

March 1, 2007

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Attn: Nancy Morris, Secretary

Re: File No. SR-NASD-2006-113

Ladies and Gentlemen:

We are writing on behalf of our client who is a registered broker-dealer and member of the National Association of Securities Dealers, Inc. Our client acts as placement agent for a number of affiliated privately offered investment funds. As placement agent, it provides written materials about the funds to current and prospective investors. Based on a facts and circumstances analysis, our client has determined that such written materials do not constitute "research reports" within the meaning of NASD Rule 2711.

Our client strongly supports the proposed amendments to Rule 2711, and in particular, the proposed amendment to the definition of "research report" to specifically exclude sales material regarding open-end investment companies that are not listed or traded on an exchange and public direct participation programs. However, private funds are not similarly excluded under the proposed amendment, although interests in private funds may also be considered "equity securities" as defined in Section 3(a)(11) of the Securities Exchange Act of 1934. Accordingly, written materials regarding interests in private funds may also fall within the definition of "research report."

We do not see any reason to expressly exclude open-end investment companies and public direct participation programs while not similarly excluding private funds. By not expressly excluding private funds from the definition of "research report," some confusion has been created as to the treatment of written materials regarding private funds under Rule 2711. Private funds are not listed or traded on exchanges, and written materials on private funds do not raise the same level of conflict of interest issues as do research on exchange-traded securities. Also, NASD Rule 2210 governs communications with the public, including communications by NASD members regarding private funds. Therefore, the NASD already regulates the content of written materials regarding private funds. Moreover, communication regarding private funds is strictly limited because private funds are not publicly offered.

Rule 2711 was intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. Because private funds are privately offered, there would be very limited circumstances where an unaffiliated analyst would be providing "research reports" regarding private funds. Moreover, in cases where a broker-dealer

provides written materials regarding the private funds of which it is affiliated, investors have no expectation that they are receiving materials from an unbiased source, especially when the affiliation is prominently disclosed in the offering materials.

It does not make sense to apply certain provisions of Rule 2711 in the context of a placement agent providing written materials for current and prospective investors in its affiliated private funds. Management personnel of private funds, which in many cases are also associated with the fund's affiliated placement agent, generally are encouraged to invest in those private funds. In fact, investors in the funds expect to see that investment. However, a literal reading of paragraphs (g)(1) and (g)(2) of Rule 2711 would prohibit such investment because private funds often engage in continuous offerings. Likewise, the disclosure requirements of paragraph (h) do not serve any added purpose because the conflicts of interest are self-evident or already required to be disclosed in cases in which a placement agent is providing materials about private funds, especially so when the placement agent is affiliated with the funds.

For these reasons, we urge the Commission to consider expanding the proposed exclusion from the definition of research report to also exclude private funds. In the alternative, we ask the Commission to consider providing interpretive guidance at the time of adoption of the proposed amendments to Rule 2711 to expressly state that written materials provided to current and prospective investors in private funds, or at least private funds affiliated with the member who places interests in such funds, are not considered to be "research reports" within the meaning of Rule 2711.

We appreciate the opportunity to comment upon the proposed amendments to NASD Rule 2711.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald S. Weiss". The signature is written in black ink and is positioned below the word "Sincerely,".

Donald S. Weiss

DSW:cxc