natural impulse will be to choose what is safe and certain, particularly for operations professionals, who would have to adapt their procedures, and for compliance professionals, who would have to address Blue Sky offering requirements. In addition, many of Och-Ziff's investors are themselves fiduciaries, who understandably are reluctant to take on any perceived risk, inconvenience, or expense when other alternatives are available. Family offices and individuals also face significant legal uncertainties under Section 4(a)(2) due to the lack of guidance and strict offering requirements in many states.

2. Section 4(a)(2) is Not a Viable Alternative to Regulation D

The very purpose of Regulation D is to replace the uncertain contours of Section 4(a)(2) with a predictable safe harbor to enable issuers to do business with a high degree of certainty. Section 4(a)(2) is not well suited to offerings to relatively large numbers of investors or to continuous offerings, and there is not an established market practice for private fund offerings under Section 4(a)(2). As illustrated by the significant decline in inflows to the OZ Funds, Och-Ziff has found itself facing serious commercial and legal limitations under this approach. As described in more detail above, prospective limited partners and other market participants have proven to be reluctant to invest in, or do business with, a fund that does not have the safe harbor protection afforded by Rule 506.[18] Och-Ziff's offering process now requires forms from clients prior to meaningful contact which is different from other firms and often results in clients refusing to progress.

Further, unlike Rule 506 offerings, offerings conducted under Section 4(a)(2) do not have the benefit of Federal pre-emption of state registration requirements. As a consequence, each Section 4(a)(2) offering requires an analysis of state Blue Sky laws, which is burdensome and imposes additional costs on both Och-Ziff and the limited partner investors.

3. Och-Ziff's Decline in Assets Under Management

Och-Ziff's inability to raise new money has contributed to a dramatic decline in its AUM. AUM declined from $39.3 billion as of September 30, 2016 to $33.0 billion as of September 30, 2018, a decrease of 16.03% in that 24-month time period. In particular, AUM in Och-Ziff's multi-strategy funds declined 50.85%, from $23.4 billion as of September 30, 2016 to $11.5 billion as of September 30, 2018. A decline in AUM not only threatens the long term health of Och-Ziff's business but also hurts existing limited partner investors. For example, many of the costs associated with managing the OZ Funds are fixed and therefore reduced on a percentage basis when the amount of assets in the fund is increased.

As an asset manager, Och-Ziff must be able to take in new subscriptions from limited partner investors to replace money that has been redeemed in order to sustain its business over time. While the overall downturn in the industry and the reputational overhang of the FCPA settlement cannot be disregarded as contributors to the decline in inflows to the OZ Funds, Och-Ziff's inability to rely on Rule 506 for the offerings of limited partnership interests in its funds has played a significant role in many limited partner investors' decisions to redeem from Och-Ziff's multi-strategy funds, has virtually halted all new subscriptions to those

[18] The Division has previously been informed of the disadvantages of reliance on Section 4(a)(2) for continuous private fund offerings. *See* incoming waiver request letter dated May 18, 2017, SEC v. Cooperman et al., Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D.

funds, and is resulting in continuing negative impact to Och-Ziff's business and its public shareholders and limited partner investors.

Och-Ziff has experienced elevated levels of outflows since 2015, which it believes can be attributed to some extent both to an industry-wide downturn in investor interest in alternative investments, and to the impact of the FCPA matter, and the pace of outflows has continued to increase. Och-Ziff experienced outflows of approximately $7.5 billion from its funds during 2015, $10.4 billion during 2016 and $10.7 billion during 2017. These outflows have occurred primarily from Och-Ziff's multi-strategy hedge funds. Between the date of the announcement of the settlement and September 30, 2018, investors have elected to redeem $14.7 billion from Och-Ziff's multi-strategy hedge funds totaling more than 50% of available capital.

