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February 27, 2008

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549
Attention: David W. Grim

RE: The Townsend Group

Ladies and Gentlemen:

On behalf of our client, The Townsend Group, Inc. ("Townsend"), we request your concurrence that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission under Section 7 of the Investment Company Act of 1940, as amended (the "Investment Company Act"), under the circumstances described below.¹

BACKGROUND

Townsend is a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Townsend currently serves as investment adviser to, among other entities, certain private equity fund-of-funds. Among the funds that Townsend advises are the Core Plus Real Estate Fund – A, L.P. ("Core A") and the Core Plus Real Estate Fund – Q, L.P. ("Core Q").

Core A is an open-end fund-of-funds investment vehicle which invests in multiple private equity real estate funds. Core A is exempt from the Investment Company Act under Section 3(c)(1). Investors in Core A are "accredited investors" under the Securities Act of 1933 ("Securities Act") and "qualified clients" under the Advisers Act.² Core A has 71 beneficial owners (excluding its general partner), taking into consideration all Section 3(c)(1) look-through and attribution rules. Core A does not have any side letters with its investors.

Core Q is an open-end fund-of-funds investment vehicle which invests in multiple private equity real estate funds. Core Q is exempt from the Investment Company Act under Section 3(c)(7). Investors in Core Q are "accredited investors" under the Securities Act, "qualified

¹ We believe that the no action relief we seek presents a novel and unusual issue so that the limitation set forth in Shoreline Fund, L.P., SEC No-Action Letter, 1994 SEC No-Act. LEXIS 517 (April 11, 1994) ("we will no longer respond to letters in this area unless they present novel or unusual issues") is not applicable.

² That investors in Core A are "qualified clients" is not essential to the no-action position stated herein.

clients” under the Advisers Act and “qualified purchasers” under the Investment Company Act. Core Q has 153 beneficial owners, taking into consideration all applicable look-through and attribution rules. Core Q does not have any side letters with its investors.

Core A and Core Q were established at the same time. Core A and Core Q invest in private equity real estate funds that are both open-end and closed-end and which make a broad range of investments in real estate funds and real estate related assets. Core A and Core Q share essentially the same investment objectives, have overlapping investment portfolios and substantially similar portfolio risk/return characteristics. But for Section 3(c)(7)(E) of the Investment Company Act, which provides that a Section 3(c)(1) exempt fund will not be integrated with a Section 3(c)(7) exempt fund, we believe that Core A and Core Q could be subject to integration under the Investment Company Act.³

The Contemplated “3(c)(1) Plus” Fund

If Core A and Core Q were combined into a single fund (“3(c)(1) Plus Fund”), Core A and Core Q would be able to achieve considerable cost savings and eliminate significant economic drag currently borne by Core A “accredited investors.” Currently, Core A investors are responsible for annual expenses in the amount of \$168,279, which accounts for 15.13% of Core A’s 2007 revenues. Currently, Core Q investors are responsible for annual expenses in the amount of \$568,129, which accounts for 5.46% of Core Q’s 2007 revenues. If Core A and Core Q were combined into the 3(c)(1) Plus Fund, we estimate that Core A investors would pay approximately \$58,592.07 in total expenses and Core Q investors would pay approximately \$539,896.93 in total expenses.⁴ As a result, Core A investors in the 3(c)(1) Plus Fund would pay 34.82% of the total expenses that Core A investors pay in Core

³ With respect to the Investment Company Act, the Commission has stated that “[t]he integration concept allows the Commission to look behind ostensibly separate issues, issuers, or transactions to determine if, in economic reality, they are actually a single issue, issuer, or transaction.” Joseph H. Moss, SEC No-Action Letter, 1984 SEC No-Act. LEXIS 1911 (Feb. 27, 1994); Santa Barbara Securities, SEC No-Action Letter, 1983 SEC No-Act. LEXIS 2390 (April 8, 1983). The Commission has also stated that it “considers several factors in determining whether integration is appropriate, and generally will require integration if a reasonable purchaser qualified to invest in both offerings would view an interest in one offering as not materially different from another. In making this determination, the staff will consider whether the entities share the same investment objectives, investment portfolios, and portfolio risk/return characteristics. Pasadena Investment Trust, SEC No-Action Letter, 1993 SEC No-Act. LEXIS 135 (Jan. 22, 1993).

