

July 7, 2008

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Douglas J. Scheidt, Esq.  
Associate Director and Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Mr. Scheidt:

We represent several clients who have asked for advice concerning the applicability of Rule 206(4)-3 (the "Cash Solicitation Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act") to payments made to persons who refer investors solely for the purpose of investing in privately offered investment funds that are managed by an investment adviser registered under the Advisers Act. Such private investment funds rely upon a subsection under Section 3(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), such as Section 3(c)(1) or Section 3(c)(7), for their exclusion from the definition of an "investment company" ("Private Investment Funds"). As you know, there have recently been statements made by members of the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission")<sup>1</sup> indicating that the Cash Solicitation Rule under the Advisers Act does not apply to the foregoing situation.

<sup>1</sup> See e.g., Compliance Reporter, *Plaze Says Letter On Cash Solicitations Was Misinterpreted* (July 14, 2006) and comments made by SEC Staff members at the CCO Outreach Program on June 29, 2006.

Douglas J. Scheidt, Esq.  
July 7, 2008  
Page 2

Accordingly, and as per our discussion with you<sup>2</sup> and with Gene A. Gohlke, Associate Director, Office of Compliance Inspections and Examinations,<sup>3</sup> we seek written confirmation from the Staff of the Division of Investment Management of the Commission that it is the Staff's interpretation of the Cash Solicitation Rule that the Cash Solicitation Rule does not apply to a situation where, and thus the Staff would not recommend enforcement action to the Commission if, payment is made to a person who refers investors solely for the purpose of investing in a Private Investment Fund and the registered investment adviser to such Private Investment Fund does not comply with the Cash Solicitation Rule in respect of such solicitation.<sup>4</sup>

*Analysis*

The Cash Solicitation Rule prohibits a registered investment adviser from paying a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless, among other things, the solicitation arrangement is pursuant to a written agreement and certain disclosures regarding the payment and the solicitor's relationship with the registered investment adviser are made and acknowledged in writing by the prospective investor. The Staff has previously addressed the Cash Solicitation Rule in various SEC no-action letters such as Dana Investment Advisers, Inc. SEC No-Action Letter (October 12, 1994) ("Dana"), Dechert Price & Rhodes SEC No-Action Letter (December 4, 1990) ("Dechert"), and Stein Roe & Farnham Inc. SEC No-Action Letter (June 29, 1990) ("Stein Roe"). These letters have, in certain instances, been inconsistently interpreted among market participants as to the applicability of the Cash Solicitation Rule to payments made to persons who refer investors solely for the purpose of investing in Private Investment Funds. To the extent that the Staff provides the relief requested above, we also request that the Staff confirm that Dana, Dechert and Stein Roe and any other

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<sup>2</sup> Telephone conversation between Douglas J. Scheidt and Michael R. Butowsky (July 21, 2006).

<sup>3</sup> Telephone conversation between Gene A. Gohlke and Michael R. Butowsky (June 30, 2006).

<sup>4</sup> Please note that we are not seeking guidance as to: (i) whether the Cash Solicitation Rule would apply to payments made to solicitors who solicit separate account clients on behalf of registered investment advisers; (ii) whether persons who refer investors solely for the purpose of investing in Private Investment Funds need to be registered as broker-dealers or as registered representatives of broker-dealers; or (iii) the nature or detail of disclosure, if any, that may be necessary in the context of arrangements involving the solicitation of investors for Private Investment Funds.

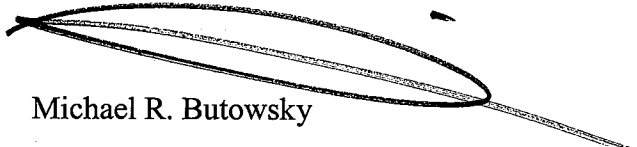
Douglas J. Scheidt, Esq.  
July 7, 2008  
Page 3

Staff no-action letters addressing this topic are superseded to the extent that they are inconsistent or conflict with the Staff's interpretative guidance given in response to this letter.

\* \* \*

Please feel free to contact the undersigned (212-506-2512 or [mbutowsky@mayerbrown.com](mailto:mbutowsky@mayerbrown.com)) if you have any questions regarding any aspects of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael R. Butowsky", written over a horizontal line. The signature is stylized and somewhat cursive.

Michael R. Butowsky