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March 9, 2007

Via Electronic Mail

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F. Street, NW
Washington, DC 20549-0609

Re: File No. S7-25-06: Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles

Dear Ms. Morris:

We are submitting this comment letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") with respect to the proposed amendment to Rule 206 (4) under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and the proposed amendments to the definition of "accredited investor" under Rule 501 (a) of Regulation D and Rule 215 of the Securities Act of 1933, as amended (the "Securities Act") (Release No. 33-8766, file S7-25-06 (December 27, 2006) (the "Release")). We will refer to the Commision's proposals as the "Proposed Rules" and to the proposing release relating thereto as the "Release."

While there are many aspects of the Proposed Rules that are worthy of further debate, we must respectfully disagree with the asserted need for certain of these rules, at least in the form proposed.

I. Proposed Anti-Fraud Rule - Proposed Rule 206 (4) – 8

In the Cost Benefit Analysis section of the Release, at page 38, the Commission states:

> Investment advisers to pooled investment vehicles should not be making untrue statements or omitting materials facts or otherwise be engaged in fraud with respect to investors or prospective investors in pooled investment vehicles today, because federal authorities, state authorities and private litigants often can, and do, seek redress from the adviser for the untrue statements or omissions, or other frauds. In most cases, the conduct that the rule would prohibit is already prohibited by federal securities statutes, other federal statutes (including federal wire fraud statutes), as well as state law. (footnotes omitted) (emphasis supplied).

Most if not all of the conduct to be addressed by the Proposed Anti-Fraud Rule is already covered by federal or state statutes or regulations. We do not see the need for additional regulatory authority at this time.

The Commission relies on the District of Columbia Circuit Court's decision in *SEC v. Steadman*, 967 F.2d 636, at 647 (D.C. Cir. 1992) for the reason why it has not included a *sciente*r rule. The Proposed Anti-Fraud Rule is so expansive in scope -- because of the lack of a *scienter* requirement -- that, at a minimum, it should be referred to the appropriate Congressional committees for hearings and further action.

The commentary to the Proposed Anti-Fraud Rule sets up a logical inconsistency. First, it suggests that the ever increasing complexity of investment vehicles makes it more important to ensure that information provided is accurate, complete and free of fraudulent statements or material misstatements. It then imposes draconian consequences for transgressions, without regard to whether the transgressions were intentional.

Present interpretations of Sections 3(c)(1) and 3(c)(7) under the Investment Company Act of 1940, as amended (the "1940 Act") prohibit advisers, with very limited exceptions, from disseminating information about their private investment funds, and the like, in order to avoid registration of the pools under the 1940 Act. Under current interpretations, any dissemination, or web availability, of information could be construed as a general solicitation which would imperil the exempt status of the pool. Well-advised advisers, therefore, do not disseminate information, or make it available on the web without password protection, in order to avoid qualification risks.

American securities jurisprudence has a well-established history of allowing the marketplace to work its magic through proper disclosure. The by-product of the Proposed Anti-Fraud Rule, in our view, will be a further erosion of the effectiveness of the marketplace. Advisers will reduce the information they provide to investors to avoid unintended foot faults, thereby exacerbating the dearth of information available.

A better approach would be to encourage information dissemination, including specific fund information, through a relaxation of the Commission's extremely narrow interpretations of what constitutes a general solicitation under the qualification rules under Sections 3(c)(1) and 3(c)(7). This would encourage a more robust public discussion of the merits and risks of each investment strategy and the performance of each fund. Standardized performance reporting rubrics as well as standardized offering memoranda formats would go a long way in making investors *and* advisers feel more comfortable that all appropriate information has been disseminated. Investor education would be enhanced, with relatively little risk because the Section 3(c)(1) funds would still be limited to 100 U.S. investors and managers are likely to have imposed higher investment minimums in order to maintain economies of scale. This would naturally minimize investments by potentially unsuitable investors. The Commission would rely, instead, on the presently existing anti-fraud restrictions and the Commission's authority to bring civil and criminal enforcement actions in appropriate cases.

II. Proposed Accredited Natural Person Rule

With respect to the proposal to create a new "Accredited Natural Person" definition (the "Proposed Accredited Natural Person Rule"), we believe the proposal is ill founded and unnecessary. Instead, rather than contribute to the proliferation of qualification standards currently applicable, the Commission should adopt a "unified field theory" of accreditation. The most natural precedent, and one that has served the investing public well, is Rule 205-3 under the Advisers Act – the "Qualified Client Standard."

-- Adoption of the Qualified Client Standard, instead of the Proposed Accredited Natural Person Rule, would show regulatory restraint – the private funds industry is well aware of the Qualified Client Standard's reach and implications. As a result, it would be relatively easy to implement and the costs to the funds industry would be minimal.

-- Adoption of the Qualified Client Standard closes the 35 unaccredited investor avenue still available even under the Proposed Accredited Natural Person Rule.

-- Congress evinced a specific purpose in maintaining Section 3(c)(1) funds virtually unchanged when it adopted Section 3(c)(7). The two have co-existed since. There appears to be no reason to eliminate or reduce significantly the availability of Section 3(c)(1) when a viable alternative (the Qualified Client Standard) already exists. Adoption of the well known Qualified Client Standard, and perhaps indexing it for inflation beginning in 2012 with $1.5 Million as the base, would be a more narrowly tailored rule that would still likely achieve the Commission's investor protection objective.

Should the Commission nevertheless impose the Proposed Accredited Natural Person Rule, a robust grandfather provision including the ability of a private fund to continue to accept new investments from current investors should be applied in order to respect the sanctity of contract.

Very truly yours,

Gregory J. Nowak

Gregory J. Nowak
Partner

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