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April 3, 2006

Nancy M. Morris
Federal Advisory Committee Management Officer
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. 265-23

Dear Ms. Morris:

We are pleased to have the opportunity to comment on the Exposure Draft of the Final Report of the Advisory Committee on Smaller Public Companies contained in SEC Release No. 33-8666 (the "Proposing Release"). While we commend the Advisory Committee's thoroughness and willingness to address a broad array of issues, we believe the Securities and Exchange Commission should take stronger action than is recommended by the Advisory Committee with respect to one issue: the application of the Proposing Release Recommendation IV.P.5, concerning private offering exemptions and solicitation activity permitted by such exemptions, as it applies to private funds operating under Investment Company Act of 1940 Section 3(c)(7) ("Section 3(c)(7) Funds").

The Advisory Committee's recommendation to permit the use of a private offering exemption that focuses on purchases and does not consider offers is laudable. The Proposing Release notes that the application of the ban on general solicitations and general advertising in private offerings is complex, requiring highly subjective and difficult determinations but posing "draconian risks" for non-compliance. As the Proposing Release further notes, this results in a disproportionate amount of time and effort being focused on persons who may never become purchasers, rather than on purchasers. In particular, the Proposing Release highlights the inappropriateness of the current approach of the private offering exemption by stating, "In all the private offerings since the beginning of regulatory time, no offeree has ever lost any money unless he or she became a purchaser." Accordingly, the Advisory Committee recommends the adoption of a new private offering exemption with heightened requirements for eligible purchasers, but no limitation on solicitations other than restricting mass media presentations to information similar to that permitted under Securities Act of 1933 Rule 135c. The Advisory Committee also recommends that the general solicitation and general advertising prohibitions under Regulation D be narrowed to exclude "test the waters" information permitted under Securities Act of 1933 Rule 254.

We believe that the Advisory Committee's perspective in this regard is generally appropriate, but that the general solicitation and general advertising prohibitions under Regulation D should not apply to Section 3(c)(7) Funds' offerings. Securities issued by these funds may be purchased only by "qualified purchasers," as such term is defined in Investment Company Act of 1940 Section 2(a)(51); "knowledgeable employees," as such term is defined in Investment Company Act of 1940 Rule 3c-5; and specified types of purchasers associated with the foregoing. In addition, securities of these funds generally may be owned only by such persons, thus imposing severe limitations on subsequent sales of such securities. Therefore, Section 3(c)(7) Funds' offerings, as well as subsequent purchases, are already subject to stringent standards well beyond those imposed by private offering exemptions. Further, Section 3(c)(7) Funds must abide by these stringent standards in order to remain exempt from the requirement to register as an investment company under the Investment Company Act of 1940 or, sometimes, as a commodity pool under the Commodity Exchange Act. Thus, Section 3(c)(7) Funds have incentives in addition to the potential penalties under the Securities Act of 1933 for complying with the additional offering restriction imposed on such funds. Moreover, in Recommendation VII.F of the Securities and Exchange Commission's Division of Investment Management's staff's report entitled "Implications of the Growth of Hedge Funds"

(2003) (the "Hedge Fund Report"), the staff acknowledged the higher requirements for eligibility to purchase Section 3(c)(7) Funds and questioned whether the restrictions on general solicitation and general advertising in private offerings of Section 3(c)(7) Funds should be retained, noting "little policy justification" for prohibiting general solicitations or general advertisings in this circumstance. The Hedge Fund Report also states that the ability of such "funds . . . to engage in a general solicitation could facilitate capital formation without raising significant investor protection concerns." By the foregoing, the staff of the Division of Investment Management appears to be strongly suggesting that the application of the prohibition on general solicitation and general advertising in private offerings of Section 3(c)(7) Funds is ripe for change.

There also are important public policy reasons to remove the general solicitation and general advertising restriction on private offerings by Section 3(c)(7) Funds, especially considering the absence of significant investor protection concerns. First, the staff of the Division of Investment Management stated in the Hedge Fund Report that the absolute return strategies employed by hedge funds, including Section 3(c)(7) Funds, can benefit investors "under a wider variety of market conditions" and assist investors in "diversifying their overall portfolios." However, hedge fund managers, the persons in the best position to explain these potential benefits and how particular funds might or might not offer these benefits, often believe they cannot discuss these issues at open meetings or with the public as a result of the prohibition on general solicitation and general advertising when making private offerings. In this regard, the staff of the Division of Investment Management in the Hedge Fund Report and participants at the Securities and Exchange Commission's Hedge Fund Roundtable on May 14 and 15, 2003 noted that actual and perceived limitations on private offerings discouraged various forms of public statements by hedge fund managers. Therefore, the prohibition on general solicitations is unnecessarily depriving eligible investors of information about the potential benefits of various hedge fund strategies deployed in Section 3(c)(7) Funds. While purchasers may expect to receive such information from their funds, many potential eligible purchasers are being denied such information. Second, the prohibition on general solicitations and general advertising discourages many managers from submitting their returns or investment terms to public databases or otherwise publishing their returns. While institutional investors can elicit information from various managers of Section 3(c)(7) Funds, the unnecessary prohibition on general solicitations and general advertising complicates the acquisition of this information by investors and unnecessarily thwarts the ability of certain investors to make broad comparisons of the performance and terms of various Section 3(c)(7) Funds. Third, the prohibition on general solicitations unnecessarily results in misinformation concerning Section 3(c)(7) Funds being published by the public media because managers of Section 3(c)(7) Funds are reluctant to correct inaccurate information as a result of the managers' believing discussions with journalists may be misconstrued as a general solicitation or general advertising. This reluctance also contributes to the perceived lack of transparency in the hedge fund industry, which was noted by participants at the Securities and Exchange Commission's Hedge Fund Roundtable. Fourth, the prohibition on general solicitations inappropriately skews the publicly available information about Section 3(c)(7) Funds towards those funds whose managers are most aggressive in their interpretations of regulatory matters, unnecessarily penalizing those managers who take a conservative approach to regulatory matters. The foregoing discussion highlights that the prohibition on general solicitation and general advertising causes unnecessary inefficiencies and generally unnecessarily deprives investors and potential investors of useful information, and that Section 3(c)(7) Funds and their managers need to be able to promulgate information broadly and have free discussions in the public media in order to address these issues.

For the foregoing reasons, we believe that the Securities and Exchange Commission should remove the prohibition on general solicitation and general advertising applicable to private offerings by Section 3(c)(7) Funds under Securities Act of 1933 Regulation D. In addition, while the limited steps suggested by the Advisory Committee to address the problems caused by the blanket prohibition on general solicitation and general advertising in connection with private offerings under Regulation D deserve serious consideration and praise, we believe these steps are not sufficient in the context of private offerings by Section 3(c)(7) Funds for the reasons stated above.

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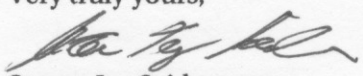
Your consideration of these comments is appreciated. Should you have any questions concerning these comments, please feel free to call the undersigned at 212-478-0271.

Very truly yours,



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