⁴ The 3(c)(1) Plus Fund’s total expenses would be \$598,489, or 5.20% of the 3(c)(1) Plus Fund’s revenues. Since the approximate net asset value of Core A is \$13,150,000 and the approximate net asset value of Core Q is \$121,220,000, Core Q investors in the 3(c)(1) Plus Fund would bear 90.21% of the total combined expenses of the 3(c)(1) Plus Fund and the Core A investors 9.79%.

A by itself, while Core Q investors would pay 95.03% of the total expenses that Core Q investors pay in Core Q by itself.⁵

We note that currently it would be inadvisable to combine Core A and Core Q into the 3(c)(1) Plus Fund because the 3(c)(1) Plus Fund would not fall entirely within Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, as the number of beneficial owners in the 3(c)(1) Plus Fund would exceed 100 beneficial owners and not all of them would be “qualified purchasers.”

Although not explicitly authorized in the Investment Company Act, we believe, for the reasons set forth below, that the 3(c)(1) Plus Fund, as long as it maintains no more than 100 non-qualified purchaser “accredited investor” beneficial owners, should be permitted to have more than 100 overall beneficial owners. We believe, as explained below, that such a fund remains firmly “private” within all policy considerations of the Investment Company Act, fits within the intended purposes of the Investment Company Act and is analogous to the Section 4(1½) exemption permitted under the Securities Act. We also believe, as explained below, that any enforcement regarding such a fund would be unduly burdensome to Core A and Core Q as well as Core A and Core Q investors, and of little practical benefit to Core A and Core Q investors. We describe this exemption as a “Section 3(c)(1) Plus Exemption” which is implicitly, although not explicitly, permitted pursuant to Section 3(c)(1) and Section 3(c)(7) of the Investment Company Act. We anticipate that the Section 3(c)(1) Plus Exemption would function as a sub-set of Section 3(c)(1), so that the 3(c)(1) Plus Fund could not be used to avoid the integration doctrine.⁶ Our understanding of the Section

⁵ In the chart below, we provide a break-down of Core A, Core Q and 3(c)(1) Plus Fund expenses and revenues.

	Core A	Core Q	3(c)(1) Plus Fund
Accredited Investors	73	0	73
Qualified Purchasers	0	151	151
Total Investors	73	151	224
'40 Act Exemption	3(c)(1)	3(c)(7)	3(c)(1) plus
2007 Total Expenses	\$168,279	\$568,129	\$598,489
tax/audit	60,222	241,291	241,291
legal	982	7,493	7,493
reimbursements	39,322	52,018	52,018
filings	1,793	9,046	9,046
interest	65,960	258,281	288,641
2007 Revenue	\$1,112,344	\$10,396,831	\$11,509,175
Expense / Revenue %	15.13%	5.46%	5.20%

⁶ For example, if the Section 3(c)(1) Plus Exemption were considered as a sub-set of Section 3(c)(7), there could be a danger that a series of funds similar to the 3(c)(1) Plus Fund would not be subject to integration both with respect to one another and with respect to Section 3(c)(1) exempt funds due to Section 3(c)(7)(E), and resulting in more than one hundred non-qualified purchaser investors being able to participate in a series of funds that were in economic substance one fund. The Commission

3(c)(1) Plus Exemption would thus effectively preserve the relevant legal considerations underlying the Section 3(c)(1) and Section 3(c)(7) exemptions.

