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October 9, 2007

Via e-mail (rule-comments@sec.gov)

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

Re: File Number S7-18-07/Release No. 33-8828; IC 27922

Dear Ms. Morris:

We are pleased to submit this letter in response to the Securities and Exchange Commission's (the "Commission") request for comments contained in the above-referenced Release (hereinafter, the "Proposing Release"). Sadis & Goldberg LLP (the "Firm") represents a wide range of participants in the financial markets including several hundred private investment vehicles relying upon Regulation D. The comments contained herein reflect the experience of the Firm's members in serving clients engaged in these activities. We submit these comments on our own behalf and not on the behalf of any clients, and have received no compensation, direct or indirect, with respect to these comments.

This letter provides our comments to the following aspects of the Proposing Release:

1. The additional exemption from the registration requirements of securities offerings for certain offerings made only to "large accredited investors" under proposed Rule 507 which also permits issuers to utilize "tombstone" advertisements;

2. The proposed rule that would dramatically expand the "bad actor" disqualification provisions of Rule 505 so as to apply to all Regulation D offerings found in proposed Rule 502(e); and

3. The revisions to the definition of "accredited investors" including: an alternative test for persons meeting certain investments thresholds; clarification of the definition of "joint investments"; conforming amendments to rules other than

Regulation D; and, quinquennial[1] adjustment of all applicable dollar values for inflation.

In addition to our comments on these proposals, we offer suggestions to improve on the Commission's rulemaking efforts. We believe our suggestions strike an appropriate balance between investor protection and the preservation of a growing area of the securities markets.

I. Proposed Rule 507—Offerings Made to "Large Accredited Investors"

We are supportive of Proposed Rule 507 and believe that the Commission's "large accredited investor" standard is appropriate for such offerings.

We believe that the exemption provided in Proposed Rule 507 will be attractive to private investment fund managers who also rely on the exclusions from the definition of an "investment company" under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940. The Section 3(c)(1) and 3(c)(7) exclusions, however, prohibit a "public offering" of securities and we would suggest concurrent amendments to these provisions in order to allow private funds to rely upon Proposed Rule 507 and make offerings to "large accredited investors".

II. Proposed Disqualification Provisions—Proposed Rule 502(e)

The Proposing Release suggests the need to adopt a new rule which would preclude certain "bad actors" from making offerings under Regulation D. Currently, only offerings under Rule 505 are unavailable to these bad actors. Proposed Rule 502(e) would expand these disqualification provisions to all offerings made under Regulation D. This reflects a dramatic policy change and should not be adopted in its current form. It would have the impact of a "one strike and you're out" rule for hedge and private equity fund managers. As described below, we support a uniform disclosure requirement in offering documents of issuers who are, or have been, subject to one of the listed disqualifying events. The Proposing Release asserts that investor protection underlies the disqualification provisions of Proposed Rule 502(e) but we believe that disclosure of prior securities violations provides ample protection for investors.

Initially, we are concerned that the Commission lacks the authority to adopt such a proposal. While the Commission has the authority under Section 3(b) of the Securities Act to adopt rules to protect investors, its discretion is not unlimited. The Proposing Release refers to a high rate of recidivism among bad actors that rely upon Regulation D to make securities offerings. The Proposing Release does not cite to any studies or other authority to support this conclusion. In light of the consequences that Proposed Rule

[1] Various proposed rules contain a "Note" which provides that dollar amounts shall be adjusted for inflation every five years, commencing with July 1, 2012, via publication in the Federal Register.

502(e) will have, we feel strongly that this is not a concept that should be adopted without supporting evidence of its need.

More importantly, we ask the Commission to consider the impact this proposal will have on respondents in regulatory proceedings. As the Commission is well aware, many enforcement proceedings are resolved through the use of cease and desist orders. Hedge fund and private equity fund managers cannot operate without the availability of Regulation D and an enforcement proceeding against such a manager would be the equivalent of a capital punishment case against their business. The drastic penalties found in proposed Rule 502(e) will inevitably discourage settlement and compel hedge and private equity fund managers to engage in protracted litigation, rendering the proposal against public policy. Finally, it would – indirectly – alter the required burden of proof necessary for the Commission to obtain a bar from the securities industry over those industry participants who rely upon Regulation D offerings including hedge fund and private equity fund managers.

The Commission and state regulators have sufficient sanctions at their disposal to punish those who violate the securities laws. Sanctions, including disqualifications like those being considered, should be determined on a case-by-case basis. The proposed disqualification provisions would apply the same penalty to a wide variety of violations, ranging from the intentional and egregious to the merely inadvertent.

