



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 22, 2017

David S. Huntington
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064

**Re: SEC v. Cooperman et al., Civil Action No. 2:16-cv-5043 (E.D. Pa.)
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D**

Dear Mr. Huntington:

This letter responds to your letter dated May 18, 2017 (“Waiver Letter”), constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, on behalf of Leon G. Cooperman (“Cooperman”) and Omega Advisors, Inc. (“Omega”), you requested relief from any disqualification that will arise as to Omega Capital Investors, L.P., Omega Equity Investors, L.P., Omega Capital Partners, L.P., Omega Credit Opportunities Partnership, L.P., Omega Overseas Credit Opportunities Fund, Ltd., and Omega Overseas Partners, Ltd., collectively, the (“Funds”) and certain third-party issuers beneficially owned by Cooperman or Omega (“Beneficially-Owned Issuers,” as defined in the Waiver Letter) that are disqualified by virtue of the entry of a judgment (“Final Judgment”) in the United States District Court for the Eastern District of Pennsylvania relating to the complaint filed by the Commission on September 21, 2016, in SEC v. Cooperman et al. (Civil Action No. 2:16-cv-5043).

Based on the facts and representations in the Waiver Letter and assuming Cooperman and Omega comply with the Final Judgment, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that Cooperman and Omega have made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Final Judgment to the Funds or the Beneficially-Owned Issuers. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that arose as to the Funds and the Beneficially-Owned Issuers under Rule 506 of Regulation D by reason of the entry of the Final Judgment is granted on the condition that Cooperman and Omega fully comply with the terms of the Final Judgment. Any different facts from those represented or failure to comply with the terms of the Final Judgment would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

/s/ Elizabeth M. Murphy

Elizabeth M. Murphy
Associate Director
Division of Corporation Finance

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LYOYD K GARRISON (1946-1991)
RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927-1950)
JOHN F WHARTON (1927-1977)

UNIT 3601 OFFICE TOWER A BEIJING FORTUNE PLAZA
NO 7 DONGSANHUAN ZHONGLU
CHAQYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU U K
TELEPHONE (44 20) 7367 1600

WRITER'S DIRECT DIAL NUMBER

212-373-3124

WRITER'S DIRECT FACSIMILE

212-373-0124

WRITER'S DIRECT E-MAIL ADDRESS

dhuntington@paulweiss.com

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU TOKYO 100-0011 JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST SUITE 3100
PO BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

May 18, 2017

Via Email and First-Class Mail

Sebastian Gomez Abero, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *SEC v. Cooperman et al.*, Civil Action No. 2:16-cv-5043 (E.D. Pa.)

Dear Mr. Gomez Abero:

We submit this letter on behalf of our clients, Leon G. Cooperman (“Mr. Cooperman”) and Omega Advisors, Inc. (“Omega,” and together with Mr. Cooperman, the “Settling Persons”), in connection with a contemplated settlement between the Settling Persons and the Securities and Exchange Commission (the “Commission”) in the above-referenced civil action (the “Action”). Omega is a registered investment adviser, and Mr. Cooperman is the chairman and chief executive officer of Omega.

On behalf of the Settling Persons, we hereby respectfully request a waiver of any disqualification that will arise pursuant to Rule 506 of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”), with respect to the Funds or Beneficially-Owned Issuers (each as defined below) as a result of the entry of the Final Judgment (as defined below).