The Passage of NSMIA

We note that prior to the National Securities Markets Improvement Act of 1996 (“NSMIA”), Section 3(c)(1) was the primary Investment Company Act exemption available to investment companies. NSMIA created the Section 3(c)(7) exemption in order to “modernize and rationalize certain important aspects of the regulatory scheme governing our capital markets....”⁷ Further, NSMIA sought “to promote efficiency, competition, and capital formation in the capital markets without compromising investor protection.”⁸

The legislative history leading up to, and the architecture of, Section 3(c)(7) reflect, in part, a concern that “qualified purchaser” investors could oppress non-qualified purchaser investors. Section 3(c)(7)(E) therefore allows parallel Section 3(c)(1) and Section 3(c)(7) funds, but requires that the funds be legally separate entities.

We note that in 1996, the average private investment partnership was approximately \$25 to \$55 million.⁹ Six years later, a 2002 study noted that “nineteen funds in 2000 alone exceeded the entire investments of the venture capital industry in 1994, 1995 and 1996 combined.”¹⁰ By comparison, today the hedge fund industry alone is estimated to be a \$2 trillion industry with approximately 10,000 active funds.¹¹ With respect to private equity buy-out funds, in 2006 the ten largest such funds raised \$101 billion,¹² reflecting an average among the ten largest private equity buy-out funds of approximately \$10 billion per fund.

In today’s market, investment funds are larger by an order of magnitude. It is common for investors in Section 3(c)(7) funds to invest amounts ranging from \$1 million to several hundred million dollars. As a result, the relative size disparity in 1996 between “qualified purchaser” investors and non-qualified purchaser investors is dwarfed by the size disparity

had expressed a similar concern with regard to the “grandfather clause” in Section 3(c)(7)(B). See Privately Offered Investment Companies, Release No. IC-22597, SEC No-Action Letter, 1997 SEC LEXIS 739 (April 3, 1997).

⁷ H.R. REP. No. 106-622, 104th Cong. (1996).

⁸ *Id.*

⁹ Congress noted that “[a]lthough there is no exact accounting of the total number and size of these private investment partnerships, estimates indicate that the total number may be as high as 3,000, with assets estimated between \$75 and \$160 billion.” H.R. REP. No. 106-622, 104th Cong. (1996).

¹⁰ Jeffrey E. Sohl, *The Private Equity Market in the USA: Lessons from Volatility* (Oct. 17, 2002), available at

http://www.angelcapitalassociation.org/dir_downloads/resources/Research_LessonsVolatility.pdf.

¹¹ Hedge Fund Association, *About Hedge Fund Strategies*, available at

<http://www.thehfa.org/Aboutus.cfm?CFID=470401&CFTOKEN=35430329>

¹² See Wikipedia, *Private Equity*, available at http://en.wikipedia.org/wiki/Private_equity.

between “qualified purchaser” investors in today’s Section 3(c)(7) funds.¹³ There have been no systemic complaints that smaller “qualified purchaser” investors have been oppressed by the larger “qualified purchasers.” As a result, we do not believe that the size disparity between “qualified purchaser” investors and non-qualified purchaser investors would provide a basis for oppression in the event the two invested in a single fund.¹⁴

The Parallel Fund Problem

In order to satisfy the current interpretation that Section 3(c)(1) and Section 3(c)(7) cannot be combined, funds seeking exemption under the Investment Company have three basic options: (i) to operate as parallel Section 3(c)(1) and Section 3(c)(7) exempt funds, (ii) to start operations as a Section 3(c)(1) exempt fund and subsequently convert to a Section 3(c)(7) exempt fund when the fund has reached a certain capital threshold (and is approaching over 100 beneficial owners) or (iii) to commence operations as a Section 3(c)(7) exempt fund and exclude Section 3(c)(1) “accredited investors.” If a fund chooses to operate as parallel funds, duplicative administrative costs and expenses are incurred and, typically, the Section 3(c)(1) investors disproportionately bear their share of fund expenses. If a fund has elected to start operations as a Section 3(c)(1) exempt fund, Section 3(c)(1) “accredited investors” have in many cases subsequently been redeemed and frozen out of the fund once the fund is in a position to become a Section 3(c)(7) exempt fund (because it is attracting larger blocks of capital from larger, more institutional investors). Alternatively, in certain cases Section 3(c)(1) “accredited investors” are excluded from funds from the start because such funds do not want the administrative burden of maintaining a separate fund with comparatively low capitalization.

