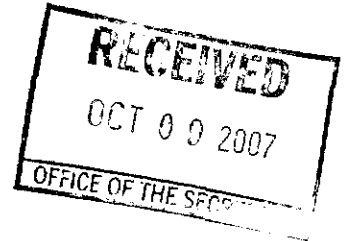




October 8, 2007



**VIA MAIL**

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File Number S7-18-07  
Revisions of Limited Offering Exemptions in Regulation D

Dear Ms. Morris:

The Alternative Investments Compliance Association<sup>1</sup> ("AICA") is pleased to submit this letter in response to the solicitation by the Securities and Exchange Commission (the "Commission") of comments on proposed Rule 507 under Regulation D of the Securities Act of 1933, as amended (the "Securities Act") regarding the proposed exemption from the registration provisions of Section 5 of the Securities Act for offers and sales of securities to "large accredited investors", as contained in Release (the "Proposing Release").

In brief, we respectfully request that the Commission revise its proposal to permit hedge funds, private equity funds, venture capital funds, other pooled investment funds, and funds of any such funds (together "Private Investment Funds") that rely on the Rule 506 safe harbor as an exemption from registration under Section 4(2) of the Securities Act to benefit from the limited offering privileges under Proposed Rule 507. Notwithstanding the Commission's comments contained in the Proposing Release, we believe that such change should be made in an effort to bring the rules relating to private

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<sup>1</sup> AICA is an association of compliance professionals focused on addressing legislative, compliance and regulatory developments and is dedicated to open communication among industry participants, as well as fostering the development and sharing of compliance best practices. AICA currently has 38 registered members and consists of chief compliance officers, mid-level compliance professionals, general counsels, hedge fund and fund of hedge fund managers, private equity firm managers, industry service providers and other senior executives within the alternative investments industries.

investment fund offerings in line with the realities of the modern market practice and facilitate capital formation without comprising investor protection<sup>2</sup>:

*Proposed Rule 507 and Its Implications on Private Investment Funds*

The new Proposed Rule 507 described in the Proposing Release serves as an exemption from the registration provisions under Section 5 of the Securities Act under its general exemptive authority in Section 28 of the Securities Act, rather than Section 4(2) of the Securities Act. As stated in the Proposing Release this has certain consequences, the most important of which is that Private Investment Funds that rely on the exclusion from the definition of "investment company" provided by Section 3(c)(1) and Section 3(c)(7) (the "Company Act Exemptions") of the Investment Company Act of 1940, as amended (the "Company Act") would NOT be able to take advantage of the limited advertising proposed under Rule 507. Such vehicles are specifically required to sell their securities in transactions not involving a public offering and rely on the private placement exemption provided in Section 4(2) to meet this requirement and (in particular), rely upon Rule 506 of Regulation D. As presently drafted, such Private Investment Funds would be precluded from engaging in limited advertisement of their offerings to "large accredited investors"<sup>3</sup> in reliance on Proposed Rule 507.

We recommend that the Rule 507 exemption be available to Private Investment Funds that rely on the Rule 506 registration safe harbor under Section 4(2) of the Securities Act. There are several reasons for our position. *First*, in the Proposing Release the Commission states that it may exempt certain offers and sales that involve limited advertising from the registration requirement of Section 5 of the Securities Act without compromising investor protection "...due to the general increased sophistication and financial literacy of investors in today's markets, coupled with the advantages of modern communication technologies." It should be noted that similar to the accreditation standards in Rule 507, most investors in Private Investment Funds that rely on the Company Act Exemptions must also satisfy certain additional financial thresholds and in fact, provide written representations and warranties to that fact (in what is most commonly referred to as a subscription agreement). In fact, many Private Investment Funds rely upon the exemption provided in Section 3(c)(7) of the Company Act which requires most investors (other than knowledgeable employees) to meet the eligibility

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<sup>2</sup> While AICA recognizes other aspects of the Proposing Release apply to hedge funds and fund of hedge funds we are intentionally limiting this comment letter to address the Commission's proposed use of its exemptive authority under Section 28 of the Securities Act and the implications of not proposing Rule 507 under Section 4(2) of the Securities Act.