We feel that the proposed disqualification provisions are draconian and we would suggest as an alternative a uniform disclosure requirement for issuers who are subject to one of the Rule 505 disqualifying events. Disclosure of such events is already commonplace in the industry but we would support a formal rule requiring such disclosure and providing guidance on how the disclosure should be made.

We would also like to raise an issue not addressed in the Proposing Release relating to Proposed Rule 502(e). We ask the Commission to clarify its position on whether an issuer would be entitled to continue an ongoing offering under Regulation D after, for example, its general partner is found to have violated securities laws unrelated to the issuer or the offering and became subject to a cease and desist order.

Finally, with respect to the Commission's request for comments on "grandfathering" provisions for Proposed Rule 502(e), we urge the Commission to reject any retroactive application of the disqualification provisions. If the Commission was to adopt Proposed Rule 502(e) in its current form, any person currently subject to a cease and desist order would be disqualified from relying on Regulation D. It would be unfair to impose these additional penalties on those who have previously resolved enforcement proceedings through, for example, offers of settlement. At a minimum, the application of any Proposed Rule 502(e) disqualification should be limited to findings, orders, convictions, etc., entered after the implementation date of the rule.

III. Other Proposed Amendments to Regulation D

A. Investments-owned standard.

In addition to the current prerequisites for classification as an accredited investor, the Commission has proposed an "investments-owned" standard as follows:

- For entities that currently must meet a $5 million *assets* test, an alternative $5 million in *investments* standard will be available under the proposed revisions.

- For individuals and their spouses, a new $750,000 in *investments* standard may be used instead of the current $1 million in net worth or $200,000/$300,000 income tests currently in place.

- Real estate used for personal purposes (e.g., personal residences) and the value of places of business would be excluded when calculating investments.

We support this alternative investments-owned standard as an additional classification.

B. Accredited Natural Person Standard.

In its Private Pooled Investment Vehicle Release of December 27, 2006[2] (the "Private Pool Investment Vehicle Release"), the Commission proposed a new category of accredited investor – the "accredited natural person". This accreditation standard would be used for those natural persons seeking to invest in certain private investment funds including hedge funds and private equity funds. Individual investors would need to satisfy a two-part test before being entitled to invest in pooled investment vehicles relying on the exemption found in Section 3(c)(1) of the Investment Company Act. An "accredited natural person" would be required to satisfy the current standard for accredited investors and pass a secondary test requiring them to own at least $2.5 million in "investments." In effect, the current accredited investor standard would be a subset of the proposed "accredited natural person" standard.

The accredited natural person standard seems to unfairly target a certain class of Regulation D users—hedge fund and private equity fund managers. Such vehicles, in particular those that rely upon sections 3(c)(1) and 3(c)(7) of the Investment Company Act, have become an important part of the investment management business. Investors look to such vehicles in creating a balanced investment portfolio that would otherwise be difficult, if not impossible, to establish without access to such pooled vehicles. Furthermore, given the current accredited investor standard, there is no indication that an investment vehicle relying upon 3(c)(1) of the Investment Company Act is any more vulnerable to fraud or collapse than the same vehicle relying upon the 3(c)(7) exemption. It is our opinion that the accredited natural person proposal should be withdrawn. The statistics cited by the Commission in the Private Pool Investment Vehicle Release

[2] Release No. 33-8766, IA-2576; File No. S7-25-06.

demonstrate that the proposal would make such investments impossible for the overwhelming majority of investors. Investors who have a net worth of $1 million should be entitled to decide how to invest their money.

IV. Conclusion

We believe Proposed Rule 507 and its large accredited investor standard would be an appropriate addition to Regulation D. As discussed above, however, such addition must be made together with conforming revisions to sections 3(c)(1) and 3(c)(7) of the Investment Company Act.

Proposed Rule 502(e) represents a very serious challenge to the private investment fund industry and is, in our opinion, unwarranted. The proposal contains career-ending consequences for issuers, their principals and sponsors and would apply to relatively minor securities law violations. In summary, the punishment may not always fit the crime under the proposal and respondents to regulatory proceedings will be forced to mount more aggressive defenses in order to protect their businesses and careers.

An investment-owned standard works well to supplement the current accredited investor standard. However, we believe that the accredited natural person proposal does not offer any additional investor protection and should be withdrawn.

We appreciate the opportunity to comment on the Proposing Release and would be pleased to discuss any matters in respect of this letter. Please direct any questions or comments to Dennis Hirsch (415-490-0563).

Respectfully submitted,

By: Dennis R. Hirsch
SADIS & GOLDBERG LLP