MATTHEW W ABBOTT
EDWARD T ACKERMAN
JACOB A ADLERSTEIN
ALAN J ALEFFA
ROBERT A ATKINS
DAVID J BALL
SCOTT J BARSHAY
JOHN F BAUGHMAN
J STEVEN BAUGHMAN
LYNN B BAYARD
CRAIG A BENSON
MITCHELL L BERG
MARK S BERGMAN
DAVID M BERNICK
JOSEPH J BIAL
BRUCE BIRENBOIM
H CHRISTOPHER BOEHNING
ANGELO BONVINO
JAMES L BROCHIN
DAVID W BROWN
SUSANNA M BUERGEL
PATRICK S CAMPBELL
JESSICA S CAREY
JEANETTE K CHAN
GEOFFREY R CHEPIGA
ELLEN N CHING
WILLIAM A CLAREMAN
LEWIS R CLAYTON
JAY COHEN
KELLEY A CORNISH
CHRISTOPHER J CUMMINGS
CHARLES E DAVIES
THOMAS V DE LA BASTIDE III
ARIEL J DECKELBAUM
ALICE BELISLE EATON
ANDREW J EHRLICH
GREGORY A EZRING
LESLIE GORDON FAGEN
ROSS A FIELDSTON
BRAD J FINKELSTEIN
BRIAN P FINNEGAN
ROBERTO FINZI
PETER E FISCH
ROBERT C FLEDER
MARTIN FLUMENBAUM
ANDREW J FOLEY
ANDREW J FORMAN
HARRIS B FREIDUS
MANUEL S FREY
ANDREW L GAINES
KENNETH A GALLO
MICHAEL E GERTZMAN
ADAM M GIVERTZ
SALVATORE GOGLIORMELLA
NEIL GOLDMAN
ROBERTO J GONZALEZ
CATHERINE L GOODALL
ERIC GOODISON
CHARLES H GOOGE, JR
ANDREW G GORDON
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A GUTENPLAN
ALAN S HALPERIN
JUSTIN G HAMILIN
CLAUDIA HAMMERMAN
BRIAN S HERMANN
NICHELE HIRSHMAN
MICHAEL S HONG
DAVID S HUNTINGTON
AMRAN HUSSEIN
LORETTA A IFFOLITO
JAREN JANGHORBANI
BRIAN M JANSON
JEH C JOHNSON
MEREDITH J KANE
JONATHAN S KANTER
ROBERTA A KAPLAN
BRAD S KARP
PATRICK N KARSNITZ
JOHN C KENNEDY
BRIAN KIM
DAVID M KLEIN
ALAN W KORNBERG
DANIEL K KRAMER
DAVID K LAKHDHIR
STEPHEN F LAMB
JOHN E LANGE
GREGORY F LAUFERY
BRIAN C LAVIN
DANIEL J LEFFELL
XIAOYU GREG LIU
JEFFREY D MARELL
MARGO V MASOTTI
EDWIN S MAYNARD
DAVID W MAYO
ELIZABETH R MCCOLM
MARK F MENDELSON
CLAUDINE MEREDITH-GOUJON
WILLIAM B MICHAEL
JUDIE NG SHORTELL
CATHERINE NYARADY
JANE B O'BRIEN
ALEX YOUNG K OH
BRAD R OKUN
KELLEY D PARKER
VALERIE E RADWANER
CHRIS L REISNER
LORIN L REISNER
WALTER G RICCIARDI
WALTER RIEMAN
RICHARD A ROSEN
ANDREW N ROSENBERG
JACQUELINE P RUBIN
CHARLES F RICK RULE
RAHMAN M RUSSO
ELIZABETH M SACKSTEDER
JEFFREY D SAFERSTEIN
JEFFREY B SAMUELS
DALE M SARRO
TERRY E SCHIMEK
KENNETH M SCHNEIDER
ROBERT B SCHUMER
JOHN M SCOTT
STEPHEN J SHIMSHAK
DAVID R SICULAR
MOSES SILVERMAN
STEVEN SINKIN
JOSEPH J SIMONS
AUDRA J SOLOWAY
SCOTT M SONTAG
TARUN M STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
RICHARD C TARLOWE
MONICA K THURMOND
DANIEL J TOAL
LIZA M VELAZQUEZ
LAWRENCE G WEE
THEODORE V WELLS JR
STEVEN J WILLIAMS
LAWRENCE I WITDORCHIC
MARK B WLAZLO
JULIA MASON WOOD
JENNIFER H WU
BETTY YAP
JORDAN E YARETT
KAYE N YOSHINO
TONG YU
TRACEY A ZACCONE
TAURIE M ZEITZER
T ROBERT ZOCHOWSKI JR

*NOT ADMITTED TO THE NEW YORK BAR

Mr. Sebastian Gomez Abero, Esq.

2

BACKGROUND

The Settling Persons have engaged in settlement discussions with the staff of the Commission's Division of Enforcement ("Enforcement") in connection with the Action. As a result of these discussions, the Settling Persons have submitted to Enforcement executed consents dated April 24, 2017 (the "Consents"). In the Consents, the Settling Persons have agreed to the entry of a judgment (the "Final Judgment") in the United States District Court for the Eastern District of Pennsylvania relating to the complaint (the "Complaint") filed by the Commission on September 21, 2016, in the Action. Under the terms of the Consents, the Settling Persons will neither admit nor deny the allegations in the Complaint, except as to jurisdiction.

