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securities, and is in the process of winding down its remaining investments. Second, as with the FCPA violations, the Section 206(4) violations arose from the intentional or reckless conduct of two former London-based employees, Cohen and Baros.⁶ These findings do not relate to any widespread or continuous offering of securities in the United States and do not imply any risk to investors from the ongoing offer and sale of limited partnership interests in the OZ Funds.

2. The Conduct Involved a Criminal Conviction for an Och-Ziff Subsidiary, not Och-Ziff Itself

The resolution of this matter with DOJ included an agreement by OZ Africa Management to plead guilty. This should not weigh against a waiver. A conviction of OZ Africa Management does not result in disqualification under Regulation D of any issuer because OZ Africa Management is not an “investment manager” of any Och-Ziff fund that relies on Rule 506 to offer limited partnership interests and is not otherwise a covered person under Rule 506(d)(1) with respect to those funds or any other issuers. In addition, the criminal charge to which OZ Africa Management pleaded guilty involved a single count of conspiracy to violate the FCPA and did not involve the offer or sale of securities. OZ Africa Management has not made new investments since 2011 and will cease operations once existing investments can be sold. Furthermore, the conduct that gives rise to the criminal charge against OZ Africa Management stems largely from the actions of Cohen and Baros, who did not share information about their conduct with others at Och-Ziff.

3. The Conduct Involved Limited Scierter-Based Anti-Fraud Violations

The majority of the scierter-based anti-fraud violations in the Commission’s Order are violations of Section 206(1) of the Advisers Act, for failing to prevent the use of investor funds in corrupt transactions by a business partner. Two other violations of Section 206(1) are based on findings of omissions from disclosures to the one outside limited partner in AGC II of conflicts of interest in transactions between AGC II and related parties. In one transaction, the disclosure omitted that Och-Ziff would receive repayment of a loan from a South African business partner following the purchase of shares by AGC II from the South African business partner. In the other transaction, the disclosure omitted the interests of Cohen and the South African business partner in the transaction. Both violations are based on the conduct of Cohen and Baros.

The Section 206(1) violations should not weigh against a waiver. These violations are largely derivative of the FCPA violations and are based on the findings that bribes were paid by a business partner from portions of Och-Ziff investments on behalf of OZ Funds. As with the FCPA violations, the Section 206(1) violations arise from the intentional or reckless conduct of two former employees, Cohen and Baros. The criminal case does not involve any violations of

⁶ As described in the Order, the former employees provided intentionally false or misleading information to the Company so that certain transactions would be approved.

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Section 206 of the Advisers Act, or any other anti-fraud provision of the securities laws. Further, the only individuals charged with acting with scienter are no longer with the firm – former employees Cohen and Baros.

C. Duration and Scope of the Violations

The conduct charged in the Order is focused primarily on the investment in the OZ Funds by the Libyan Investment Authority in 2007 (over eleven years ago), and on certain investments by Och-Ziff managed funds in Africa between 2007 and 2011 (which concluded more than seven years ago).

Even though the findings in the Commission’s Order are serious and the violations occurred over a multi-year period, the misconduct was not pervasive within the Company or continuous – rather it was limited and episodic. The Order references six discrete transactions in which corrupt payments were made between 2007 and 2011, and three transactions in the time period between 2010 and 2011 in connection with which OZ Management made material misrepresentations or omissions or engaged in self-dealing. In addition, the conduct at issue related only to a small fraction of Och-Ziff’s business at the time. At their peak, private investments in Africa represented less than 2% of Och-Ziff’s invested capital in a given year. Och-Ziff ceased making private investments in Africa and has not made new investments since 2011.

