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March 9, 2007

Via Electronic Filing

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number S7-25-06

Dear Ms. Morris:

We are writing in response to the Commission's request for comments on proposed new Rules 216 and 509 (the "Proposed Rules")<sup>1</sup> under the Securities Act of 1933, as amended (the "Securities Act"). The Proposed Rules would create a new category of "accredited investor" that would apply to offers and sales by private investment funds ("private funds") relying on the § 3(c)(1) exemption from registration under the Investment Company Act of 1940, as amended (the "Investment Company Act"). We appreciate the opportunity to comment on the Proposed Rules.<sup>2</sup>

We recognize the Commission's important role in regulating the activities of private funds and the Commission's desire to protect investors. However, we believe that certain aspects of the Proposed Rules are not the best means for achieving the Commission's objectives of protecting investors in private funds<sup>3</sup> and providing clear and objective standards regarding

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<sup>1</sup> PROHIBITION OF FRAUD BY ADVISERS TO CERTAIN POOLED INVESTMENT VEHICLES; ACCREDITED INVESTORS IN CERTAIN PRIVATE INVESTMENT VEHICLES, Securities and Exchange Commission Proposing Release No. 33-8766, IA-2576, proposed December 27, 2006 (hereinafter referred to as the "*Proposed Rules*"). Page references to the Proposed Rules herein are to the Proposed Rules as released in Commission Proposing Release 33-8766, IA-2576.

<sup>2</sup> The opinions expressed herein represent those of the undersigned and not necessarily those of our clients.

<sup>3</sup> Proposed Rules at 4.









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practical matter, most investors commit to each investment. We recommend that the Proposed Rules clarify that the time of investment, in the context of a pledge fund, means at the time an investor makes an initial commitment to a pledge fund. As an alternative, we recommend that the Proposed Rules provide an exception allowing an investor who, as of the effective date of the final rule, has already made a commitment to a pledge fund and has been paying a management fee on such commitment amount to participate in such pledge fund even if such investor would not qualify as an accredited natural person. To disallow participation by such an investor would be unfair since the investor would have already been paying management fees for the opportunity to participate in investments sourced by the private fund sponsor during the entire commitment term.

#### **IV. Breadth of Private Investment Vehicle Definition**

As drafted, the definition of private investment vehicle covers all § 3(c)(1) vehicles (except for those within the venture capital fund exception), including co-investment vehicles designed to make one-time investments in operating companies.<sup>12</sup> Regulating these types of investment vehicles does not further the Commission's stated objective of protecting investors since these vehicles are created for administrative convenience to facilitate cooperation among various deal parties, including possibly key employees with respect to the proposed investment, rather than to attract pool investors. Furthermore, since investors in co-investment vehicles could invest directly in the underlying operating company without violating any of the Commission's rules, it seems senseless to prohibit such investors from making the same investment indirectly simply because of the vehicle chosen. Therefore, we recommend that the Commission narrow the scope of the Proposed Rules to exempt an investment vehicle formed for the purpose of making an investment in one portfolio company if the investment vehicle is not itself an operating company (or a holding company for an operating company).

#### **V. Employees of Private Fund Sponsors**

We believe that while the four options noted in the Proposed Rules available to private fund sponsors to compensate pool employees<sup>13</sup> may permit some employees who would not meet

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<sup>12</sup> Such vehicles might meet the definition of investment company under § 3(a) of the Investment Company Act because, for example, the vehicle owns a minority interest in an operating company or, if it holds a majority interest in an operating company, may be deemed an "investment company" under the special situation investment company doctrine.

<sup>13</sup> Proposed Rules at 26.





