

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299
Telephone 212.969.3000
Fax 212.969.2900

BOCA RATON
BOSTON
LONDON
LOS ANGELES
NEW ORLEANS
NEWARK
PARIS
SÃO PAULO
WASHINGTON

By Electronic Mail

October 8, 2007

Nancy M. Morris
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-18-07
Release Nos. 33-8828; IC-27922 (the "Proposing Release")

Ladies and Gentlemen:

We submit this letter in response to the request by the Securities and Exchange Commission (the "Commission") for comments on the proposals in the Proposing Release. The proposals relate to revisions to Regulation D under the Securities Act of 1933 (the "'33 Act") intended to provide additional flexibility for issuers and to clarify and improve the application of the rules in that Regulation.

We commend the Commission for issuing these proposals and our comments are narrowly focused on only one issue—the anomalous differences between (i) the current and proposed definitions of "accredited investor" ("AI") used in Rule 501(a) of Regulation D and (ii) the definition of "qualified purchaser" ("QP"), as defined in Section 2(a)(51) of the Investment Company Act of 1940 (the "'40 Act") and the Commission's rules thereunder, for purposes of the exclusion in Section 3(c)(7) of the '40 Act from the definition of "investment company" for investment funds offered privately to QPs.

We are an international law firm with offices in 10 cities around the world, including New York, Los Angeles, Boston, Washington, D.C., London, Paris and Sao Paulo. We represent numerous sponsors, investment managers and placement agents for, and investors in, private equity and other private investment funds in the United States and overseas. We also represent numerous private investment funds. Our clients rely on the exclusion from the definition of investment company in Section 3(c)(7) of the '40 Act. For offerings in the United States, to satisfy the condition of Section 3(c)(7) that the issuer "is not making and does not at the time propose to make a public offering of such securities", our clients rely on Regulation D, if the offering is made to U.S. persons. In these circumstances, the practice is that such offerings must be made to AIs only.

PROSKAUER ROSE LLP

October 8, 2007

Page 2

In our practice described in the preceding paragraph, we regularly experience the anomaly of the differences between the definitions of AI and QP. These differences are difficult to understand and explain to clients. For example, a trust with less than \$5,000,000 in assets with a QP settlor and a QP trustee qualifies as a QP but not as an AI. The same anomaly could apply to charitable corporations, which under staff no action letters could qualify as QPs but, under Rule 501(a), not as AIs. See, for example, Goldman Sachs Asset Management (March 13, 2007).

We urge the Commission to adopt a very simple change to correct this anomaly. We suggest that the definition of AI be revised to provide that all QPs are AIs. We cannot conceive of any harm that such a change would cause to the protection of investors.

This change would cure the anomaly; simplify and improve the application of the Commission's rules; and provide more flexibility to issuers. There could be other benefits in the public interest as well.

As noted in the Proposing Release (Section II.B.5), the proposed inflation adjustment for purposes of Rule 501(a)(1) could cause the standards for qualifying as an AI to become higher than the standards for qualifying as a QP; still another anomaly. Our suggested change would cure this possible anomaly and avoid having to cap the proposed inflation adjustments.

In addition, our suggested change also would benefit investors by eliminating the need to complete the two complex questionnaires that our clients currently use to determine the QP and AI status of prospective investors. If our suggestion is adopted only the QP questionnaire would be necessary.

In conclusion, we believe that providing that all QPs are also AIs would be consistent with the public interest and the goals of flexibility, clarification and improvement of the application of Regulation D expressed in the Proposing Release and would not adversely affect the protection of investors.

We appreciate the opportunity to comment on these proposals and would be pleased to discuss them with the Commission or its staff. Questions may be directed to Richard H. Rowe (202.416.6820) or Bruce Lieb (212.969.3320).

Respectfully submitted,

Proskauer Rose LLP

PROSKAUER ROSE LLP

October 8, 2007

Page 3

cc: Hon. Christopher Cox, Chairman
Hon. Paul S. Atkins, Commissioner
Hon. Annette L. Nazareth, Commissioner
Hon. Kathleen L. Casey, Commissioner
John W. White, Director, Division of Corporation Finance
Andrew J. Donohue, Director, Division of Investment Management
Brian Cartwright, General Counsel
Gerald J. Laporte, Chief, Office of Small Business Policy, Division of Corporation
Finance