D. Responsibility for the Violations

In subsequent actions following the issuance of the Order, the SEC has concluded that the “masterminds”⁷ and “driving forces”⁸ of the violative conduct underlying the enforcement action were two former employees, Cohen and Baros, who separated from the firm over four years ago. Among the allegations against the former employees are knowing participation, along with third parties, in the payment of bribes to foreign government officials. The Order finds numerous examples of Cohen and Baros withholding material information related to their corrupt conduct from others at Och-Ziff (*see, e.g.*, Order ¶¶ 24, 52, 56, 60, 77, 80, 86-88, 90). The SEC’s own charging documents for Cohen and Baros are replete with references to the fact that those individuals actively concealed their violative conduct from the firm and that no one else at Och-Ziff was aware that bribes were paid (*see, e.g.*, SEC Complaint ¶¶ 7, 55, 58, 75, 77, 106, 129, 172). This conduct was inconsistent with the Company’s anti-corruption policies and procedures, training, annual certifications, and the Company’s Code of Ethics. As described in

⁷ SEC Press Release, *SEC Charges Two Former Och-Ziff Executives With FCPA Violations* (Jan. 26, 2017), available at: <https://www.sec.gov/news/pressrelease/2017-34.html>.

⁸ SEC Complaint, *SEC v. Michael L. Cohen and Vanja Baros* (E.D.N.Y., filed Jan. 26, 2017), available at: <https://www.sec.gov/litigation/complaints/2017/comp-pr2017-34.pdf> (“SEC Complaint”).

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the Order, the Company's liability arises from the conduct of Cohen and Baros, as well as the absence of internal controls sufficient to identify and prevent such misconduct.

The resolution with the SEC includes cease-and-desist orders against Daniel S. Och, the Company's then Chief Executive Officer, and Joel Frank, the former Chief Financial Officer, on a neither-admit-nor-deny basis, for being a cause of the Company's violation of the recordkeeping and internal controls provisions of the Exchange Act in connection with certain of the transactions that violated the FCPA. Unlike Cohen and Baros, neither were charged with FCPA or fraud violations. Rather, Mr. Och received a lesser charge of causing a books and records violation, and Mr. Frank was charged with causing violations of the books and records and internal controls provisions.⁹ The Order expressly finds that "neither Och nor Frank knew that bribes would be paid." Rather the Order finds that they were aware of a high risk of corruption in certain transactions, and that nevertheless Mr. Och approved and Mr. Frank authorized Och-Ziff to enter into those transactions in which bribes were later paid.

Mr. Frank resigned as Chief Financial Officer and as a Board member at the end of 2016. Och-Ziff has appointed a new chief financial officer and gave the duties of principal operating officer and principal accounting officer to other executives at the firm. None of these current executives – Thomas Sipp (Chief Financial Officer), Wayne Cohen (President and Chief Operating Officer), and Erez Elisha (Chief Accounting Officer) – had any involvement in the FCPA-related conduct described in the Order.

In addition, Mr. Och has stepped down as the Company's Chief Executive Officer effective as of February 5, 2018 and resigned as Chairman of the Board effective as of March 31, 2019.¹⁰ Further, Mr. Och has submitted his irrevocable resignation with respect to his Board seat, effective at the next annual shareholder meeting, which is scheduled to take place on July 2, 2019.¹¹ If the waiver is granted so as to permit the Existing Funds to engage in Regulation D offerings, Mr. Och will not participate in, or have any role, or be involved in any way in Regulation D activities that the Existing Funds will pursue.

⁹ See Order, Exchange Act. Rel. No. 78989, Advisers Act Rel. No. 4540 (September 29, 2016).

¹⁰ This is pursuant to a January 27, 2018 agreement entered into between Mr. Och and the independent directors of the Company's Board that sets forth certain governance changes, which was filed with the Company's January 30, 2018 Form 8-K.

¹¹ This is pursuant to a December 6, 2018 strategic plan announced by the Company and closed on February 7, 2019. Details of the transaction can be found in a Form 8-K filed by the Company on February 11, 2019 (the "Recapitalization Plan"). Specifically, subject to certain closing conditions, Mr. Och has agreed to resign his board seat at the next annual shareholder meeting that is at least 30 days following completion of certain redemptions of his investments in OZ Funds, which annual meeting is expected to take place in July 2019. Other related changes, including acceleration of the date that Mr. Och will relinquish his proxy under the Class B Shareholders Agreement and disband the Class B Shareholder Committee, are expected to take place not later than the date of the annual shareholder meeting.