The Complaint alleges that (i) the Settling Persons violated Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 10b-5 thereunder, as a result of communications between Mr. Cooperman and a senior executive of Atlas Pipeline Partners, L.P. ("APL") in July 2010, and subsequent trading by funds and accounts controlled by the Settling Persons on the basis of material nonpublic information relating to APL allegedly received by Mr. Cooperman in those conversations; and (ii) Mr. Cooperman violated Sections 13(d) and 16(a) of the Exchange Act, and Rules 13d-1, 13d-2 and 16a-3 thereunder, as a result of his failure to report beneficial ownership in certain securities.

The Final Judgment will require the Settling Persons:

- (i) to pay \$1,759,049 in disgorgement, \$429,041 in prejudgment interest, and \$2,759,049 in penalties;
- (ii) to comply with Sections 10(b), 13(d) and 16(a) of the Exchange Act and Rules 10b-5, 13d-1, 13d-2 and 16a-3 thereunder; and
- (iii) to carry out various undertakings, described in greater detail below.

DISCUSSION

The Settling Persons understand that, absent a waiver, entry of the Final Judgment will disqualify them, their affiliates, and issuers, offering participants and other persons from participating in certain offerings otherwise exempt under Rule 506 of Regulation D. The Settling Persons are concerned that third-party investors in certain existing funds affiliated with Omega, which are listed on Schedule I to this letter (the "Funds"), would be harmed if the Funds were disqualified from relying on Rule 506. In addition, the Settling Persons are concerned that if either Mr. Cooperman or Omega is, directly or indirectly, the beneficial owner of 20% or more of an issuer's outstanding voting securities, calculable on the basis of voting power, then, absent a waiver, such issuer (a "Beneficially-Owned Issuer") would be prohibited from relying on Rule 506. For purposes of this letter, the term "Beneficially-Owned Issuer" excludes (i) any pooled

Mr. Sebastian Gomez Abero, Esq.

3

investment fund managed by Omega or Mr. Cooperman, (ii) any issuer of which Omega or Mr. Cooperman is the beneficial owner of 50% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, (iii) any issuer of which Mr. Cooperman serves as a director or officer, and (iv) any broker, dealer, investment adviser or other entity that is directly or indirectly wholly owned or controlled by Mr. Cooperman or Omega. While there are no Beneficially-Owned Issuers as of the date hereof, it is foreseeable that in connection with the Funds' investment activities there could be Beneficially-Owned Issuers in the future. Rule 506 authorizes a waiver of the Regulation D exemption disqualification upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.¹

We hereby request on behalf of the Settling Persons that the Commission waive any disqualifying effects that the Final Judgment would have on the ability of the Funds and Beneficially-Owned Issuers to rely on the exemption provided by Rule 506 of Regulation D.

1. *Whether the Misconduct Involved the Offer and Sale of Securities*

The alleged conduct relating to trading in APL securities involved the purchase and sale of securities in the secondary market. The alleged violations of beneficial ownership reporting requirements did not involve the offer and sale of securities.

2. *Whether the Alleged Misconduct Was Scierter-Based or Involved a Criminal Conviction*

The alleged violations relating to trading in APL securities are scierter-based. The alleged violations of beneficial ownership reporting requirements are not scierter-based. The Complaint relates only to civil causes of action, and no criminal charges were filed against Mr. Cooperman or Omega.

3. *Responsibility for the Misconduct*

The Settling Parties are responsible for the alleged misconduct giving rise to the Final Judgment. The Complaint alleges that the Mr. Cooperman, who is the chairman and chief executive officer of Omega, violated insider-trading laws as a result of communications between Mr. Cooperman and a senior executive of APL, and subsequent trading by funds and accounts controlled by the Settling Persons on the basis of material nonpublic information relating to APL allegedly received by Mr. Cooperman in those conversations. The Complaint also alleges that Mr. Cooperman violated beneficial ownership reporting requirements with respect to certain securities.

¹ 17 C.F.R. § 230.506(d)(2)(ii).

Mr. Sebastian Gomez Abero, Esq.

4

4. *Duration of the Misconduct*

The alleged conduct relating to trading in APL securities took place over three weeks in July 2010. While the alleged violations of beneficial ownership reporting requirements took place over a longer period, from August 2010 through the filing of the Complaint in September 2016, that conduct is not scienter-based.

5. *Remedial Steps*

The Settling Persons have taken substantial remedial steps since 2010 to address the conduct at issue in the Final Judgment, and they will take additional remedial steps to comply with the undertakings in the Final Judgment.

