March 8, 2007

VIA ELECTRONIC MAIL
Securities and Exchange Commission
100 F Street NW
Washington, DC 20549-1090

Re: File Number S7-25-06

Ladies and Gentlemen:

I am writing in response to the Securities & Exchange Commission's (the "Commission") proposed Rules 509 and 216 (collectively, the "Proposed Rules") under the Securities Act of 1933, as amended (the "Securities Act"). The Proposed Rules would introduce a new category of accredited investor ("accredited natural person") that would apply to certain offers and sales of securities issued by certain 3(c)(1) Pools (defined in the Proposed Rules as "private investment vehicles") to accredited investors. The term accredited natural person would mean any natural person who meets either the net worth or income test specified in rule 501(a) or rule 215, as applicable, and who owns at least $2.5 million in investments, as defined in the Proposed Rules. The term would apply for purposes of ascertaining whether a person is an accredited investor at the time of that person's purchase of securities of private investment vehicles in accordance with Section 4(6) of the Securities Act and Regulation D.

While the Proposed Rules seem well intentioned, I respectfully submit that they are misdirected. I have provided below, for the Commission's consideration, a few counterpoints to the Commission's stated main premises for the Proposed Rules:

Premise #1: Inflation, along with the sustained growth in wealth and income of the 1990s, has boosted a substantial number of investors past the 'accredited investor' standard that was initially proposed by the Commission in 1982, and as a result many individual investors may now be eligible to make investments in privately offered investment pools as accredited investors that previously may not have qualified as such for those investments.

Counterpoint: It would appear to be reasonable to contend that, to the extent that the ranks of eligible accredited investors have increased as a result of inflation, then this effect should be normalized using an inflation-adjusted metric. However, it would seem that the more logical, direct approach would be to simply periodically adjust for inflation the *currently existing net worth and income tests* in Regulation D's accredited investor definition. The introduction of a separate "investments" test in response to the increased net income and net worth of natural persons is unwarranted and would only serve to unfairly penalize those natural persons who, on an inflation-adjusted basis, would otherwise have the opportunity to invest in 3(c)(1) Pools and gain access to the investment strategies (and the appurtenant potential risk-adjusted rewards) that may generally not be available in publicly offered investment pools.

Premise # 2: The increasing complexity of private pools' investment strategies and their associated risks, together with the sparseness of publicly available information regarding these pools, makes it difficult for investors to gain access to the kind of information provided through our system of securities registration and to consequently to appreciate the unique risks of these pools (e.g., undisclosed conflicts of interest, complex fee structures and the higher risk that may accompany such pools' anticipated returns).

Counterpoint: While it is difficult to provide complete empirical data, my professional observation is that most private placement of securities issued by privately offered investment pools (including 3(c)(1) Pools and 3(c)(7) Pools) typically offer such securities pursuant to a confidential offering memorandum (or other document), prepared with the assistance of counsel, that includes fairly extensive disclosures regarding the investment strategy and philosophy that will be implemented in respect of the relevant pool (including types of securities and instruments in which the pool may invest), actual and potential conflicts of interest of the investment adviser, tax disclosures and related risk disclosures. In fact, the absence of a statutorily imposed prospectus delivery requirement for these types of private placements has become, to a certain extent, moot, as most sponsors/investment advisers as a matter of practice deliver extensive disclosures to their existing and prospective clients as a means of satisfying their common law fiduciary obligations and complying with the antifraud provisions set forth in Section 206 of the Investment Advisers Act and the rules promulgated thereunder. Moreover, it is my understanding that prospective investors in 3(c)(1) Pools and other privately offered pools are customarily offered the opportunity to ask additional questions of the sponsors or administrators of such pools, including, without limitation questions in respect of those very same risks that the Commission believes may not be properly appreciated by prospective investors. Finally, there has been such a significant and widespread increase in the breadth and depth of press coverage of private investment pools, their managers, strategies, and risks that it is difficult to imagine that there would be a critical mass of prospective investors in 3(c)(1) Pools that would be counted among the naïve and unsuspecting in respect of the risks presented by investments in 3(c)(1) Pools, which ultimately boils down to a risk common to all investment vehicles—the risk of losing all or a significant portion of one's investment. In light of these observations, it is difficult to agree with the Commission's assertion that natural person accredited investors are not afforded sufficient opportunity to receive and interpret information regarding the 3(c)(1) Pools in which such persons may invest.