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Mr. Och was immediately succeeded as CEO by Robert Shafir. Mr. Shafir, who previously served as the CEO of Credit Suisse Americas and Co-Head of Private Banking & Wealth Management, joined the firm at the time he succeeded Mr. Och and therefore had no involvement in the conduct described in the Order. Mr. Shafir has an unblemished record spanning a 35-year career in the financial services industry. Mr. Shafir serves on the Board of Directors, chairs the Company's Executive Operating Committee, which is described below, and serves on the Risk and Business Initiatives Committees. As noted above, Mr. Och was succeeded as Chairman of the Board of Directors by Richard G. Ketchum. Mr. Ketchum is an expert in market regulation who brings a long track record of heralded senior regulatory experience to the Och-Ziff Board.

Even prior to this management transition, Mr. Och had ceded significant day-to-day responsibilities to others, in part to de-centralize decision-making authority. Specifically, there are two main aspects of overseeing the Company's affairs: (1) operational management of the Company, and (2) overseeing the Funds' investment decisions. As to operational management, the firm currently has a Partner Management Committee (PMC) and an Executive Operating Committee (EOC). The PMC is comprised of nine members, including Mr. Och as chairman¹² and the firm's new CEO, Mr. Shafir, and is responsible for approving the Company's business strategy and key operating decisions. However, day-to-day corporate management and operational decision-making is the responsibility of the EOC, which was established in October 2014 and serves as a sub-committee of the PMC. The EOC is chaired by Mr. Shafir and Mr. Och is not a member of this Committee. The EOC is comprised of five members: Mr. Shafir; James Levin (Chief Investment Officer); Wayne Cohen (President and Chief Operating Officer); Thomas Sipp (Chief Financial Officer); and David Levine (Chief Legal Officer). In light of the CEO transition noted above, the PMC and EOC are being combined into one management committee that will be chaired by Mr. Shafir and be comprised of the current members of the EOC. Mr. Och will not be a member of such committee. Notably, (1) none of these individuals had any involvement in the conduct underlying the Company's SEC settlement; and (2) the presence of the Chief Legal Officer on both the EOC and the new management committee underscores the Company's commitment to operating in strict compliance with all laws, rules and regulations.

As to investment decisions, the Company has established a Portfolio Committee, comprised of senior investment professionals, that is responsible for managing the firm's multi-strategy funds and conducting a review of the Funds' investment portfolios on a regular basis. Mr. Och is not a member of the Portfolio Committee or the Commitments Committee (which approves private investment transactions). In his capacity as Chairman and founder, Mr. Och does provide his knowledge and views on portfolio positioning, overall Company strategy and geography

¹² Pursuant to the Recapitalization Plan, Mr. Och will resign as Chairman of the PMC and all other Company and Board committees simultaneous with his resignation from the Company's Board of Directors.

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allocation, and on industry trends, economic outlook and geographic factors. Also, again to disperse authority, Mr. Och is not a member, and does not participate in meetings of, the Business Risk Committee.

Lastly, the settled actions do not render either Mr. Och or Mr. Frank “bad actors” and do not trigger disqualification under Rule 506. Neither is the subject of any criminal action. The settled actions against each also do not include any violation under the Advisers Act, which triggered the Regulation D disqualification.

E. The Company’s Remedial Measures

Och-Ziff has revamped its corporate governance and internal control framework as a result of the underlying investigation. The enhanced control framework is particularly strong and is designed so that the violative conduct is unlikely to recur.

Further bolstering confidence in the strength of the control framework is a review by an independent monitor that Och-Ziff was required by the Commission and DOJ to engage as part of the settlement. Specifically, both the Commission Order and the deferred prosecution agreement with the DOJ require the monitor to evaluate the effectiveness of Och-Ziff’s internal accounting controls, record-keeping, and financial reporting policies and procedures as they relate to Och-Ziff’s compliance with the FCPA and other applicable anti-corruption laws, including an assessment of the Board of Directors’ and senior management’s commitment to the corporate compliance program. The Commission Order further requires the monitor to evaluate OZ Management’s related disclosure and compliance issues under the Advisers Act, and to make recommendations reasonably designed to improve the effectiveness of these policies and procedures.

