

# SHEARMAN & STERLING<sup>LLP</sup>

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April 18, 2017

## ***Via Electronic Mail***

Division of Investment Management  
United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
Attn: Douglas J. Scheidt, Esq.

## **Re: Closed-end master-feeder funds: share and tender offer registration fees**

Dear Mr. Scheidt:

We write with a matter of interest to closed-end funds that are organized as master-feeder funds registered under the Investment Company Act of 1940 (“1940 Act”) and with shares registered under the Securities Act of 1933 (“1933 Act”). In particular, we respectfully request that the staff (the “Staff”) of the Division of Investment Management of the Commission advise us that the Staff would not recommend enforcement action under Section 6(b) of the 1933 Act<sup>1</sup> or Section 13(e) of the Securities Exchange Act of 1934 (the “1934 Act”) and Rule 0-11 thereunder<sup>2</sup> against Ironwood Multi-Strategy Fund LLC (“Feeder Fund”) or Ironwood Institutional Multi-Strategy Fund LLC (“Master Fund,” and, together with Feeder Fund, the “Funds”), if, as described below, Feeder Fund does not pay registration fees on shares sold to the public or tender offer registration fees on shares it repurchases from the public.

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<sup>1</sup> Section 6(b) of the 1933 Act requires that applicants filing a registration statement under the 1933 Act must pay a fee based on the maximum aggregate price of the securities offering at a rate as published in the Federal Register and adjusted each fiscal year to meet certain statutory target fee collection amounts.

<sup>2</sup> Under Section 13(e)(1) of the 1934 Act, an issuer which has a class of equity securities registered under the 1934 Act, or which is a closed-end investment company registered under the 1940 Act, may be required to file a statement in connection with its purchase of any equity security issued by it. In such case, Section 13(e)(3) of the 1934 Act and Rule 0-11(b) thereunder requires that the issuer pay a filing fee based on the value of securities proposed to be purchased at a rate equal to the rate applicable under Section 6(b) of the 1933 Act.

## Background

Both Funds are closed-end registered investment companies with shares registered under the 1933 Act. Feeder Fund invests in Master Fund shares in reliance on Section 12(d)(1)(E) of the 1940 Act. Feeder Fund's sole investment assets are shares issued by Master Fund (with any related cash not to exceed 5% of Feeder Fund's assets).<sup>3</sup>

Feeder Fund shares are sold to the public. In addition to sales to Feeder Fund, Master Fund shares are likewise sold to the public. Feeder Fund is currently the largest investor in Master Fund.

*Share registration fees.* Master Fund currently pays 1933 Act registration fees on the sale of all of its shares. This is so whether those shares are sold to the public or to Feeder Fund. Feeder Fund likewise currently pays 1933 Act registration fees for all of its shares. For both Funds, these fees are paid pursuant to Section 6(b) of the 1933 Act and related Rule 457 and are paid in advance of actual share sales, so that the relevant Fund pays registration fees and then, in effect, maintains an internal record account against which fees are deducted as shares are sold. When subsequent share sales draw that record account to zero, assuming continued public share sales are desired, then a new registration statement and the payment of new registration fees is required.

Share sales by Master Fund to Feeder Fund are made directly and solely for the purpose of facilitating corresponding share sales by Feeder Fund to Feeder Fund's public shareholders (with each sale of Master Fund shares to Feeder Fund resulting in the directly corresponding sale of Feeder Fund shares of corresponding value to Feeder Fund's public shareholders). No Feeder Fund shares are sold that do not correspond to Master Fund shares in this manner. The Funds believe their practice to date of calculating registration fees against all share sales, including share sales made solely between the two Funds, results in "double-counting" of share registration fees.

*Tender offer fees.* The Funds also conduct registered tender offers when repurchasing their shares. Master Fund pays tender offer fees as to shares offered for repurchase from its public shareholders and as to repurchase of its shares held by Feeder Fund. Feeder Fund, in turn, pays tender offer fees as to all shares it offers to repurchase from its shareholders. For both Funds, these fees are paid pursuant to Section 13(e) and Rule 0-11 under the 1934 Act and are paid in advance when the tender is announced with the filing of a Schedule TO.

Share repurchases by Master Fund from Feeder Fund are solely for the purpose of facilitating corresponding share repurchases by Feeder Fund from its public shareholders (with each

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<sup>3</sup> Feeder Fund may exceed this 5% threshold on an "overnight" basis associated solely with the timing of its transactions with the Master Fund. For example, it typically receives subscriptions from Feeder Fund shareholders on a month-end and then processes its corresponding purchase of Master Fund shares the following business day.

repurchase of shares by Master Fund from Feeder Fund resulting in the directly corresponding repurchase of Feeder Fund shares of equal value from Feeder Fund's public shareholders). The Funds likewise believe their practice to date of calculating tender offer fees against all tenders, whether shares are repurchased at the level of Feeder Fund or Master Fund, results in "double-counting" of fees.

