MAYNARD COOPER & GALE PC
ATTORNEYS AT LAW

Gregory S. Curran
DIRECT 205.254.1098
EMAIL gcurran@maynardcooper.com

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VIA E-MAIL

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

Re: Proposed Rules Regarding the Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles; SEC File Number S7-25-06

Dear Ms. Morris:

We are writing in response to the request of the Securities and Exchange Commission (the "Commission") for comments concerning proposed rule 206(4)-8 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and proposed rules 216 and 509 under the Securities Act of 1933, as amended (the "Securities Act), as set forth in Release No. IA-2576 (December 27, 2006) (the "Proposing Release"). We are submitting these comments on behalf of an investment adviser client that provides advice primarily to affiliated private investment funds. We appreciate this opportunity to comment.

I. Proposed Rule 206(4)-8 under the Advisers Act

While our client appreciates and agrees with the Commission's commitment to protect the interests of investors consistent with its authority under section 206(4) of the Advisers Act, our client is concerned that section (a)(1) of proposed rule 206(4)-8 would substantially expand the Commission's enforcement power over advisers with respect to private funds and could extend to routine communications and day to day activities. Proposed rule 206(4)-8(a)(1) incorporates language from rule 10b-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); however, the broad language of the proposed rule would apply, unlike rule 10b-5, regardless of whether the investment vehicle is then offering, selling or redeeming its securities. The Proposing Release notes that the rule would not be limited to fraud "in connection with" the purchase and sale of a security, nor would the Commission need to demonstrate that an adviser acted with *scienter* (Proposing Release 12). Accordingly, under the proposed rule, the Commission could arguably bring an enforcement action against an adviser who, for example, made an inadvertent typographical error in a routine email to an investor or prospective investor.

Second, the proposed rule would apply to any communications to prospective investors as well as investors, thereby creating an overly broad regulatory regime that our client believes is well

beyond that intended by Congress and the courts. SEC rule 206(4)-1(a)(5) already prohibits untrue statements of material fact, or other false or misleading statements, by registered investment advisers in any advertisement, and rule 206(4)-1(b) makes it clear that the term "advertisement" goes beyond communications addressed to clients. Our client believes this existing rule to be sufficient for the protection of prospective investors. Any additional regulation should be narrowly focused to apply only to advice given to investors or prospective investors concerning the value of securities or the advisability of investing in, purchasing or selling securities.

Our client currently communicates with its clients and investors in the pooled investment vehicles it advises frequently and in an accurate and complete manner. Our client believes that the combination of the broad language of proposed rule 206(4)-8, coupled with the lack of any *scienter* standard, would go well beyond the congressional findings and intent expressed in Section 201 of the Advisers Act and may well have the unfortunate and unintended effect of hampering or discouraging this type of candid communication in the future. Such a chilling effect on routine communications with clients and investors is certainly not desirable.

Accordingly, our client urges the Commission to reconsider the adoption of rule 206(4)-8 as it is currently proposed.

II. Proposed Amendments to Private Offering Rules under the Securities Act

A. General

Proposed rules 216 and 509 would require a natural person investing in a "private investment vehicle" (as defined) to qualify as both (i) an "accredited investor" under Securities Act rule 215 or 501(a), as the case may be, and (ii) an "accredited natural person" under the proposed rule. An "accredited natural person" would mean any natural person who meets either the net worth or income test specified in rule 215 or 501(a), as applicable, *and* who owns not less than $2.5 million in investments individually or jointly with a spouse, as adjusted for inflation. Our client strongly recommends that the Commission not adopt proposed rules 216 and 509, or in the alternative, consider certain modifications, as described below.

B. Complexity and Potential for Confusion

The Commission has not set forth a basis for changing the current clear and simple income/net worth standard to a complicated dual standard of income/net worth and investments. The proposed rules would treat personal real estate inconsistently; under the first prong, personal real estate could be counted (as is currently the case) toward the $1 million net worth standard for accredited investors, but under the second prong, personal real estate could not be counted toward the $2.5 million in investments calculation. Such a different treatment within the same rule for the same class of asset will undoubtedly cause confusion. If the Commission chooses to adopt proposed rules 216 and 509, it should not introduce a bifurcated standard. Instead, it should create a single, revised definition of the current "accredited investor" standard.

Moreover, the new standard under the proposed rules will lead to inequitable results based upon whether or not a prospective investor has chosen to place significant assets in personal real estate. For example, assume that A and B are two investors with the same amount of net worth and identical economic positions. Historically, A has invested his savings in mutual funds and has thereby accumulated $2.5 million in investments. On the other hand, B has invested the majority of his savings in a personal residence in Manhattan (which, as it turns out, was a very prudent investment). However, B would not have $2.5 million in investments, as defined under the proposed rules. The anomalous result is that B, who may have equal or superior investing capabilities as compared to A, would not be permitted to invest in private investment vehicles. The revised criteria imposed by the proposed rules, therefore, will likely influence investment decisions and the allocation of investment capital in a manner that is neither intended nor prudent.

Finally, our client believes that a goal of regulation by the Commission should be to enhance efficiency and to avoid unnecessarily complex and burdensome regulation. Proposed rules 216 and 509 do not further this goal.

C. Knowledgeable Employees

If the Commission adopts proposed rules 216 and 509, our client recommends that the Commission add the term "knowledgeable employees," as defined in rule 3c-5 promulgated under the Investment Company Act of 1940, as amended (the "Company Act") to the definition of "accredited natural persons." Our client makes this recommendation for two reasons.