The monitor began his work in January 2017 and is tasked with conducting three reviews over a three-year period. The first review has been completed and the Monitor submitted his second year report to the government on December 21, 2018. As a condition/limitation on being awarded a waiver, Och-Ziff proposes the retention of an independent compliance consultant who would be tasked with overseeing the Company’s Regulation D policies and procedures.

The discussion below provides an overview of the Company’s remediation to date and planned or proposed additional steps to enhance the Company’s compliance program.

1. Corporate Governance Enhancements

a) Creation of a New “Corporate Responsibility and Compliance” Board Committee

The Company created a new board committee in September 2016 – the Corporate Responsibility and Compliance Committee (“Compliance Committee”). This committee

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oversees management's efforts to ensure a culture of ethical business practices within the Company and to sustain an industry-leading legal and regulatory compliance program. The Compliance Committee is chaired by Richard Ketchum, who joined the Board in July 2018 and became Chairman of the Board on April 9, 2019. Mr. Ketchum has significant experience in the financial industry with extensive time in senior roles with various regulatory agencies, including having served as Chairman and CEO of FINRA, CEO of New York Stock Exchange Regulation, and Director of the SEC's Division of Market Regulation. The Company also recently filled a vacancy on the Board and the Compliance Committee with Marcy Engel, a new director with in-depth knowledge and experience in financial services regulation, legal and compliance, risk management and controls. In addition to this role, Ms. Engel is currently the lead independent director.

b) Creation of the Executive Operating Committee ("EOC")

In November 2014, Och-Ziff created the EOC which is responsible for day-to-day corporate management and operational decision making. The EOC reflects an evolution of the Company's decision-making model away from one centered primarily on the chief executive officer to one that is more dispersed among senior management, including the new Chief Executive Officer. Och-Ziff sees the EOC as part of a mature and robust system of checks and balances that also has compliance benefits, particularly through having the Chief Legal Officer as one of the committee members. As discussed above, the PMC and the EOC will soon be combined into one committee. That committee will run in the same manner, and bring the same benefits, as the EOC.

c) Enhanced Audit Committee Oversight and Internal Audit Function

Och-Ziff has enhanced reporting to the Board's Audit Committee to include regular reports from Compliance in addition to the previously existing Legal and Internal Audit reports, as well as reports on all investment proposals reviewed by the Business Risk Committee. In addition, as of April 2018, Och-Ziff outsourced its Internal Audit function to KPMG. Engaging KPMG bolsters the Internal Audit-function by utilizing eight KPMG professionals, along with other support from KPMG specialists in information technology and other areas. Additionally, KPMG makes regular presentations to the Company's Board of Directors and participates on a monthly call with the Chair of the Company's Audit Committee.

d) Elevation of the Compliance Department

As with many firms, at Och-Ziff, Compliance historically reported to the Chief Legal Officer and the same person served as Chief Legal Officer and Chief Compliance Officer. In September 2015, the Company separated the roles and hired a fully dedicated Chief Compliance Officer. In addition, in January 2017, the Company put Compliance on the same

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- transactions that involve payments to persons for sourcing investors in OZ Funds or for sourcing transactions;
- transactions that may touch upon persons or entities subject to OFAC sanctions; and
- transactions involving parties who pose substantial reputational risks.

b) Creation of the Commitments Committee

Och-Ziff also created a Commitments Committee in late 2012 to review all proposed private investments, such as those at issue in the investigation, regardless of geographic location.¹⁴ The Chief Legal Officer and Chief Compliance Officer, or their designees, sit on this committee. Other members include key investment professionals and the heads of Legal for the London and Hong Kong offices (Och-Ziff's main offices other than New York). The Commitments Committee reviews all aspects of a proposed transaction including the economics, risks, and any legal and compliance issues. Although a main focus of the Commitments Committee is investment-related, it serves as a control function as well. The committee structure ensures that no one person will have excessive influence on investment decisions involving heightened risk and that decisions will be made in a more formalized and structured manner. It also acts as a check on persons in remote offices who do not have the authority to act on their own. Finally, the membership of Legal and Compliance provides a mechanism for spotting issues that may not otherwise have surfaced during the investment process.