### **Proposed fee arrangement**

To alleviate the "double-counting" concerns discussed above, the Funds are proposing a fee arrangement whereby Feeder Fund will no longer pay registration fees for shares it sells to the public or tender offer registration fees for shares it redeems from the public. Master Fund will continue to pay registration fees for all shares it sells (including shares to Feeder Fund) and tender offer registration fees for all shares it redeems (including shares redeemed from Feeder Fund). As a result of this arrangement, the sale of Master Fund shares to Feeder Fund and the corresponding sale of Feeder Fund shares to the public will be subject to only one registration fee. Similarly, the redemption of Master Fund shares from Feeder Fund and the corresponding redemption of Feeder Fund shares from the public will be subject to only one tender offer registration fee.

### **Prior guidance**

Were these open-end funds, the question of how to treat the share registration fees would be well settled. No double-counting would result.

The first relevant Staff no-action letter was issued in 1995 to the American Council of Life Insurance (the "American Council Letter"). Although this letter addresses the question of double-counting of registration fees where a master-fund uses a unit investment trust ("UIT") "conduit," the incoming request letter discusses, and we believe the Staff implicitly confirms, the position that an open-end master fund need not count share sales to its dedicated feeder fund for purposes of counting the master fund's 1933 Act share registration fees. *See American Council of Life Insurance*, SEC No-Action Letter (pub. avail. June 20, 1995). This relief was granted on the basis that the UIT operates solely as a "conduit" for investment in the master fund and in recognition of avoiding unnecessary and duplicative shareholder expense.

A more recent Staff no-action letter was issued in 2012 to the GMO Trust and takes an analogous position with respect to open-end funds operating in a master-feeder structure, while acknowledging that a feeder fund may still be such a "conduit" when it holds up to 5% of its assets in cash rather than being invested solely in underlying master fund shares. *See GMO Trust*, SEC No-Action Letter (pub. avail. May 24, 2012). Similar to the American Council Letter, this relief was granted on the basis that the feeder fund operates solely as a "conduit" for investment in the master fund and in recognition of avoiding unnecessary and duplicative shareholder expense. We also note that, in both cases, the corresponding 1933 Act share registration fees would continue to be paid by the feeder fund (or UIT "conduit").

## Legal analysis

### *Share registration fees*

Rule 24f-2 under the 1940 Act applies only to open-end funds, with the result that the mechanics of share registration fee payments are somewhat different as between registered open-end funds and registered closed-end funds. But that is simply a difference in form.

The public policy rationale for the relief requested is the same. For substantially the same reasons that underpinned the open-end no-action letters, shareholders of a closed-end master-feeder structure likewise should be eligible for relief from unnecessary share registration fees in the context of a dedicated “conduit” feeder fund.

As to the proposed fee arrangement we describe above, we believe there are no additional legal or regulatory issues created by Master Fund paying the registration fees. That approach, which is viewed by the Funds as equitable and straightforward to administer, provides for payment of statutory fees for all shares sold to the public (with no diminution in total fees paid relative to the alternative model applied under Rule 24f-2). In addition, all shares sold to the public will continue to be sold under registration statements on file with the Commission.

### *Tender offer fees*

The same considerations that weigh against double-counting of share registration fees also weigh against double-counting of tender offer fees as between a closed-end master fund and its “conduit” feeder fund. An issuer self-tender is, after all, simply the inverse of an issuer’s share sale; in either case, the role of the feeder fund is as a mere conduit in the transaction.

The purpose of both types of registration fees (tender offer and share registration) also appears to be the same. Tender offer fees under Section 13(e) of the 1934 Act are, like share registration fees under Section 6(b) of the 1933 Act, “user” fees assessed by the Securities and Exchange Commission on investors and market participants. (See, House Report No. 107-52 (I), at 7). Further illustrating this similarity of purpose, cash tender offer registration fees were enacted in order to equalize fees as between cash tender offers (where no fees were imposed prior to 1983) and exchange offers and proxy solicitations (where securities are required to be registered under the 1933 Act and thus have always carried fees). (See House Report No. 98-106, at 5 (1983).

Finally, we note that the open-end funds guidance refers explicitly to both share purchases and redemptions. For example, the Staff’s GMO Trust letter says the following: “a company calculates and pays 1933 Act registration fees pursuant to Rule 24f-2 based on all of its sales and redemptions of securities during its previous fiscal year except for sales to and redemptions from its feeder funds”. That the commentary does not speak to tender offer fees is to be expected; tender offer fees are specific to closed-end funds. But it is clear that the GMO Trust letter recognizes that shares purchased by the feeder fund and redeemed from the feeder fund are part and parcel of the same economic arrangement.

## Conclusion

The no-action position requested here is appropriate to address the otherwise inconsistent treatment as between open-end and closed-end master-feeder funds. In the absence of guidance, Feeder Fund will be hesitant to credit these "internal" share transactions itself and can be expected to continue to calculate its share registration and tender offer fees on a duplicative basis.

Please contact the undersigned at (212) 848-4668 should you have any questions or concerns regarding this request.

Sincerely,



Nathan J. Greene

Copy to Mark Zaruba, Esq., SEC Division of Investment Management