<sup>3</sup> Proposed Rule 501(a) defines a new category of investors called "large accredited investors," which would apply to Rule 507. The proposed definition is based on the "accredited investor" definition, but with higher and somewhat different dollar-amount thresholds (in that they relate to "investments" as opposed to "assets" or "net worth"). Entities or institutions that currently have more than \$5 million in assets under Rule 501(a) would be required to have more than \$10 million in investments to qualify as large accredited investors. Individuals, or "natural persons" as the proposed rule refers to them, would qualify as large accredited investors if they own more than \$2.5 million in investments or have had individual annual income of more than \$400,000 (or \$600,000 with one's spouse) over the last two years and expect to maintain the same level of income in the current year.

requirements of a “qualified purchaser”<sup>4</sup>. Based on Commission guidance and judicial decisions, this is generally accepted to mean that such Private Investment Fund managers may offer their securities to those persons who have provided the manager with sufficient information to evaluate such persons’ financial sophistication and risk tolerance without triggering registration requirements. As such, we are of the view that Private Investment Fund offerings that are made to investors who meet certain financial criteria offers a comparable benchmark for gauging an investor’s financial sophistication and literacy to a participate in an offering under Rule 507.

*Second*, the Commission believes the proposal attempts to ease the restrictions on limited offerings of securities in a manner that is “cognizant of the potential harm of offerings by unscrupulous issuers or promoters who might take advantage of more open solicitation and advertising to lure unsophisticated investors to make investments in exempt offerings that do not provide all the benefits of Securities Act registration”. As noted above, Private Investment Funds are precluded from making general advertisements or solicitations. Applying the proposed Rule 507 guidelines to Private Investment Funds that rely on the private placement exemptions under Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder furthers the Commission’s view under the Proposing Release that limited advertising can be done for certain private and limited offerings without compromising investor protection.

*Third*, if the Commission were not to allow Private Investment Funds to benefit from Rule 507 limited offerings, this would result in disparate treatment between Private Investment Funds and other private offerings. The Proposing Release fails to demonstrate that by excluding Private Investment Funds that rely on Rule 506 that investors are afforded greater protections. Further, we do not believe that offerings by Private Investment Funds are empirically more risky than offerings made by other private issuers. Unlike an offering by a single private issuer, “hedge funds [and funds of hedge funds] offer investors an important risk management tool by providing valuable portfolio diversification”.<sup>5</sup> Similarly, private equity, and specially venture capital funds (and certainly funds of such funds) would commonly, if not always, offer such diversification.

In conclusion, we support the Commission’s desire to expand exemptions for private and limited offerings, however, we believe the Proposed Rule’s exclusion of Private Investment Funds serves no meaningful regulatory purpose and would unnecessarily hinder domestic capital formation by such Funds.<sup>6</sup> For the foregoing reasons, we propose that the Commission allow Private Investment Funds that rely Rule 506 under Section 4(2) of the Securities Act be permitted to engage in a limited

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<sup>4</sup> In fact for an individual investor who is such a “qualified purchaser” the “investments” threshold is \$5,000,000 which is considerably higher than the \$2,500,000 threshold of Proposed Rule 507. See Section 2(a)(51)(A) of the Company Act.

<sup>5</sup> *Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission*, p. 5 (Sept., 2003) (available at <http://www.sec.gov/spotlight/hedgefunds.htm>.)

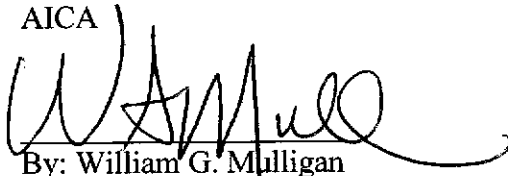
<sup>6</sup> The importance of such activity to our domestic economy is immense. According to one source relying on *The Private Equity Analyst*, a Dow Jones publication, investors committed \$172 billion to U.S.-based private equity limited partnerships (not including hedge funds) in the first ten months of 2006. See Schell, *Private Equity Funds*, Law Journal Press, 2007 Edition at p. 1-3.

advertising of their offerings pursuant to the guidelines of a proposed Rule 507 exempt transaction. We strongly believe that in applying such exemption to Private Investment Fund offerings the Commission can strike the appropriate balance between investor protection and the capital formation needs of all private issuers.

We appreciate the opportunity to comment on the Proposing Release and would respectfully urge the Commission to take these comments into account. We would be happy to discuss any questions the Commission or its staff may have with respect to our comments. Any such questions may be directed to William G. Mulligan at (212) 515-2800.

Very truly yours,

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AICA

A handwritten signature in black ink, appearing to read 'W. G. Mulligan', written over a horizontal line.

By: William G. Mulligan  
Chair and Member of the Board of Managers

VIA MAIL