As a result of the creation of the Commitments Committee and the BRC (discussed above), the authority to approve proposed transactions is dispersed, and no one person can bind the firm to a transaction. This addresses a primary risk apparent in the underlying matter, where authority was vested in certain senior managers individually and decisions were sometimes made in a less than formal, structured manner.

3. Compliance Enhancements

Och-Ziff has continued to strengthen its compliance program in a number of ways in recent years. These enhancements were the result of a joint review of the compliance program by the Company and the Audit Committee, assisted by external counsel, with a view to addressing issues identified in the investigation.

¹⁴ There is one exception. For real estate transactions, a separate committee conducts the review. The same type of safeguard exists for these transactions, as the General Counsel for Real Estate (*i.e.* a senior legal department lawyer specializing in this area) and the firm's Anti-Corruption Counsel sit on the committee.

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basis of revenue – declined by this amount during the first four months of 2017). The Company reported redemptions of approximately \$10.5 billion during 2017 and AUM of \$32.4 billion as of December 31, 2017, a 14% decrease from December 31, 2016. This followed material declines in AUM in 2016. Inflows increased slightly in late 2017 and into 2018, but continue to be difficult to obtain without the ability to rely on Regulation D. The risks to the firm and its public shareholders are meaningful – a firm which employs over 400 people and serves a client base principally comprised of pensions (43%) and foundations and endowments (7%), and whose shares are held by public investors and traded on the New York Stock Exchange.

1. Subscriptions Have Declined Due in Part to the Lack of a Regulation D Waiver and Will Continue to Decline

Subscriptions into the OZ Funds have declined meaningfully in recent quarters due in part to the lack of a Regulation D waiver. To illustrate this, over the period of 2012 through the settlement date, the OZ Funds on average received inflows of \$1.1 billion per quarter. During the eight quarters following the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds received average subscriptions of only \$122 million per quarter. The total subscriptions for the second quarter of 2017 were slightly higher; however, subscriptions to Och-Ziff's multi-strategy funds continue to be significantly lower compared to prior years, with average subscriptions over the last eight quarters of only \$36.9 million compared to an average of \$698.1 million per quarter during the period of 2012 through the settlement date. The increase in total subscriptions seen primarily in the second quarter of 2017 was mainly due to commitments made to Och-Ziff's first real estate credit fund, as well as its dedicated credit products and opportunistic credit funds.¹⁶

Prior to the entry of the Order, the real estate credit fund was offered and sold primarily under Regulation D, with a smaller percentage offered and sold to offshore investors under Regulation S. Following the entry of the Order, interests in the fund were sold primarily to offshore investors in reliance on Regulation S. Only 10% of the total interests in the fund

¹⁶ The figures in the foregoing paragraph and elsewhere in this letter relating to average subscriptions over the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D do not include reinvestments by investors in OZ Funds that were put into wind-down earlier in 2018 into another OZ Fund in the second and third quarters of 2018.

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since its inception were sold under the Section 4(a)(2) exemption from registration.¹⁷ Similarly, since the entry of the Order, the large majority of the interests in Och-Ziff's dedicated credit products and opportunistic credit funds have been sold to offshore investors in reliance on Regulation S.