4. Reputational Impact of Regulation D Disqualification

All of these concerns illustrate that Och-Ziff faces a special stigma as a result of the Rule 506 disqualification, the impact of which extends far beyond the reputational concerns arising from the FCPA settlement. Och-Ziff's business is extremely competitive, and its competitors regularly rely on Regulation D to conduct domestic private offerings. No other major alternative asset manager that we are aware of has the Rule 506 disqualification or the resulting stigma. Potential investors, when faced with the choice between an offering that fits the standard Regulation D model and an offering under Section 4(a)(2) that involves legal uncertainty, additional documentation such as Blue Sky questionnaires, and differing compliance processes, are likely in most cases to opt for the familiar Regulation D process. While it is not possible to quantify the negative impact on Och-Ziff with exact precision, it manifests itself in a variety of ways, such as a reluctance on the part of certain institutional investors to participate in meetings or discussions about OZ Fund offerings.

5. Loss of Revenue

The disqualification's limitation on the OZ Funds' ability to offer limited partnership interests and bring in new capital has resulted in revenue losses in the form of reduced management fees and incentive income. Och-Ziff's principal sources of revenues are management fees and incentive income. For any given period, the Company's revenues are influenced by the amount of AUM, the investment performance of the OZ Funds, and the timing of when the Company recognizes incentive income for certain AUM. Management fees are generally calculated and paid to Och-Ziff on a quarterly basis in advance, based on the amount of AUM at the beginning of the quarter, and are prorated for capital inflows and redemptions during the quarter. Accordingly, changes in management fee revenues from quarter to quarter are driven by changes in the quarterly opening balances of AUM, the relative magnitude and timing of inflows and redemptions during the respective quarter, as

well as the impact of differing management fee rates charged on those inflows and redemptions. Och-Ziff earns incentive income based on the cumulative performance of the OZ Funds over a commitment period. The ability of investors to contribute capital to and redeem capital from the OZ Funds causes AUM to fluctuate from period to period, and therefore affects the Company's revenues.

This loss of revenue has had an effect on Och-Ziff's ability to maintain previous staffing levels. The Company's headcount has declined since January 2016 from a high of 659 employees to 410 employees as of February 1, 2019.

6. Conclusion

The tangible negative effects of the disqualification described above on Och-Ziff's business, its limited partner investors and its public company shareholders would be immediately addressed by the granting of a waiver. Unlike the majority of applicants requesting a waiver of the Rule 506 disqualification, the harm described herein is not hypothetical – Och-Ziff has been operating under the disqualification since the entry of the Order, and the negative results of the disqualification are clear to see. This impact, particularly in light of the significant improvements in the firm's compliance-related mechanisms, as described above, weighs strongly in favor of the granting of a waiver of disqualification.

* * *

In addition to the proposed new "Three Level of Review" process described above, as a further condition to receiving the waiver, the Company agrees that the waiver will be subject to certain of the terms agreed to with respect to the governance arrangements of the Company as set forth in that certain agreement, dated January 27, 2018, between the Company and Mr. Och (collectively, the "Governance Arrangements"). Pursuant to the Governance Arrangements, (i) Mr. Och ceased to serve as the Company's Chairman of the Board effective as of March 31, 2019, (ii) Mr. Och is no longer an "executive officer" of the Company (as such term is defined in Rule 3b-7 of the Exchange Act), (iii) Mr. Och is not empowered to remove any executive officer of the Company and (iv) Mr. Och does not approve any of the Company's individual investment decisions. The Company agrees that it will not rely on the waiver if any of these conditions should change. The Company's Chief Legal Officer and Chief Compliance Officer will certify in writing annually as to the Company's compliance with this condition and submit a copy of the certification to the Commission staff.

Och-Ziff also agrees, for the time period described in Rule 506(d)(1), to furnish (or cause to be furnished) to each potential limited partner investor in a Rule 506 offering that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

Based on the foregoing and subject to Och-Ziff's compliance with the representations and conditions set forth herein, we believe Och-Ziff has shown good cause that disqualification is not necessary under the circumstances and that the requested waiver should be granted.

Please do not hesitate to contact me at (202) 663-6644 should you have any questions regarding this request.

Sincerely,

Meredith B. Cross

cc: David M. Levine
Och-Ziff Capital Management Group LLC