Omega has, *sua sponte*, implemented the following measures to enhance its compliance functions:

- (i) Omega has implemented a web-based approval system (Financial Tracking) for personal trading, under the supervision of the Compliance Department. The system includes a multi-level pre-trade approval process, and also monitors trades (both personal and for Omega accounts) in relation to relevant public news reports.
- (ii) Omega has enhanced its procedures for surveillance and monitoring of emails and other written communications, including the adoption of an email capture utility (Global Relay).
- (iii) Omega has implemented a pre-contact approval process for communications with expert-network consultants and enhanced its monitoring of such communications, including, when appropriate, chaperoning by the Compliance Department of certain meetings and calls with such consultants.
- (iv) Omega has conducted two separate top-to-bottom reviews and revisions of its compliance policies, procedures and protocols (by two different law firms) and implemented two separate best-practice revisions to its compliance manual and code of ethics.
- (v) Omega has strengthened its mandatory compliance-training programs for all employees.
- (vi) Omega has enhanced its protocols for beneficial ownership reporting and other regulatory filings.
- (vii) Omega has strengthened its disaster-recovery (DR) capabilities and its business continuity plan (BCP) procedures.

Mr. Sebastian Gomez Abero, Esq.

5

In addition, the Final Judgment will require the following undertakings by the Settling Persons:

- (i) The Settling Persons will retain an Independent Compliance Consultant (the “Compliance Consultant”) until May 1, 2022 or until such time as Omega ceases to be a registered investment adviser, whichever occurs first. The Compliance Consultant will:
 - a. together with the Settling Persons, implement a system that requires the Settling Persons and certain of their agents and employees to certify monthly in writing that, prior to the execution any trade they decided upon and/or directed, they were not aware of any material nonpublic information regarding the traded security such that the trade, or direction of the trade, violated Section 10(b) of the Exchange Act;
 - b. conduct a review of Omega’s training, policies and procedures, and Mr. Cooperman’s practices, with respect to compliance with the prohibitions on insider trading and tipping;
 - c. submit a written report of the findings of the review to the Settling Persons and the Commission’s staff, including recommendations for changes in or improvements to Omega’s policies and procedures and/or Mr. Cooperman’s practices, and a procedure for implementing such changes or improvements;
 - d. include in the report a recommendation regarding a method for reviewing Omega’s and Mr. Cooperman’s trades to ensure there was no violation of Section 10(b) of the Exchange Act, for which purpose the Compliance Consultant will have access to certain communications, trading records and research;
 - e. be on site at Omega’s principal office a minimum of one day per month to ensure compliance with the terms of the Final Judgment;
 - f. conduct at least two trainings per year relating to compliance with the prohibitions on insider trading and tipping (although such trainings may alternatively be conducted by a nationally recognized law firm not unacceptable to the Commission staff);
 - g. consider in formulating its recommendations whether to empower and require Omega compliance personnel to monitor telephonic and electronic communications of Omega personnel involved in securities trading decisions or execution, and to conduct internal

Mr. Sebastian Gomez Abero, Esq.

6

investigations of securities trading that meets certain profitability thresholds or is done in proximity to certain public disclosures; and

- h. provide an additional annual report to Mr. Cooperman, Omega, and the Commission staff detailing its activity during the previous year and including, among other things, the conclusions reached and any recommendations for improvements to Omega's and/or Mr. Cooperman's policies and procedures.
- (ii) The Settling Persons will adopt all recommendations contained in the Compliance Consultant's report, unless they notify the Compliance Consultant and the Commission staff that such requirements are unduly burdensome, impractical, or inappropriate, in which case the Settling Persons will propose an alternative mechanism designed to achieve substantially the same objective or purpose. The Settling Persons and the Compliance Consultant will attempt in good faith to reach an agreement as to any recommendation on which they do not agree.
- (iii) The Settling Persons will cooperate fully with the Compliance Consultant and provide access to such of their files, books, records and personnel as are reasonably requested by the Compliance Consultant.
- (iv) To ensure the independence of the Compliance Consultant, the Settling Persons will not have the authority to terminate the Compliance Consultant without prior written approval of the Commission staff (which approval shall not be unreasonably withheld). In addition, the Compliance Consultant must agree that neither it, nor any affiliated firm or any person engaged to assist the Compliance Consultant in its performance of its duties, may enter into any employment or professional relationship with Omega during or within two years following completion of the Compliance Consultant's engagement.
- (v) The Settling Persons will retain, at Mr. Cooperman's expense, a nationally recognized law firm not unacceptable to the Commission's staff to file beneficial ownership reports and amendments as required under Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 thereunder, during the period of the Compliance Consultant's engagement. The law firm will also conduct an annual review of, and training regarding, Omega's and Mr. Cooperman's policies and procedures, and Mr. Cooperman's practices, insofar as they relate to the filing, on behalf of Mr. Cooperman, Omega, and Omega's clients, of beneficial ownership reports and amendments. The law firm will provide an annual certification to the Commission staff of the compliance of Mr. Cooperman's beneficial ownership reporting with the requirements of

Mr. Sebastian Gomez Abero, Esq.