The lack of a Regulation D waiver has acutely impacted Och-Ziff's limited partner investors' willingness and ability to invest. For example, the wealth management arms of large financial institutions ("private banks") and other intermediaries rely on Rule 506 for distribution of fund investments to their high net worth individual clients. Most of these intermediaries are not comfortable investing in or distributing OZ Funds without a Regulation D waiver on the part of Och-Ziff. In addition, although institutional and other types of investors are technically able to invest in offerings made in reliance on Section 4(a)(2), Och-Ziff has experienced significant hurdles with these investors as well.

a) Intermediaries

The harm caused by the lack of a Regulation D waiver is shown most directly by problems in distributing OZ Funds through private banks, which are the primary channels for sales of limited partner interests in the OZ Funds to high net worth individuals. These channels accounted for approximately 12% of Och-Ziff's investor base as of October 1, 2018, compared with 16% of the investor base as of April 1, 2016. To illustrate this, over the period of 2012 through the settlement date, OZ Funds on average have received inflows of \$265 million per quarter from private banks. During the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds have received average subscriptions of only \$16.4 million per quarter from private banks, almost all of which came from offshore investors in reliance on Regulation S.

The private banks consider the lack of a waiver from Rule 506 disqualification as a significant risk factor in their overall evaluation of the OZ Funds. Och-Ziff has been made aware that certain large private banks continue to be unwilling to participate in the fund offerings in the United States if a waiver of disqualification is not granted, due to legal uncertainties in connection with the OZ Funds' reliance on Section 4(a)(2). In addition, as some of the private banks have informed Och-Ziff that they likely cannot continue holding

¹⁷ In addition, as of September 30, 2018, Och-Ziff reported a 38% increase year-over-year in AUM in its dedicated credit products business, driven by capital net inflows of \$3.6 billion primarily due to the closing of additional collateralized loan obligations ("CLOs") and an aircraft securitization. Och-Ziff acts as collateral manager for such offerings. CLO offerings are not conducted under Regulation D; rather they are conducted under Securities Act Rule 144A through an initial purchaser and under Regulation S to offshore investors. We note, however, that although this demonstrates that alternative exemptions from registration are available for these limited CLO offerings, such inflows do not offset the impact of the Rule 506 disqualification on the OZ Funds overall. In addition, CLO offerings generate significantly less revenue than Och-Ziff's multi-strategy funds, in part because they are an entirely different product than hedge funds, carrying materially lower management fees.

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client investments in a fund that they cannot make available to new U.S. clients, such private banks may choose to redeem all, or a material portion of, their remaining investments in OZ Funds if a Regulation D waiver is not obtained. As of October 1, 2018, private banks represent \$2.3 billion in AUM.

The lack of a waiver from Regulation D disqualification also has had a negative impact on Och-Ziff's ability to develop and launch new products that are distributed through intermediaries. For example, Och-Ziff was preparing a new fund product designed to tap into a growing segment of the insurance market but has been unable to launch the product because the intermediary that would be used to offer the fund is not willing to offer the fund in reliance on Section 4(a)(2). The firm believes this product could have grown quickly in a relatively short period of time.

b) Other investors, including pension funds, family offices and individuals

Och-Ziff's Regulation D disqualification has also affected other potential sales channels for the OZ Funds' interests, even in cases where technical compliance with Section 4(a)(2) may be possible. For example, sales to institutional investors such as pension funds and sales to family offices and high net worth individuals, each of which participate directly in OZ Fund offerings, have declined since the entry of the Order. Most significantly, these investors include pension funds, which accounted for approximately 43% of Och-Ziff's investor base as of October 1, 2018. To illustrate this, over the period of 2012 through the settlement date, OZ Funds on average have received inflows of \$346 million per quarter from pension funds. During the eight quarters since the loss of Och-Ziff's ability to rely on Regulation D, OZ Funds have received average subscriptions of only \$14.0 million per quarter from pension funds, almost all of which came from offshore investors in reliance on Regulation S.