Premise #3: The investor protections that already exist for private pools that rely on the exclusion from the definition of investment company provided by section 3(c)(7) of the Investment Company Act of 1940, as amended ("3(c)(7) Pools") may be lacking with respect to 3(c)(1) Pools. The "two-step approach" to which 3(c)(7) Pools are subject in respect of its offerings of securities to natural persons, i.e., the requirement that (i) such persons own $5 million in certain investments at the time of their investment in the 3(c)(7) Pool and (ii) in order to rely on the safe harbor provided by Regulation D, the pool must limit the sale of its securities to qualified purchasers who also meet the definition of accredited investor, is designed to provide assurance that an investor has a level of knowledge and financial sophistication and the ability to bear the economic risk of the investment in such pools, as demonstrated by the investor's investment experience and also, for natural persons, that person's net worth or income. The aforementioned "two step" approach should likewise be applied to 3(c)(1) Pools so as to provide important, additional investor protections to natural persons who invest in such pools.

Counterpoint: The foregoing premise appears to ignore (or at least understate the significance of) a very meaningful distinction between 3(c)(1) Pools and 3(c)7 Pools: under Section 3(c)(1) of the Investment Company Act of 1940, as amended (the "Company Act"), each 3(c)(1) Pool is limited in its offerings to *no more than 100 beneficial owners* (regardless of whether they are accredited investors under Rule 501(a) under the Securities Act). In 1992, the Commission concluded that the 100-beneficial owner limit imposed on 3(c)(1) Pools may place unnecessary constraints on investment pools that sell their securities exclusively to sophisticated purchasers,[1] and therefore recommended that Congress amend the Company Act to create an alternative exclusion for investment companies whose securities are owned exclusively by sophisticated investors. Congress implemented the Commission's recommendation in NSMIA, which introduced the 3(c)(7) Pool---which, unlike the 3(c)(1) Pool, could be offered to an unlimited number of "qualified purchasers," unless limited by some other regulation.[2]

I would suggest that the beneficial ownership limitation that is uniquely applicable to 3(c)(1) Pools, when considered together with inflation-adjusted net worth and net income tests for accredited investors, constitutes an adequate "two-step" protective measure for 3(c)(1) Pools. To add an investments test to 3(c)(1) Pools would appear to be in blatant disregard of the intent and purpose for the creation of 3(c)(7) Pools.

Alternatively, to the extent that an investment test would also become applicable to 3(c)(1) Pools, then I would suggest that, by extrapolation, the currently imposed limitations on the amount of beneficial owners of 3(c)(1) Pools should likewise be relaxed (or eradicated) so as to allow for a similar (or the same) degree of capital formation for such pools as is now possible for 3(c)(7) Pools. The need for such a result becomes even more compelling when considering that the Commission's proposed definition of "investments" would, unlike the more liberal definition of "investments' as applies to 3(c)(7) Pools, include, in respect of a natural person's investment in a 3(c)(1) Pool on his or her own behalf, only *50%* of (a) such natural person's investments held jointly with a spouse and (b) any investments in which such natural person shares a community property or similar shared ownership interest with that person's spouse. To the extent that an investments test is applied to 3(c)(1) Pools, it would seem somewhat counterintuitive to do so (especially in light of the more restrictive treatment of property that is jointly owned or otherwise shared by an accredited natural person, as described above) without allowing for an increased ability to offering securities of 3(c)(1) Pools.

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I appreciate the opportunity to comment on the Proposed Rules and thank you in advance for your thoughtful consideration of the foregoing points.

Sincerely,

M. H.

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[1] 138 CONG. REC. at S4822 (daily ed. Apr. 2, 1992) (Memorandum of the Securities and Exchange Commission in Support of the Small Business Incentive Act of 1992). Some commenters also suggested that section 3(c)(1)'s 100-investor limit may have had the effect of providing an incentive for Americans to invest in unregulated off-shore markets. See S. REP. NO. 293, 104th Cong., 2d Sess. at 10 (1996) ("Senate Report"); H.R. REP. NO. 622, 104th Cong., 2d Sess. at 18 (1996) ("House Report"). The House Report and the Senate Report relate to bills that were eventually enacted as the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290 (1996) ("NSMIA").

[2] Of course, it should be noted that 3(c)(7) Pools with more than 499 holders of record generally must register their securities under the Exchange Act.