SadisGoldberg LLP

October 3, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SEC Release No. 33-9354, File Number S7-07-12

Dear Ms. Murphy:

We appreciate the opportunity to comment on the Securities and Exchange Commission's (the "SEC") proposed amendments to Rule 506 of Regulation D under the Securities Act of 1933, as amended (the "Proposed Rules") to implement Section 201(a) of the Jumpstart Our Business Startups Act (the "JOBS Act").

In this comment letter we would like to highlight two areas of concern that we feel should be addressed and clarified by the SEC in connection with any final amendments issued in connection with Rule 506.

1. Rule 506(c) should explicitly permit offerings made to accredited investors and to knowledgeable employees. Investors in private funds routinely expect that the principals and key employees of issuers, even if they are not accredited investors, invest alongside such investors.

2. The SEC should coordinate with the Commodity Futures Trading Commission (the "CFTC") to ensure that the JOBS Act provisions pertaining to the permissibility of general solicitation and advertising in certain offerings are harmonized as between the two agencies. Otherwise, Rule 506(c) will not have the intended impact with respect to private fund managers relying on various CFTC exemptions.

Knowledgeable Employees

We believe that Rule 506(c) should be expanded to permit the use of general solicitation where all purchasers of securities are either "accredited investors" or "knowledgeable employees". We acknowledge that the SEC noted in footnote 27 to the Proposed Rules that it had considered revising the definition of accredited investor to include knowledgeable employees and, at this time, determined not to make any amendments to the definition of accredited investor. For the various reasons provided herein, we feel strongly that by not including knowledgeable employees in Rule 506(c), the Proposed Rules will not have the impact as intended by Congress.

Rule 3c-5 of the Investment Company Act of 1940, as amended (the "Company Act"), was established by the SEC to allow a knowledgeable employee to invest in a private fund managed by their employer, operating under the Section 3(c)(7) exemption from the Company Act, without having to be a qualified purchaser. As such, employees of private fund managers who are knowledgeable employees may own interests or shares in a private fund operating pursuant to Section 3(c)(7) regardless of whether they meet any of the financial tests typically required of qualified purchasers. Essentially, in practice, the SEC currently treats knowledgeable employees as capable of investing in private offerings by virtue of their significant involvement with a private fund's investment program, which at a minimum, make them tantamount to a qualified purchaser. The qualified purchaser standard is significantly harder to meet than the accredited investor standard. For example, a natural person would need to have $5 million in investments to be considered a qualified purchaser but would only need to have $1 million of net worth to be deemed an accredited investor. Therefore, if a knowledgeable employee is comparable to a qualified purchaser for purposes of the Company Act, such person must be considered at least comparable to an accredited investor for purposes of Rule 506(c). The intent of the Proposed Rules is to limit a 506(c) offering to investors with a significant level of sophistication and exclude others such as the typical non-accredited investor because an investor is believed to lack the sophistication to evaluate the merits and risks associated with private offerings of securities. A non-accredited knowledgeable employee is an exception to this principle and is not the intended target group requiring the protections afforded to non-accredited investors.

Moreover, on a practical level, if non-accredited knowledgeable employees are not permitted to participate in Rule 506(c) offerings, this could potentially result in disaccord between (a) investors and private fund managers and (b) private fund managers and key employees. Many private fund investors desire and expect that key employees invest a significant portion of their liquid net worth in a fund alongside investors so that the employees "have skin in the game" or "eat their own cooking". These investors will be frustrated by the impact of Rule 506(c) as currently drafted as certain knowledgeable employees would not be able to invest in certain offerings which would produce a situation where the interests of these employees and the investors would not necessarily be aligned. Additionally, if knowledgeable employees are no longer able to invest in private funds engaged in general solicitation, such employees may be precluded from participating in various incentive programs offered by their employers. Such situations will ultimately affect private fund managers and investors in private funds, as certain key employees may ultimately leave their employer because of their employer's inability to offer competitive compensation packages. In short, if the SEC does not amend Rule 506(c) to include investments by knowledgeable employees, we expect that private fund managers, employees and investors will be harmed.

CFTC

We would also strongly encourage that the SEC coordinate implementation of revisions to Rule 506 with the CFTC. The CFTC provides for various exemptions from registration as a commodity pool operator ("CPO") and certain exemptions require that the offerings do not involve any marketing to the public. Many private managers rely on Rule 4.13(a)(3) of the Commodity Exchange Act, as amended (the "CEA"), which requires, in part, that interests in a commodity pool "be offered and sold without

marketing to the public in the United States". Reliance on Rule 4.13(a)(3) will increase as reliance of Rule 4.13(a)(4) is no longer available as of December 31, 2012. The Proposed Rules and the JOBS Act both refer to permitting general solicitation and advertising only with respect to the federal securities laws but there is no mention of general advertising or solicitation with respect to the CEA.

If the Proposed Rules are not harmonized with the CEA, any new rules adopted by the SEC involving general advertising and general solicitation will not be meaningful to private fund managers who are subject to the CEA. In order to implement the intent of the JOBS Act and permit for general advertising and general solicitation in certain private offerings, the SEC needs to coordinate with the CFTC to implement consistent rules.

We appreciate the SEC's consideration of the matters set forth above. If you have any questions, or if we can provide any further information, please contact Ron S. Geffner, Daniel G. Viola or Yehuda Braunstein at (212) 947-3793.

Very truly yours,

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