In short, Section 3(c)(1) “accredited investors” are often either forced to disproportionately bear fund expenses or are systematically excluded from funds. We believe that, for the reasons set forth in this letter, the current practice – requiring a fixed differentiation between 3(c)(1) funds and 3(c)(7) funds – runs counter to the capital raising policy goals of the Investment Company Act, does not promote investor protection and is not required under the language of the statute.

The 3(c)(1) Plus Fund Solution

In the event the Staff advises that it will not recommend enforcement action, consistent with the spirit of the “grandfather clause” in Section 3(c)(7)(B), Core A and Core Q intend to notify each of their respective limited partners that Core A and Core Q will merge into the 3(c)(1) Plus Fund pursuant to Section 17-211 of the Delaware Revised Uniform Limited Partnership Act. Section 17-211 requires approval by limited partners who own more than

¹³ Note that the “natural accredited person” standard proposed in Release 33-8828 would further reduce size disparity, since natural person investors would have to own at least \$2.5 million in investments in order to invest in Section 3(c)(1) exempt funds.

¹⁴ Oppression concerns are discussed in more detail in Section III.A.

50 percent of the then current percentage or other interest in the profits of the partnership. Core A will notify its investors that following the merger, ownership in the fund will no longer be limited to 100 beneficial owners and that an unlimited number of “qualified purchasers” may invest in the fund. Core Q will notify its beneficial owners that following the merger, ownership in the fund will no longer be limited to “qualified purchasers” and that up to 100 “accredited investors” may invest in the fund. Concurrently, Core A and Core Q investors will be able to redeem any part or all of their interests in Core A and Core Q, as the case may be.

If Core A and Core Q were combined into the 3(c)(1) Plus Fund, the 3(c)(1) Plus Fund would have 224 beneficial owners, taking into consideration attribution and look-through rules as noted above. Of such investors, 71 beneficial owners in the 3(c)(1) Plus Fund would be “accredited investors” and 153 beneficial owners in the 3(c)(1) Plus Fund would be “qualified purchasers.”

DISCUSSION

The Section 3(c)(1) Plus Exemption falls squarely within the policy goals and implicitly within the statutory language of the Investment Company Act for the following reasons.

I. Implications of Section 4(1½) under the Securities Act

Prior to the Commission’s acknowledgment of the Section 4(1½) exemption in Employee Benefit Plans Release No. 6188,¹⁵ with regard to privately reselling securities initially issued in a private placement,¹⁶ “[such] variety of sale [had] become popularly known as “section 4(1½)” transactions, primarily because the SEC, in no-action letters and other pronouncements, frequently [had] required that such resales meet at least some of the established criteria for exemptions under both section 4(1) and section 4(2).”¹⁷ As explained below, we believe that the Section 4(1½) exemption was founded upon (A) the view that not allowing the Section 4(1½) exemption would have been an unnecessary burden and of little practical benefit to investors; (B) the view that there is no meaningful difference between issuer and non-issuer transactions that meet all of the criteria for the section 4(2) private offering exemption (and by extension, we believe, on the view that where the purpose of a securities act is to regulate “public” matters as opposed to “private” matters, a hybrid exemption should apply where the hybrid exemption would effectively satisfy all “private” criteria) and (C) the view that the Section 4(1½) exemption, although not specifically provided for in the 1933 Act, was clearly within its intended purpose.

¹⁵ Employee Benefit Plans, Release No. 6188, 1980 SEC LEXIS 2141 (Feb. 1, 1980).

¹⁶ See Section “4(1-1/2)” Phenomenon: Private Resales of “Restricted Securities”, a Report to the Committee on Federal Regulation of Securities of the ABA from the Study Group on Section “4(1-1/2)” of the Subcommittee on 1933 Act, 34 *Bus. Law.* 1961 (1979).