Och-Ziff believes this decline is attributable in large part to the absence of the Rule 506 safe harbor in general, as well as the resulting absence of state Blue Sky preemption. While other factors may also be contributing to the decline in inflows from these channels, we note that many of the consultants that work with large public pension funds are particularly focused on the risks of an offering under Section 4(a)(2), and other potential investors who are not generally conversant with Section 4(a)(2), also have concerns about participating in such offerings. It would be expected that their natural impulse will be to choose what is safe and certain, particularly for operations professionals, who would have to adapt their procedures, and for compliance professionals, who would have to address Blue Sky offering requirements. In addition, many of Och-Ziff's investors are themselves fiduciaries, who understandably are reluctant to take on any perceived risk, inconvenience, or expense when other alternatives are available. Family offices and individuals also face significant legal uncertainties under Section 4(a)(2) due to the lack of guidance and strict offering requirements in many states.

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2. Section 4(a)(2) is Not a Viable Alternative to Regulation D

The very purpose of Regulation D is to replace the uncertain contours of Section 4(a)(2) with a predictable safe harbor to enable issuers to do business with a high degree of certainty. 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). As illustrated by the significant decline in inflows to the OZ Funds, Och-Ziff has found itself facing serious commercial and legal limitations under this approach. As described in more detail above, prospective limited partners and other market participants have proven to be reluctant to invest in, or do business with, a fund that does not have the safe harbor protection afforded by Rule 506.¹⁸ Och-Ziff's offering process now requires forms from clients prior to meaningful contact which is different from other firms and often results in clients refusing to progress.

Further, unlike Rule 506 offerings, offerings conducted under Section 4(a)(2) do not have the benefit of Federal pre-emption of state registration requirements. As a consequence, each Section 4(a)(2) offering requires an analysis of state Blue Sky laws, which is burdensome and imposes additional costs on both Och-Ziff and the limited partner investors.

3. Och-Ziff's Decline in Assets Under Management

Och-Ziff's inability to raise new money has contributed to a dramatic decline in its AUM. AUM declined from \$39.3 billion as of September 30, 2016 to \$33.0 billion as of September 30, 2018, a decrease of 16.03% in that 24-month time period. In particular, AUM in Och-Ziff's multi-strategy funds declined 50.85%, from \$23.4 billion as of September 30, 2016 to \$11.5 billion as of September 30, 2018. A decline in AUM not only threatens the long term health of Och-Ziff's business but also hurts existing limited partner investors. For example, many of the costs associated with managing the OZ Funds are fixed and therefore reduced on a percentage basis when the amount of assets in the fund is increased.

As an asset manager, Och-Ziff must be able to take in new subscriptions from limited partner investors to replace money that has been redeemed in order to sustain its business over time. While the overall downturn in the industry and the reputational overhang of the FCPA settlement cannot be disregarded as contributors to the decline in inflows to the OZ Funds, Och-Ziff's inability to rely on Rule 506 for the offerings of limited partnership interests in its funds has played a significant role in many limited partner investors' decisions to redeem from Och-Ziff's multi-strategy funds, has virtually halted all new subscriptions to those

¹⁸ The Division has previously been informed of the disadvantages of reliance on Section 4(a)(2) for continuous private fund offerings. See incoming waiver request letter dated May 18, 2017, SEC v. Cooperman et al., Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D.

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funds, and is resulting in continuing negative impact to Och-Ziff's business and its public shareholders and limited partner investors.

Och-Ziff has experienced elevated levels of outflows since 2015, which it believes can be attributed to some extent both to an industry-wide downturn in investor interest in alternative investments, and to the impact of the FCPA matter, and the pace of outflows has continued to increase. Och-Ziff experienced outflows of approximately \$7.5 billion from its funds during 2015, \$10.4 billion during 2016 and \$10.7 billion during 2017. These outflows have occurred primarily from Och-Ziff's multi-strategy hedge funds. Between the date of the announcement of the settlement and September 30, 2018, investors have elected to redeem \$14.7 billion from Och-Ziff's multi-strategy hedge funds totaling more than 50% of available capital.

