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January 18, 2012

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Re: Registration of Related Persons under the Investment Advisers Act of 1940
(the "Advisers Act") as amended by the Dodd-Frank Wall Street Reform and
Consumer Protection Act (the "Dodd-Frank Act")

Gentlemen:

This letter is submitted on behalf of the Subcommittee on Hedge Funds
(the "Subcommittee") of the Federal Regulation of Securities Committee (the
"Committee") of the Business Law Section of the American Bar Association. The
purpose of this letter is to request the Staff of the Division of Investment Management
(the "Division") to issue interpretive guidance, in question and answer format or
otherwise, with respect to the registration of related entities of a registered investment
adviser (a "registered adviser") in view of the new rules and rule amendments adopted
by the Securities and Exchange Commission (the "Commission") pursuant to the
Dodd-Frank Act (Rel. No. IA-3221; Rel No. IA-3222 (the "New Rules"). We believe
that such interpretive guidance will facilitate timely and effective compliance with the
New Rules.

Background

Advisers to "private funds" (as defined by the Dodd-Frank Act) often
are part of a group of related advisers.¹ The related advisers are generally created
subject to a unified structure for regulatory supervision and compliance with respect to

¹ The term "private funds," as used in this letter, refers to private funds as defined in
section 202(a)(29) of the Advisers Act.

the investment advisory activities of the entities within the group. The structure of the group has generally been created in order to address various tax or liability issues, or to permit different portfolio managers to provide advice to different funds based on differing investment objectives or strategies. In many cases, a special purpose vehicle (“SPV”) acts as a fund’s general partner, managing member or offshore investment adviser.

Section 203(a) of the Advisers Act generally provides that it is unlawful for an investment adviser to engage in business without registering under that Act, unless an exemption is available. Section 202(a)(11) of the Advisers Act defines the term “investment adviser” broadly to include any person who for compensation provides advice about securities as part of a regular business. This definition is sufficiently broad to include not only a corporation, partnership or sole proprietorship doing business as an investment adviser, but also many of the adviser’s employees. Nevertheless, the Commission and its staff have, as a matter of administrative practice, not required natural persons associated with a registered adviser to themselves register separately solely as a result of their activities as associated persons. The Commission has treated the adviser’s registration with the Commission as effectively covering these associated persons.

The staff took a similar approach with respect to certain special purpose vehicles (“SPVs”) in a December 8, 2005 letter addressed to the American Bar Association’s Subcommittee on Private Investment Entities (“2005 Staff Letter”).² In that letter, the staff stated that it would not recommend enforcement action to the Commission under section 203(a) or section 208(d) of the Advisers Act against a registered adviser and an SPV if the SPV does not separately register as an investment adviser, subject to the following representations and undertakings (collectively, the “2005 Conditions”):

- i. the investment adviser to a private fund establishes the SPV to act as the private fund’s general partner or managing member;
- ii. the SPV’s formation documents designate the investment adviser to manage the private fund’s assets;

² See *American Bar Association Subcommittee on Private Investment Entities*, SEC Staff Letter (Dec. 8, 2005) at Question and Answer G.1. References to the 2005 Staff Letter in this response refer only to the position of the staff expressed in Question and Answer G.1. <http://sec.gov/divisions/investment/noaction/aba120805.htm>

- iii. all of the investment advisory activities of the SPV are subject to the Advisers Act and the rules thereunder, and the SPV is subject to examination by the Commission;³ and
- iv. the registered adviser subjects the SPV, its employees and persons acting on its behalf to the registered adviser's supervision and control⁴ and, therefore, the SPV, all of its employees and the persons acting on its behalf are "persons associated with" the registered adviser (as that term is defined in section 202(a)(17) of the Advisers Act).

Subject to the 2005 Conditions, the SPV would look to and essentially rely upon the registered adviser's registration with the Commission in not submitting a separate Form ADV.⁵ In the years since the issuance of the 2005 Staff Letter, many SPVs have relied upon the relief granted thereunder.

We also are concerned that the 2005 Staff Letter may have been viewed as applying only in the context of an SPV acting as a private fund's general partner or managing member. For a variety of reasons, advisers to private funds may be part of a group of related advisers. For example, separate related advisers may be formed in different jurisdictions to provide certain support or research functions for persons located in such jurisdictions. Tax considerations may mandate advisory entities that are separate from the registered adviser be created in various jurisdictions. Additionally, related advisers may be formed to advise different private funds based on different investment objectives and strategies or for liability or income sharing purposes. We believe that under the circumstances described herein, advisers that are related to a registered adviser may satisfy their obligation to register with the Commission through the registration of the registered adviser in lieu of filing separate registrations.

Issue 1: Continuing Applicability of the 2005 Staff Letter

The Dodd-Frank Act repealed the exemption previously provided by section 203(b)(3) of the Advisers Act for private advisers having fewer than 15 clients

³ It is our view that such an SPV is an investment adviser registered with the Commission and, as such, is required to comply with all of the provisions of the Advisers Act and the rules thereunder that apply to registered investment advisers.

⁴ The staff noted that, for example, all of the employees of the SPV and persons acting on its behalf would be subject to the registered adviser's code of ethics (*see* Advisers Act rule 204A-1) and compliance procedures and practices (*see* Advisers Act rule 206(4)-7).