¹⁷ *Id.*

A. Section 4(1½) Was Not Troubling to the Commission Because Enforcement Would Be of Little Practical Benefit to the Purchaser

“Despite the absence of clear articulation of the statutory basis of the [Section 4(1½)] exemption for such sales, neither the Commission nor the securities bar [were] very troubled by them. From a practical point of view, this feeling of relative security probably results from the recognition that registration of such sales would be an unnecessary burden to the Holder and of little practical benefit to the Purchaser.”¹⁸

B. Section 4(1½) Rests On the Logic That There Is No Meaningful Difference Between Private Issuer and Non-Issuer Transactions (and by Extension Between “Private” as Opposed to “Public” Funds)

James Landis, a principal draftsman of H.R. 5480, noted with respect to the Securities Act that “‘public offerings’ as distinguished from ‘private offerings’ proved to be the answer [to the question what scope the Securities Act was to have].”¹⁹ One treatise also notes that the “Section 4(1½) exemption rests on sound logic that there is no meaningful difference between issuer and non-issuer transactions that meet all of the criteria for the section 4(2) private offering exemption.”²⁰ This suggests that where the purpose of a securities act is to regulate “public” matters as opposed to “private” matters, a hybrid exemption should apply where the hybrid exemption would effectively satisfy all “private” criteria.

C. A Securities Exemption Need Not Be Specifically Provided For If Clearly Within the Intended Purpose of a Securities Act

The Commission acknowledged that Section 4(1½) “is a hybrid exemption not specifically provided for in the 1933 Act but clearly within its intended purpose.” The exemption basically would permit affiliates to make private sales of securities held by them so long as some of the established criteria for sales under both Section 4(1) and Section 4(2) of the [Securities] Act are satisfied.”²¹

D. Section 4(1½) Suggests That the Section 3(c)(1) Plus Exemption Should Exist

For the same reasons, the Section 3(c)(1) Plus Exemption should be recognized:

First, allowing the Section 3(c)(1) Plus Exemption would benefit investors by reducing unnecessary economic drag in parallel funds. Conversely, not recognizing the Section 3(c)(1) Plus Exemption will maintain an unnecessary burden on investors – a burden that is

¹⁸ *Id.*

¹⁹ James Landis, *The Legislative History of the Securities Act of 1933*, 28 Geo. Wash. L. Rev. 29, 37 (1959).

²⁰ Matthew Bender & Company, Inc., 1-4 Federal Securities Act of 1933, §4.05[1].

²¹ Employee Benefit Plans, Release No. 6188, 1980 SEC LEXIS 2141 (Feb. 1, 1980).

disproportionately borne by the smaller investors – with little practical benefit to anyone. As noted above, both Core A and Core Q investors will pay lower costs if they can combine their funds. The cost savings to Core A investors will be material.

Second, where the purpose of a securities act is to regulate “public” matters as opposed to “private” matters, a hybrid exemption should apply where the hybrid exemption would effectively satisfy all “private” criteria. With regard to the Section 3(c)(1) Plus Exemption, the private criteria for Section 3(c)(1) and Section 3(c)(7) are each individually satisfied.²² Since Section 3(c)(7)(E) already functionally permits what is in essence a 3(c)(1) Plus Fund by preventing integration of Section 3(c)(1) and Section 3(c)(7) funds, there is no meaningful difference to be maintained by refusing to recognize the Section 3(1) Plus Exemption.

Third, the Section 3(1) Plus Exemption is within the intended purposes of the Investment Company Act. It will promote capital raising and benefit investors without derogating any of the protections investors currently enjoy. All of the other criteria of Section 3(c)(1) and Section 3(c)(7) – including investor sophistication requirements, financial thresholds and look-through protections – will continue to be satisfied, except for a limit on the number of “qualified purchaser” beneficial owners in the Section 3(1) plus exempt fund.²³ However, since parallel Section 3(c)(1) and Section 3(c)(7) exempt funds effectively operate as one fund from an economic perspective, it appears that the only truly material issue (from a policy perspective) with respect to the Section 3(c)(1) Plus Exemption is the issue of possible oppression by comparatively larger investors when the funds are combined into a single legal entity. As mentioned above (and discussed below in Section III.A.), we have not seen differences in investor size as a basis for oppression in the private fund context. Furthermore, Core A and Core Q will effectively address this issue by providing for disclosure and adequate notice and opportunity for redemption to each of their respective investors.

