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 SECTION 2(a)(51), 3(c)(7)
 RULE _____
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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
 DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 97-287-CC
 Redwood Investment Fund, LLC
 File No. 132-3

Your letter of May 29, 1997 requests assurance that the staff would not recommend enforcement action to the Commission if Redwood Investment Fund, LLC ("Redwood") is deemed a "qualified purchaser" within the meaning of Section 2(a)(51)(A)(ii) of the Investment Company Act of 1940 when it purchases the securities of companies excluded from the definition of "investment company" by Section 3(c)(7) of the Investment Company Act ("3(c)(7) Funds").¹

You represent that Redwood was formed to permit its investors to make collective investments in privately offered investment companies, including 3(c)(7) Funds. Redwood has four investors, each of which is organized as a trust. The four investors include (1) a trust created under the will of Harold T. Martin for the principal benefit of his widow, Eloise T. Martin; (2) a trust created under the will of Harold T. Martin for the principal benefit of his daughter, Joyce Martin Brown; (3) a revocable trust created by, and for the principal benefit of, Joyce Martin Brown; and (4) a revocable trust created by, and for the principal benefit of, H. Alex Vance, Jr., the former spouse of Melinda Martin Sullivan, a daughter of Eloise and Harold T. Martin. You represent that Mr. Vance is the chief executive and sole stockholder of Conifer Investments Ltd., a registered investment adviser that will serve as the manager of Redwood.

Section 2(a)(51)(A)(ii) of the Investment Company Act defines "qualified purchaser" to include, in relevant part:

any company that owns not less than \$5,000,000 in investments² and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons . . . or trusts established by or for the benefit of such persons (a "Family Company").

You are concerned that Mr. Vance's interest in Redwood could preclude Redwood from being a Family Company, and thus from being a qualified purchaser. You note that Section 2(a)(51)(A)(ii) specifically refers only to former spouses of the owners of a Family

¹ Section 3(c)(7) of the Investment Company Act excludes from the definition of "investment company" any issuer whose outstanding securities are owned only by "qualified purchasers," and that is not making, and does not propose to make, a public offering of its securities.

² You represent that Redwood initially will own total "investments," as that term is defined in Rule 2a51-1 under the Investment Company Act, with a value of approximately \$7,500,000.

Company, and does not expressly include former spouses of the direct lineal descendants of the owners. You assert that the paragraph should be interpreted to also include former spouses of direct lineal descendants, and therefore that Mr. Vance's ownership interest in Redwood is consistent with Redwood's status as a Family Company.

We believe that the reference in Section 2(a)(51)(A)(ii) to "former spouses" evidences Congress' intent that the other reference in the paragraph to "spouses" also include former spouses. Accordingly, we would not recommend enforcement action to the Commission if Redwood is deemed a "qualified purchaser" within the meaning of Section 2(a)(51)(A)(ii).



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Investment Company Act Sec. 2(a)(51)(A)(ii)

May 29, 1997

Office of Chief Counsel
Division of Investment Management
Mail Stop 10-6
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Redwood Investment Fund, LLC

Ladies and Gentlemen:

On behalf of Redwood Investment Fund, LLC, a Delaware limited liability company ("Redwood"), we hereby request that the Staff of the Commission's Division of Investment Management (the "Staff") confirm that, under the circumstances described in this letter, it will not recommend any enforcement action to the Commission if Redwood takes the position that it is a "qualified purchaser" within the meaning of Investment Company Act ("40 Act") Sec. 2(a)(51)(A)(ii).

Background

Redwood has been formed to enable its investors to make collective investments in privately offered investment companies, including "hedge" funds, that are excluded from registration under the '40 Act based on the provisions of Section 3(c)(1) and/or new Section 3(c)(7).

Redwood has four member/investors:

(1) The Article 3 Trust u/w/o Harold T. Martin. This trust is a "marital" trust for the principal benefit of Eloise T. Martin ("Eloise"), widow of Harold T. Martin ("Harold").

