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September 14, 2004

By Electronic Delivery

Jonathan G. Katz
Secretary, Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: File No. S7-30-04

Dear Mr. Katz:

We are writing to comment on proposed Rule 203(b)(3)-2 included as part of Investment Advisers Act Release No. 2266 (the "Release"), which would require investment advisers to count each owner of interests in a "private fund" as a client for purposes the private adviser exemption of section 203(b)(3) of the Investment Advisers Act of 1940 (the "Act"). Under the proposed Rule, each investor in a "private fund" would generally count as a separate client for purposes of determining whether an investment adviser has more than fourteen clients and is required to register. We believe that the proposed Rule, if adopted, should include a provision excluding from the definition of "private fund" a multi-generational family limited partnership or similar vehicle. For reasons discussed below, we believe that it is neither in the public interest nor necessary or appropriate for the protection of investors to count each investor in a multi-generational family partnership as a client of the investment adviser under the Act.

Current Law and Multi-Generational Family Partnerships

Families often organize limited partnerships or other similar vehicles (so-called family limited partnerships or "FLPs") to manage their assets.[1] Some of these FLPS have been in existence for a substantial period of time. Often, these

[1] A family may use a limited partnership, a limited liability company, or other entity to achieve its objectives. In this letter, a family limited partnership or FLP will be used to refer to any of these vehicles.

FLPs encompass multiple generations of a family and may include parents, their children and grandchildren and spouses of the foregoing, as well as charitable foundations and other charitable entities established by family members. In addition, a single multi-generational family group may form several FLPs, with each FLP intended to address a different investment objective, e.g., one for real estate, another for public market equities, etc.

Rule 203(b)(3)-1(a)(2)(i) currently provides that the following constitute a single client:

> (2) (i) A corporation, general partnership, limited partnership, limited liability company, trust, … or other legal organization (any of which are referred to as a "legal organization") that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner") ….

Thus, under existing law, each FLP or similar vehicle is counted as a single client of the general partner of or investment adviser to the FLP.

Proposed Rule

The proposed Rule would require an investment adviser to count "the shareholders, limited partners, members, other securityholders or beneficiaries (any of which are referred to hereinafter as an "owner") of a private fund as clients."[2] Under the proposed Rule, a private fund is a company:

> (i) That would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act (15 U.S.C. 80A-3(c)(1) or (7));
>
> (ii) That permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests; and
>
> (iii) Interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser.

[2] Proposed Rule 203(b)(3)-2(a)

It is not clear whether an FLP qualifies as a private fund under the proposed Rule.[3] If the proposed Rule applied to an FLP, pursuant to Rule 203(b)(3)-1(a), each family member of majority age, his/her spouse, and their minor children of an FLP would count as one client. It is not uncommon for the number of "clients" in an FLP in its second or third generation to exceed fourteen, in which case the general partner of the FLP would be required to register.

Exempting FLPs from the definition of "private fund" is consistent with the policy underlying the registration requirements applicable to investment advisers and the long-held view that "there is no federal interest in regulating advisers with only a small number of clients, many of whom are likely to be friends and family members."[4] Membership in an FLP is typically limited to members of a family group, trusts for their benefit, charitable entities, the investment adviser advising the FLP and knowledgeable employees involved in the investment activities of the FLP. An investment adviser to an FLP, thus, in reality has one client – the family group.

It is noteworthy that, unlike the private funds that are the focus of the Release, FLPs are typically formed by the family group being advised, and not by the investment adviser. Indeed, investment advisers to FLPs, unlike those to other funds, do not solicit investors; instead, they are typically selected by the FLP itself. Accordingly, an FLP does not present an investment adviser with the opportunity for the "retailization" that the proposed Rule seeks to limit. When an investment adviser advises an FLP, the adviser is advising one client; the "packaging" of investors in the FLP is effected by the family, not the adviser.[5] Moreover, the family typically retains control of the FLP such that it has the right to terminate the investment advisory relationship, while keeping the FLPs in existence with its investments intact. Finally, given the control and oversight maintained by the family group in an FLP, investors in an FLP do not require the protections and safeguards that the proposed Rule is intended to offer.

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[3] It is possible that an FLP would not be considered a "private fund" because it may not satisfy the condition that the "interests in [the fund] are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser." It would be difficult, however, for an FLP to rely on this exception as it appears to depend on the rationale of each family member making his decision to invest or maintain his assets in the FLP.

[4] See the Release, text accompanying notes 17 and 115.

[5] This is true whether the advisor is admitted to the FLP as the general partner or member-manager. Often, the investment professionals are permitted or required to own interests in the FLP. This is often done to ensure an alignment of interests between the family group and the investment professionals. In these instances, it is the adviser, not the investors, who are redeemed from the FLP when its services are no longer desired by the investors in the FLP.

We would urge the Commission, if it adopts the proposed Rule, to exclude from the definition of "private fund" any "Multi-Generational Family Fund." For this purpose, a "Multi-Generational Family Fund" would be defined as "any company the owners of which are limited to individuals who are descendants of the same person, the spouses of such individuals, trusts for benefit of one or more of the foregoing, private foundations and other charitable entities established by the foregoing, an individual investment adviser, and knowledgeable employees of an entity that is an investment adviser to the company."

Thank you for considering our comments. If you have any questions, please do not hesitate to call the undersigned at (212) 735-3654.

Very truly yours,

Deborah Tuchman