As a result, we believe that the Commission should permit combining Section 3(c)(1) and Section 3(c)(7) criteria, subject to the conditions and representations noted in this letter, in order to recognize the Section 3(c)(1) Plus Exemption.

II. The Section 3(c)(1) Plus Exemption Is Fundamentally Private and Does Not Destroy the Private Character of Section 3(c)(1) or Section 3(c)(7)

The legislative history of the Investment Company Act in several instances states that Congress and the Senate intended to regulate public investment companies. Senate Report

²² See Section II.

²³ Note, however, that there is a practical cap of 500 investors if the fund does not want to incur the registration and reporting obligations under Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”). In addition, an overly broad number of “qualified purchasers” could create a general solicitation and destroy the availability of the 3(c)(1) Plus Exemption.

No. 1775 notes that “investment companies are essentially institutions which provide a medium for public investment in common stocks and other securities.”²⁴ In addition, Section 1(a) of the Investment Company Act refers to securities distributed by investment companies that are publicly offered and distributed. More recently, the House and Senate Reports which accompanied the 1980 amendments to the Investment Company Act reaffirm the premise that the rationale for an exemption under the Investment Company Act is that the exemption is private. “Section 3(c)(1) was intended to exclude from the [Investment Company] Act private companies in which there is no significant public interest and which are therefore not appropriate subjects of federal regulation.”²⁵

Until the passage of NSMIA in 1996, exempt investment companies were generally limited to Section 3(c)(1). When the ABA Task Force made its recommendations regarding the Section 3(c)(7) exemption, it cited a Commission order issued in 1941, noting that the “limitation of 100 stockholders in Section 3(c)(1) obviously is an arbitrary figure,” and that “section 3(c)(1) of the Investment Company Act of 1940 clearly indicates that it was not intended to bring private companies within the purview of the [1940] Act.”²⁶ Clearly, the ABA Task Force understood that a parallel Section 3(c)(1) exempt fund and a Section 3(c)(7) exempt fund would effectively mean that the 100 person threshold in Section 3(c)(1) would be exceeded.²⁷ As a result, we believe that the fact that the Section 3(c)(1) Plus Exemption would cause the Section 3(c)(1) exemption to exceed 100 beneficial owners is not in itself relevant to the question of whether the Section 3(c)(1) Plus Exemption is private, provided that the Section 3(c)(1) Plus Exemption is otherwise proper under the Investment Company Act.

The Section 3(c)(1) Plus Exemption is private for several reasons. First, under current law, an investment adviser can manage a parallel Section 3(c)(1) exempt fund and a Section 3(c)(7) exempt fund, each of which are clearly separately private under the Investment Company Act. We believe that the Section 3(c)(1) and Section 3(c)(7) exemptions, like the Section 4(1) and Section 4(2) exemptions, were created because the private nature of the activities they permit does not implicate the purposes of the Investment Company Act or the Securities Act, as the case may be.

²⁴ S. REP. NO. 1775, at 2.

²⁵ H.R. REP. No. 1341, 96th Cong., 2d Sess. 35 (1980); S. REP. No. 958, 96th Cong., 2d Sess. 20 (1980).

²⁶ The Task Force on Hedge Funds, Report on Section 3(c)(1) of the Investment Company Act of 1940 and Proposals to Create an Exception for Qualified Purchasers, 51. *Bus. Law* 773 (May, 1996), citing *In re Maritime Corp.*, Exchange Act Release No. 40-190, at 3 n.2 (Aug. 15, 1941).