7

Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 thereunder.

- (vi) The Settling Persons will certify, in writing, compliance with the undertakings on an annual basis.

6. *Disqualification Would Have a Material Impact on the Funds and Beneficially-Owned Issuers*

The inability of the Funds to engage in private placements pursuant to Rule 506 would be materially damaging to the investors in those funds. Between 2012 and 2016, the Funds have raised in excess of \$2 billion in private offerings in reliance on Rule 506, and they expect to rely on Rule 506 offerings in the future to increase the amount of new assets that can be deployed.² This is important, among other reasons, because many of the costs associated with managing the funds are fixed and are therefore reduced on a percentage basis when new capital is raised.

Moreover, the Funds would not have a ready substitute if Rule 506 were to become unavailable. The parameters of the exemption under Section 4(a)(2), for example, are far less clear than those of Rule 506. Section 4(a)(2) is not well suited to offerings to relatively large numbers of investors or to continuous offerings, and there is not an established market practice for private fund offerings under Section 4(a)(2). Indeed, many potential investors will expect the greater legal certainty associated with reliance on the Rule 506 safe harbor and may be unwilling to invest in or participate in an offering that does not rely on Rule 506. Accordingly, Omega does not view Section 4(a)(2) as a viable alternative to Rule 506. It bears noting, as well, that offerings conducted under Section 4(a)(2) do not have the benefit of Federal pre-emption of state registration requirements, which does apply to Rule 506 offerings. As a consequence, each Section 4(a)(2) offering would require an analysis of state Blue Sky laws and, in many instances, registration in multiple states, the requirements of which may be impracticable.

In addition, the inability of Beneficially-Owned Issuers to engage in private placements pursuant to Rule 506 would be damaging to such issuers and their investors because it would significantly limit their capital-raising options.

² As of March 31, 2017, a total of 375 investors unaffiliated with Mr. Cooperman owned interests (as limited partners or shareholders, as the case may be) in the Funds totaling approximately \$1.84 billion in capital (NAV), as follows: Omega Capital Investors, L.P. (approximately \$240.2 million from 109 unaffiliated investors), Omega Equity Investors, L.P. (approximately \$391.9 million from 88 unaffiliated investors), Omega Capital Partners, L.P. (approximately \$465.1 million from 65 unaffiliated investors), Omega Credit Opportunities Partnership, L.P. (approximately \$80.5 million from 32 unaffiliated investors), Omega Overseas Credit Opportunities Fund, Ltd. (approximately \$94.4 million from 20 unaffiliated investors), and Omega Overseas Partners, Ltd. (approximately \$569.2 million from 61 unaffiliated investors).

Mr. Sebastian Gomez Abero, Esq.

8

REQUEST FOR WAIVER

In light of the grounds for relief discussed above, and under the specific and unique facts and circumstances presented here, we believe that disqualification is not necessary for the protection of investors, and that good cause has been shown that relief should be granted. Accordingly, we respectfully request that the Commission, pursuant to Rule 506(d)(2)(ii) of the Securities Act, waive the disqualification provisions in Rule 506 of Regulation D to the extent they may be applicable to the Funds and Beneficially-Owned Issuers as a result of the entry of the Final Judgment.

For a period of five years from the date of the Final Judgment, Omega will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d)(1) as a result of the Final Judgment a description in writing of the Final Judgment a reasonable time prior to sale.

Please do not hesitate to contact me at (212) 373-3124 if you should have any questions regarding this request.

Sincerely yours,



David S. Huntington

cc: David Bloom, Esq.
Omega Advisors, Inc.

Mr. Sebastian Gomez Abero, Esq.

9

Funds

Omega Capital Investors, L.P.

Omega Equity Investors, L.P.

Omega Capital Partners, L.P.

Omega Credit Opportunities Partnership, L.P.

Omega Overseas Credit Opportunities Fund, Ltd.

Omega Overseas Partners, Ltd.