First, "knowledgeable employees" are not in need of special protections when investing in Section 3(c)(1) funds, since they are presumed to be significantly informed and have access to information. "Knowledgeable employees," as defined in Company Act rule 3c-5, include (i) executive officers, directors, trustees, general partners and advisory board members of funds and (ii) an employee or affiliated person of a fund (other than one performing solely clerical, secretarial or administrative functions) "who, in connection with his or her regular functions or duties, participates in the investment activities of such" funds. Such persons do not require additional measures of investor protection.

Second, adding knowledgeable employees as a separate category of accredited natural persons would cure what is now a disparity of treatment of such employees in connection with their investment in Section 3(c)(7) and Section 3(c)(1) funds. Under Company Act rule 3c-5, knowledgeable employees or companies owned by knowledgeable employees are excluded for purposes of determining whether the securities of a Section 3(c)(7) fund are owned exclusively by qualified purchasers. Accordingly, with respect to a Section 3(c)(7) fund, there is no net worth or level of investments standard required for knowledgeable employees. However, for purposes of Section 3(c)(1) funds, Company Act rule 3c-5 only excludes knowledgeable employees for purposes of determining the number of beneficial owners. Accordingly, a knowledgeable employee who is not an accredited natural person would be able to invest in a Section 3(c)(7) fund (because, by virtue of his status as a knowledgeable employee, he need not otherwise qualify as a qualified purchaser), and yet such an employee would not qualify for

purposes of investing in a Section 3(c)(1) fund. Yet, in order to invest in a Section 3(c)(7) fund a natural person other than a knowledgeable employee must be a "qualified purchaser," which requires a much higher eligibility standard than the "accredited natural person" standard that would be applicable to Section 3(c)(1) funds under proposed rules 216 and 509. This inconsistent treatment should be eliminated.

D. Venture Capital Fund Exception

Under proposed rules 216 and 509, the enhanced accredited natural person standard would not apply to the offer and sale of securities issued by "venture capital funds." The term "venture capital fund" is proposed to be defined by reference to the definition of "business development company" under section 202(a)(22) of the Advisers Act. This definition incorporates by reference (but is ultimately broader than) the definition of "business development company" found in section 48 of the Company Act.

While our client commends the Commission for recognizing the need to facilitate capital formation by small businesses and, accordingly, excluding venture capital fund securities from the application of the proposed accredited natural person standard, the proposed definition of "business development company" simply does not work. The Commission has introduced a highly technical term, compliance with which relates to the composition of the total assets of the investment vehicle and the degree to which a "business development company" provides significant managerial assistance to a portfolio company. Moreover, the term "business development company" is not a term of art in the private investment fund industry and would create both confusion and complex, administrative burdens. It is also significant that the proposed rule's definition of "business development company" would completely exclude offshore funds from the venture capital fund definition. This seems completely incompatible with the stated goal of facilitating capital formation for small businesses. Our client would urge the Commission to consider a simpler, less technical exclusion.

E. Grandfathering

If the Commission adopts proposed rules 216 and 509, our client strongly recommends that the Commission add a "grandfathering" provision, thereby excluding current members, partners and other investors in private investment vehicles from the accredited natural person standard. The need for a "grandfather" provision is particularly apparent in the case of a Section 3(c)(1) fund in which investors are obligated to comply with "capital calls" by the fund manager or general partner – funds in which investors commit to make agreed upon capital contributions over a defined investment period when called upon to do so. The Commission notes "that our proposed rules would not grandfather current accredited investors who would not meet the new accredited natural person standard so that they could make future investments in private investment pools, even those in which they currently are invested." (Proposing Release 25). Our client believes this situation to be undesirable for several reasons.

First, it is highly unlikely that current investors in a Section 3(c)(1) fund would be unfamiliar with the investment operations of that fund and need any additional protection that would be afforded under the proposed rule.

Second, the idea of revising the standards for natural persons who are currently invested is inconsistent with the very definition of "accredited investor" under Rule 501 of Regulation D, which only requires the determination of one's status as an accredited investor to be made "at the time of the sale of securities." Since no new investment decision is being made by investors in the Section 3(c)(1) funds described above, and, accordingly, there is no new offer or sale of securities, our client believes that the lack of any grandfathering provision, coupled with the Commission's language on page 25 of the Proposing Release, is confusing and arguably inconsistent with settled law.

Third, a failure to grandfather existing investors would present significant hardships for all investors in Section 3(c)(1) funds as well as the funds themselves, and our client sees no justification for such significant interference with existing investor arrangements and imposition of administrative burdens. Investors who would not now qualify as accredited natural persons would run the risk of having their long-term financial planning disrupted by the inability to continue to invest in the pools that they have already researched extensively and to which they have contributed or committed significant capital. In addition, allocations of participation in investments among a fund's other investors would be altered, would likely reduce the diversification of investments that other investors expected, and would impose accounting and administrative burdens.

Finally, because the proposed rules contain an indexing provision for inflation, in the absence of a grandfathering provision an investor who qualifies as an accredited natural person would be required to demonstrate every five years that he is still an accredited natural person. This will create further uncertainty for investors and advisers would incur additional administrative costs in monitoring each investor's accredited natural person status well into the future.

We appreciate the opportunity to comment on the Proposing Release, especially considering the significant impact that the proposed rules, if adopted, would have on our client's business. For the aforementioned reasons, our client respectfully requests the Commission to reconsider certain provisions of the proposed rules. Questions for or requests for clarification from our client may be transmitted through the undersigned.

Yours truly,

Gregory S. Curran

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