²⁷ The ABA Task Force noted: “Some have argued that the commingling of sophisticated and other purchasers (as occurs now under Section 3(c)(1)) poses a threat that sophisticated purchasers could act to the detriment of unsophisticated investors in the investment fund.” The Task Force on Hedge Funds, Report on Section 3(c)(1) of the Investment Company Act of 1940 and Proposals to Create an Exception for Qualified Purchasers, 51. *Bus. Law* 773 (May, 1996).

The Section 3(c)(1) Plus Exemption does not increase the above risks. First, as is evident from Release No. 33-8828, such risks are present in 3(c)(1) exempt funds, notwithstanding the Section 3(c)(1) Plus Exemption. The proposed “accredited natural person” standard demonstrates that such risks would be most effectively dealt with by raising the minimum sophistication of investors in funds exempt under the Investment Company Act. The Section 3(c)(1) Plus Exemption does not lower the minimum sophistication of investors in funds exempt under the Investment Company Act, rather it merely combines into a single fund two separate categories of sophisticated investors. Since the Section 3(c)(1) Plus Exemption is a subset of Section 3(c)(1), the proposed “accredited natural person” standard would apply to investors in the 3(c)(1) Plus Fund and would therefore raise the minimum sophistication level of “accredited investors.” Second, the Section 3(c)(1) Plus Exemption is also consistent with the proposed “natural accredited person” standard because the adoption of such a standard would further reduce the disparity between “accredited investors” and “qualified purchasers” in Section 3(c)(1) exempt funds, thereby further nullifying oppression concerns (which we believe are minimal independent of the adoption of the “accredited natural person” standard). As a result, we believe that the Section 3(c)(1) Plus Exemption is both consistent with the proposed “accredited natural person” standard as well as with any related concerns.

Also in Release No. 33-8828, the Commission has proposed broadening Regulation D to allow tombstone style public advertisements under proposed Rule 507 similar to those allowed prior to registration if an offering is made to “large accredited investors.”⁴² Specifically, the Commission noted:

Proposing Rule 507 under Section 28, rather than Section 4(2), has certain consequences. Among these consequences, is that pooled investment vehicles that rely on the exclusion from the definition of “investment company” provided by Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act would not be able to take advantage of the limited advertising proposed to be permitted under Rule 507. This results because the vehicles are required to sell their securities in transactions not involving a public offering.⁴³

Release No. 33-8828 therefore potentially reflects a reluctance on the part of the Commission to expand the scope of the Section 3(c)(1) exemption. However, we believe that the purpose of not making Rule 507 available to Section 3(c)(1) exempt funds is to prevent marketing exempt funds to the investing public at large, which will be equally applicable to a Section 3(c)(1) Plus Exemption. The Section 3(c)(1) Plus Exemption does not broaden the marketing or distribution scope of Section 3(c)(1) or Section 3(c)(7). Any of the above risks are effectively the same for the Section 3(c)(1) Plus Fund as for a Section 3(c)(1) or Section 3(c)(7) exempt fund, since the amount and quality of the investors will be

⁴² *Id.*

⁴³ *Id.*

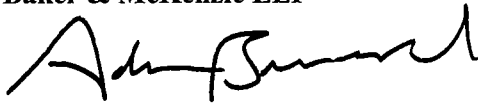
satisfying private criteria under the Investment Company Act, also generally satisfies all other criteria under Section 3(c)(1) and Section 3(c)(7), including providing disclosure, adequate notice and opportunity to redeem consistent with the spirit of the “grandfather clause” in Section 3(c)(7)(B) and (vi) the Section 3(c)(1) Plus Exemption is within the intended purposes of the Investment Company Act, we believe that the Commission should conclude that the 3(c)(1) Plus Exemption is permissible.

On the basis of these circumstances and the representations made above, we respectfully request that the Staff consider this matter and advise as to whether it would recommend an enforcement action against the 3(c)(1) Plus Fund, under the circumstances described herein.

Please do not hesitate to contact me at (312) 861-2827 or Seth Chertok at (312) 861-3710 if you have any questions or require any further information.

Sincerely,

Baker & McKenzie LLP



Addison D. Braendel

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