(2) The Article 9 Trust for Joyce u/w/o Harold T. Martin. This trust is for the principal benefit of Joyce Martin Brown ("Joyce"), one of the two daughters of Harold and Eloise.

(3) The Joyce Martin Brown Revocable Trust. This trust was created by and is for the principal benefit of Joyce.

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(4) The H. Alex Vance, Jr. Revocable Trust. This trust was created by and is for the principal benefit of H. Alex Vance, Jr. ("Alex"). Alex is the former spouse of Melinda Martin Sullivan ("Melinda"), the other daughter of Harold and Eloise.

Each member/investor will make an initial capital contribution to Redwood of no less than \$1 million. Total Redwood investments, within the meaning of Rule 270.2a51-1(b), will approximate \$7.5 million. Alex is the chief executive and sole stockholder of Conifer Investments Ltd. ("Conifer"), a registered investment adviser that will serve as the manager of Redwood, and has been providing investment advice to Eloise and Joyce for many years, both before and after his divorce from Melinda.

In Rule 270.2a51-1(a)(2), a company satisfying the definition of qualified purchaser set forth in Sec. 2(a)(51)(A)(ii) is referred to as a "Family Company." Redwood believes that it is a "family" company.

Analysis

For the reasons set forth below, we are of the opinion that, based on the factual circumstances described above, Redwood would satisfy the definition of qualified purchaser set forth in Sec. 2(a)(51)(A)(ii). That section provides as follows:

(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

The parenthetical midway through the subsection clearly indicates that former spouses are meant to be included in the concept of "family". However, the fact that the parenthetical follows only the initial reference to "spouse" in the subsection and not to the succeeding reference to "spouses" raises the potential of a question.

For example, assume three generations of a single family, A (parent), B (child) and C (grandchild). Further assume each has a former spouse, respectively AX, BX and CX. Clearly A, B and C could participate in a "family company". Clearly A, B, C and AX could participate in a "family company" even if the parenthetical reference to "former spouses" were read in an extremely restrictive way, limiting the reference to former spouses of the oldest participating generation of the family. However, if such a restrictive interpretation were to apply, both BX and CX would not be included within the "family" concept. We were not able to think of any policy reason why the drafters of the statute should have wished to mandate such a result.

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We find in the Commission's recent Release No. IC-22597 (April 3, 1997), adopting rules to define certain terms for purposes of the new exclusion from regulation for privately offered investment companies whose investors are all highly sophisticated investors, no suggestion of any intention to exclude BX or CX from the family concept in our hypothetical or Alex in our actual factual context.

The two daughters of Alex and Melinda are considering possibly becoming investors in Redwood at some time in the future. There is absolutely no doubt that their participation along with the trusts for Eloise and Joyce would have no negative effect on Redwood's qualification under Sect. 2(a)(51)(A)(ii). It would seem to be a strange and unnatural result if Sect. 2(a)(51)(A)(ii) were read so as to change the result if their father were also to be an investor.

The legislative history of the recent amendments to the '40 Act makes no reference to the portion of the definition of "qualified purchaser" now contained in Sect. 2(a)(51)(A)(ii), either generally or specifically on the topic of former spouses. Also, there is no specific indication of whether the various categories of purchaser within the definition of qualified purchaser were meant to be interpreted expansively or restrictively.

* * * *

The background information set forth above is consistent with my description of that background in conversations with Ms. Sarah Wagman of the Division's staff on May 16 and May 19.

In accordance with Release No. 33-6269, seven additional copies of this letter are enclosed. Your prompt determination with respect to the matter discussed herein would be greatly appreciated. If there are any questions, or if further information is needed with respect to this request, please call the undersigned at 312-876-8011 or Thomas G. Opferman of this firm at 312-876-7481.

Very truly yours,

SONNENSCHN NATH & ROSENTHAL

By:



Daniel R. Swett

Enclosures

cc: Sarah Wagman
Alex Vance
Thomas G. Opferman