⁵ The staff explained that, for example, any disciplinary history that the SPV would have been required to disclose on Form ADV, had it registered as an investment adviser, would be disclosed on the registered adviser's Form ADV.

who do not hold themselves out to the public as investment advisers. Generally speaking, the Dodd-Frank Act requires investment advisers with assets under management of more than \$100 million to register with the Commission unless an exemption is available.⁶ In view of this repeal, we are concerned that there may be some question as to whether the relief set forth in the 2005 Staff Letter continues to apply. We believe that requiring separate Form ADV filings on behalf of such SPVs would impose unnecessary regulatory burdens and costs on these advisers, as well as create confusion among investors (*e.g.*, through the receipt of multiple Forms ADV Part 2), with no commensurate investor benefit. We request the Staff's concurrence that the relief set forth in the 2005 Staff Letter in Question and Answer G.1 continues to apply.

Issue 2: Multiple Special Purpose Vehicles

The 2005 Staff Letter Question and Answer G.1 specifically responded to the issue of a single SPV formed to act as a private fund's general partner or managing member. Many investment managers of private funds have sponsored multiple funds, and frequently multiple SPVs (each for a separate fund). We inquire as to whether the position in the 2005 Staff Letter was intended to be limited to a registered adviser with a single SPV. We believe the relief provided by the Staff in the 2005 Staff Letter in Question and Answer G.1 is equally applicable to multiple SPVs, and request the Staff's concurrence.

Issue 3: Special Purpose Vehicles with Independent Directors

A registered adviser to a private fund may, for a variety of reasons, establish SPVs that have directors who are independent of the registered adviser or a related SPV. Independent directors frequently are engaged to represent the interests of investors in a private fund or to permit the fund to satisfy certain legal obligations, such as engaging in certain transactions or practices that may otherwise be restricted under applicable law. We request the Staff's concurrence that the presence of directors who are not "persons associated with" the registered adviser does not require the SPV to register separately.

Issue 4: Multiple Related Entities

As noted above, advisers to private funds often are part of a group of related advisers, at least one of which is or will be registered with the Commission. Although they are organized as separate legal entities, the registered adviser and its related

⁶ The Dodd-Frank Act amended section 203A of the Advisers Act to provide that an investment adviser with between \$25 million and \$100 million in assets under management will be required to register with the state in which it maintains its principal office or place of business unless it is not subject to examination by the securities authority of the state, in which case such investment adviser is required to register with the SEC.

advisers are in a control relationship (whether controlled by, or under common control with, the registered adviser) and conduct a single advisory business subject to a unified compliance program. We believe that permitting these related advisers to satisfy their obligation to register with the Commission through the registration of a single adviser would be consistent with or in some cases a logical extension of the Commission's and staff's administrative practice pursuant to which natural persons associated with registered advisers and certain SPVs have not been required to register separately. Moreover, permitting a single registration (and thus a single Form ADV filing) to cover the entire group of related advisers—rather than requiring each entity to register separately—would more accurately reflect the full nature and scope of the single advisory business conducted by the group and would be more informative for advisory clients and private fund investors as well as the Commission.

We believe that these advisers, although organized as separate legal entities, conduct a single advisory business because, among other things, they: (i) are subject to a unified compliance program; (ii) advise only private funds and certain separate accounts for qualified clients as defined in Advisers Act rule 205-3, as described in more detail below; (iii) use the same or similar names; and/or (iv) hold themselves out to current and prospective private fund investors and advisory clients as conducting a single advisory business because they, for example, share personnel and resources. Since these related advisers conduct a single advisory business, we believe only one of them should be required to file (or amend) a single Form ADV (the “filing adviser”) on behalf of itself and each other adviser that is controlled by or under common control with the filing adviser that is registering through a single registration with the filing adviser (each a “relying” adviser), where the filing adviser and the relying adviser conduct a single advisory business. It is our view that each relying adviser is an investment adviser registered with the Commission and, as such, required to comply with all of the provisions of the Advisers Act and the rules thereunder that apply to registered advisers.

We request the Staff's concurrence that, under the circumstances set forth herein, it is sufficient for a filing adviser to file (and amend) a single Form ADV that will effectuate and maintain the registration of the relying advisers that are identified in the Form ADV,⁷ where: the filing adviser and each relying adviser advise only private funds and separate accounts for qualified clients that are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are substantially similar, or otherwise related, to those of one or more of the private funds; each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are “persons associated with” the filing adviser (as

⁷ The filing adviser would be required to identify such relying adviser in its Form ADV (Miscellaneous Section 1 Schedule D). Certain related advisers that could otherwise be covered by the Form ADV may choose to file a separate Form ADV.

that term is defined in section 202(a)(17) of the Advisers Act); the advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the Commission; the filing adviser and each relying adviser would operate under a single code of ethics adopted in accordance with Advisers Act rule 204A-1, and a single set of written policies and procedures adopted and implemented in accordance with Advisers Act rule 206(4)-(7), administered by a single chief compliance officer in accordance with that rule.⁸

We would be pleased to discuss with the Commission or the Staff any aspect of this letter. Questions may be directed to Paul N. Roth at 212-756-2450.

Respectfully submitted,

/s/ Paul N. Roth

Paul N. Roth, Chair
Subcommittee on Hedge Funds

cc: Eileen Rominger, Director, Division of Investment Management
Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee

Drafting Committee:
Marc Elovitz
Stuart Kaswell
Michael Neus

⁸ A single set of written policies and procedures may take into account, for example, that a relying adviser operating in a different jurisdiction may have obligations that differ from the filing adviser or another relying adviser.