March 5, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-25-06
Proposed Rules 509 and 216: Accredited Investors in Certain Private Investment Vehicles

Dear Ms. Morris:

The Alternative Investments Compliance Association[1] ("AICA") is pleased to submit this letter in response to the solicitation by the Securities and Exchange Commission (the "Commission") of comments on proposed Rules 509 and 216 under the Securities Act of 1933, as amended (the "1933 Act") regarding the threshold for accredited investors as contained in Release No. 33-8766 (the "Proposing Release").

While we fully support the Commission's approach with respect to proposed Rule 206(4)-8 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), for the reasons discussed below, we respectfully request that the following changes to the Proposing Release be made in an effort to achieve a better balance in capital formation as well as to provide for a more equitable application of the proposed rules:

(1) Revise the definition of accredited natural person;
(2) Allow current investors in private investment vehicles to make additional contributions to those vehicles notwithstanding the revised qualifications in the Proposing Release; and
(3) Permit "knowledgeable employees" to invest in the private investment vehicle(s) which are managed by the investment firm at which they are employed.

A. The Proposed Two-Step Approach Improperly Delineates Accredited Investors

The Proposing Release would require a two-step approach that would apply either the net worth or income test currently specified in Rule 501(a) or Rule 215, and add a $2.5 million minimum investment requirement. While we generally agree with a two-step approach as one

[1] AICA is an association of compliance professionals focused on addressing legislative, compliance and regulatory developments and is dedicated to open communication among industry participants, as well as fostering the development and sharing of compliance best practices. AICA currently has 41 registered members and consists of chief compliance officers, mid-level compliance professionals, general counsels, hedge fund and fund of hedge fund managers, private equity firm managers, industry service providers and other senior executives within the alternative investments industries.

method to increase investor protection, we believe that the $2.5 million minimum investment threshold is overly burdensome and could have significant negative consequences on current and prospective investors, as well as firms that currently rely on Section 3(c)(1) for exclusion from registration under the Investment Company Act of 1940, as amended (the "Company Act"). This is based upon our view that there are a large number of investors that are sufficiently sophisticated to make investments in hedge funds that would not otherwise be permitted if the Proposing Release were adopted. Investments in hedge funds could be a very valuable addition to an individual's investment portfolio, and the Commission should be mindful not to exclude financially sophisticated persons (with significant net assets and significant investment portfolios) from the pool of permissible investors. We are also of the view that such an overly burdensome requirement will reduce the amount of new hedge fund managers coming to the market and reduce competition, which could have significant negative consequences for hedge fund investors.

We propose that the proper eligibility standard for an investor in a 3(c)(1) fund requires that an investor be a "qualified client"[2] (having more than $1.5 million in net worth or $750,000 invested with the manager in question); and that an investor have at least $1 million in investments (as defined in the Proposing Release), as opposed to the $2.5 million in investments as the Commission proposes. There are several reasons for our position. First, part of the reasoning in the Proposing Release, with respect to increasing the eligibility threshold, was that the definition of accredited investor has not been modified since 1982. However, it should be noted that the Commission revisited the concept of a "qualified client" in the late 1990s and increased the net worth and assets under management requirements.[3] At that time, the Commission deemed further protections unnecessary to ensure adequate client sophistication, evincing the historical lack of abuse and the high cost and inconvenience associated with incorporating new thresholds into existing agreements. The Commission further recognized that such qualified clients did not need the full protections provided by the Advisers Act's restrictions on performance fee arrangements. It is generally accepted that a majority of hedge fund vehicles (and a supermajority of direct investment hedge fund vehicles) have an element of performance-based compensation as part of their fee structure. We assert that this would make it an especially relevant benchmark in evaluating eligibility requirements that should be applicable to investors in hedge funds. Secondly, because the proposed rules (and our suggested changes thereon) preclude the use of personal residences for qualification as an accredited natural person, the Commission has, in effect, raised the qualification threshold even higher by focusing on investment of liquid assets, ensuring sufficient knowledge and financial sophistication to enable investors to evaluate the merits or risks of a prospective investment in a private investment vehicle.

[2] Rule 205-3 of the Advisers Act.

[3] 50 FR 48561, Nov. 26, 1985, amended by 62 FR 28112, 28135, May 22, 1997 (the Commission increased the net worth and assets-under-management tests from $1,000,000 and $500,000 to $1,500,000 and $750,000, respectively.)

B. The Lack of a Grandfather Provision for Current Investors Presents an Undue Burden Upon those Investors and the Funds in Which They Invest

Under the Proposing Release, natural persons who currently hold investments as accredited investors may no longer qualify to make additional contributions in a private investment vehicle. If such an investor wants to make additional contributions, even in investment vehicles in which the investor currently invests, he/she would be compelled to satisfy the new accredited natural person standards.

We propose that all existing investors in pooled investment vehicles that rely on Section 3(c)(1) for exclusion from registration under the Company Act be grandfathered into any modifications of the definition of accredited investor. If these investors were deemed sufficiently sophisticated to make an initial investment in a pooled investment vehicle, then they are sophisticated enough to make additional investments in that same pooled investment vehicle. We assert that this group of investors is in an even better position to evaluate the risks of adding assets to a private investment vehicle since they are existing investors who have experience with the manager in question. Providing otherwise would disservice such investors, forcing them to change their current portfolio allocations, and harm the 3(c)(1) funds in which they invest by restricting and in effect, eliminating a previously qualified source of capital.

C. Knowledgeable Employees Should be Permitted to Invest in Private Investment Vehicles Despite Their Non-Accredited Investor Status

We do not believe that the Proposing Release properly addresses whether employees and managers of pooled investment vehicles ("pool employees") must satisfy the new accredited natural person standards. Although the Commission recognizes four exceptions by which knowledgeable employees of pooled investment vehicles can make investments without requiring those employees to be accredited natural persons, we are of the view that these exceptions do not sufficiently align the goals of employees with those of investors. The most efficient and fair manner to achieve this goal is to simply allow such knowledgeable employees (as defined in Rule 3c-5 promulgated under the Company Act) to make investments in the fund regardless of whether they meet the eligibility requirements of an accredited natural person.

We believe that benefits to investors accrue when pool employees that provide investment services for funds have personal financial interests in those funds. In essence, their interests become aligned with respect to the management of risk in the fund (as the employees' own assets are "in play"). All prudent investors recognize the value of employee investment and indeed ascertain the level of pool employee investment as part of their pre-investment diligence process. While the purpose of Regulation D of the 1933 Act is to limit investment in private investment vehicles to those sophisticated investors with knowledge and experience, that purpose is properly adhered to by allowing knowledgeable employees to invest in the private investment vehicle(s) that employ them because such employees generally have the sufficient knowledge and experience in financial and business matters and are fully capable of evaluating the merits or risks of an investment in funds they help manage.

As such, we propose that knowledgeable employees of private investment vehicles or their investment advisors should not be subject to the same accredited natural person standard as other investors, and should therefore be permitted to receive securities issued by the private investment vehicle that employs them.

Based on the foregoing, we believe the burdens imposed on potential and current investors, the 3(c)(1) funds in which they invest, as well as knowledgeable employees far outweigh the perceived benefits of investor protection and would actually hinder the capital formation process.

We appreciate the opportunity to comment on the Proposing Release and would respectfully urge the Commission to take these comments into account. We would be happy to discuss any questions the Commission or its staff may have with respect to our comments. Any such questions may be directed to William G. Mulligan at (212) 515-2800.

Very truly yours,

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AICA

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By: William G. Mulligan
Chair and Member of the Board of Managers

VIA EMAIL