4. Reputational Impact of Regulation D Disqualification

All of these concerns illustrate that Och-Ziff faces a special stigma as a result of the Rule 506 disqualification, the impact of which extends far beyond the reputational concerns arising from the FCPA settlement. Och-Ziff's business is extremely competitive, and its competitors regularly rely on Regulation D to conduct domestic private offerings. No other major alternative asset manager that we are aware of has the Rule 506 disqualification or the resulting stigma. Potential investors, when faced with the choice between an offering that fits the standard Regulation D model and an offering under Section 4(a)(2) that involves legal uncertainty, additional documentation such as Blue Sky questionnaires, and differing compliance processes, are likely in most cases to opt for the familiar Regulation D process. While it is not possible to quantify the negative impact on Och-Ziff with exact precision, it manifests itself in a variety of ways, such as a reluctance on the part of certain institutional investors to participate in meetings or discussions about OZ Fund offerings.

5. Loss of Revenue

The disqualification's limitation on the OZ Funds' ability to offer limited partnership interests and bring in new capital has resulted in revenue losses in the form of reduced management fees and incentive income. Och-Ziff's principal sources of revenues are management fees and incentive income. For any given period, the Company's revenues are influenced by the amount of AUM, the investment performance of the OZ Funds, and the timing of when the Company recognizes incentive income for certain AUM. Management fees are generally calculated and paid to Och-Ziff on a quarterly basis in advance, based on the amount of AUM at the beginning of the quarter, and are prorated for capital inflows and redemptions during the quarter. Accordingly, changes in management fee revenues from quarter to quarter are driven by changes in the quarterly opening balances of AUM, the relative magnitude and timing of inflows and redemptions during the respective quarter, as

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well as the impact of differing management fee rates charged on those inflows and redemptions. Och-Ziff earns incentive income based on the cumulative performance of the OZ Funds over a commitment period. The ability of investors to contribute capital to and redeem capital from the OZ Funds causes AUM to fluctuate from period to period, and therefore affects the Company's revenues.

This loss of revenue has had an effect on Och-Ziff's ability to maintain previous staffing levels. The Company's headcount has declined since January 2016 from a high of 659 employees to 410 employees as of February 1, 2019.

6. Conclusion

The tangible negative effects of the disqualification described above on Och-Ziff's business, its limited partner investors and its public company shareholders would be immediately addressed by the granting of a waiver. Unlike the majority of applicants requesting a waiver of the Rule 506 disqualification, the harm described herein is not hypothetical – Och-Ziff has been operating under the disqualification since the entry of the Order, and the negative results of the disqualification are clear to see. This impact, particularly in light of the significant improvements in the firm's compliance-related mechanisms, as described above, weighs strongly in favor of the granting of a waiver of disqualification.

* * *

In addition to the proposed new "Three Level of Review" process described above, as a further condition to receiving the waiver, the Company agrees that the waiver will be subject to certain of the terms agreed to with respect to the governance arrangements of the Company as set forth in that certain agreement, dated January 27, 2018, between the Company and Mr. Och (collectively, the "Governance Arrangements"). Pursuant to the Governance Arrangements, (i) Mr. Och ceased to serve as the Company's Chairman of the Board effective as of March 31, 2019, (ii) Mr. Och is no longer an "executive officer" of the Company (as such term is defined in Rule 3b-7 of the Exchange Act), (iii) Mr. Och is not empowered to remove any executive officer of the Company and (iv) Mr. Och does not approve any of the Company's individual investment decisions. The Company agrees that it will not rely on the waiver if any of these conditions should change. The Company's Chief Legal Officer and Chief Compliance Officer will certify in writing annually as to the Company's compliance with this condition and submit a copy of the certification to the Commission staff.

Och-Ziff also agrees, for the time period described in Rule 506(d)(1), to furnish (or cause to be furnished) to each potential limited partner investor in a Rule 506 offering that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

Mr. Tim Henseler
June 13, 2019
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Based on the foregoing and subject to Och-Ziff's compliance with the representations and conditions set forth herein, we believe Och-Ziff has shown good cause that disqualification is not necessary under the circumstances and that the requested waiver should be granted.

Please do not hesitate to contact me at (202) 663-6644 should you have any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Cross', with a long horizontal flourish extending to the right.

Meredith B. Cross

cc: David M. Levine
Och-Ziff Capital Management Group LLC