

COMMENTS FROM NIERENBERG INVESTMENT
MANAGEMENT COMPANY ON PROPOSED EXEMPTION
FROM REGISTRATION FOR PRIVATE FUNDS PROSCRIBING
REDEMPTION FOR AT LEAST TWO YEARS

We are writing to express strong support for the proposed exemption from registration for investment advisers to private funds which do not permit investor redemptions for at least two years. The funds we manage always have required a five year commitment from our investors. This has been our consistent policy since we began business almost nine years ago. We never have accepted any investor for a shorter duration, with the only small exception being that we permit partial withdrawals solely for investor payment of taxes due on taxable gains earned by the funds. We require a five year commitment because it fits so well with our investment strategy: we generally invest in turnarounds of under-performing domestic micro-cap equities, often by acquiring large ownership blocks and instigating changes in governance, management, and strategy. As in private equity, such tactics require considerable time to bear fruit and to be valued properly by the capital markets. A one or two year investor commitment would be incompatible with what we do.

Our strategy drives business practices totally opposite from those of funds which attract short term-oriented “hot money” and which may create opportunities for abuses. Almost all of our investors are people we have known personally; all of the rest were introduced to us, and vouched for, by our existing investors. We do not hold ourselves out to the public. We do not market or promote ourselves. Most of our investors are qualified purchasers (as defined in 3(c)(7)), and the rest are at least accredited investors.

Our long term strategy makes our business a clean and simple operation. We are not active or short term traders. We pursue a long term buy and hold strategy. We rarely utilize margin. We do not buy derivatives. We don’t accept money from strangers, gatekeepers, or third parties. We don’t use soft dollar arrangements. We pay the lowest commissions we can negotiate. We have no disciplinary record. Since we invest for the long term on behalf of sophisticated investors we know personally, the retailing, speculative, and fraudulent abuses cited in your report are foreign to our experience.

We avoid conflicts of interest. This is prudent given that we know all of our investors personally, either as family, friends, or friends of friends. It is also relatively easy to avoid conflicts when one has, as we have, the preponderance of management personnel’s net worth, and virtually all of our management’s liquid net worth, invested in the partnerships we manage. If we were playing fast and loose, we’d be lying to ourselves and to those we care most about.

We appreciate that staff and the Commission have proposed an exemption from registration for private funds which require relatively lengthy investor commitments (although we do urge you to carve out a small exception for partial withdrawals for payment of taxes due on gains). Because we require such long term commitments, and

for the other above-mentioned reasons, we do not believe that requiring us to register would serve our interest, our investors', or the public interest. Instead, we fear that the costs of registering, and of preparing for and managing unscheduled examinations, presumably by relatively junior and inexperienced field examiners, could greatly outweigh any hypothetical benefits. We are a deliberately lean, three professional operation. Based on prior experience in other regulated environments, we worry that our productivity could be greatly diminished, if not overwhelmed, by the diversion of our time to maintain constant readiness for examination and to answer questions from examiners.

Please retain the proposed exemption for advisers to funds requiring long investor commitments. What we do is sufficiently similar to private equity, sufficiently different from short term trading, to warrant continued exemption from registration. We present little risk of fraud or other abuse; illuminating us would serve no purpose.

Thank you for your consideration of our views.

Sincerely yours,

David Nierenberg
Nierenberg Investment Management Company, Inc.

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