

INCOMING LETTER:

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BY U.S. MAIL

Douglas J. Scheidt, Esq.
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

RE: Alternative Investment Partners Absolute Return Fund STS and AIP
Absolute Return Fund LDC

Dear Mr. Scheidt:

We are submitting this letter on behalf of Alternative Investment Partners Absolute Return Fund STS (the “Top-Tier Fund”), a closed-end investment company registered under the Investment Company Act of 1940 (the “1940 Act”), which will make a registered public offering under the Securities Act of 1933 (the “Securities Act”), and AIP Absolute Return Fund LDC company (the “Cayman Fund”), a Cayman limited duration company. The proposed structure for which we seek no-action relief involves a three-tier, master-feeder arrangement under which the Top-Tier Fund will invest substantially all its assets in, and acquire securities of, the Cayman Fund, which will, in turn, invest substantially all its assets in, and acquire securities of, Alternative Investment Partners Absolute Return Fund (the “Master Fund”), a closed-end investment company that is registered under the 1940 Act (the “Proposed Structure”). The Proposed Structure is similar to the three-tier, master-feeder fund structure employed by the Man-Glenwood Group (the “Man Structure”), for which the Staff of the Securities and Exchange Commission (the “Staff”) provided no-action relief in April 2004.¹

¹ See Letter from Susan Olson, Senior Counsel, Division of Investment Management, to Michael Caccese, Robert Rosenblum and George Zornada, Kirkpatrick & Lockhart LLP dated April 30, 2004 with

As discussed more fully below, we are seeking your assurance that you would not recommend that the Securities and Exchange Commission (the “Commission”) take enforcement action under Section 7(d) of the 1940 Act against the Top-Tier Fund or the Cayman Fund, if the Cayman Fund offers and sells its securities to the Top-Tier Fund and, to a limited extent, to eligible non-U.S. investors, without registration of the Cayman Fund under the 1940 Act. In addition, we request guidance concerning the application of Section 12(d)(1)(E) of the 1940 Act to the Proposed Structure.

As is the case with the Man Structure, the purpose of the Proposed Structure is to enable retirement plans and certain other tax-exempt or tax-deferred entities (collectively, “Retirement Plans”)² to invest, through the Cayman Fund as part of a master-feeder structure, in the Master Fund without incurring unrelated business taxable income (“UBTI”), a type of income that would be currently taxable to the otherwise tax-exempt or tax-deferred Retirement Plans.

BACKGROUND

Under the Proposed Structure, the Top-Tier Fund would follow an investment strategy of investing only in the securities of the Cayman Fund, while the Cayman Fund would follow an investment strategy of investing only in the securities of the Master Fund. Thus, the Top-Tier Fund will have no other assets besides cash and securities of the Cayman Fund, and the Cayman Fund will have no other assets besides cash and securities of the Master Fund.³ The Master Fund would invest its assets in several unaffiliated, privately offered, unregistered hedge funds. Thus, the performance of the Top-Tier Fund and the Cayman Fund would be dependent on the performance of the Master Fund. The existence and operation of the Cayman Fund would be fully disclosed in the Top-Tier Fund’s prospectus.

The investment adviser of the Master Fund is Morgan Stanley AIP GP LP (the “Adviser”), which is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). The principal underwriter of the Master Fund and the Top-Tier Fund is Morgan Stanley Distribution Inc., which is registered as a broker/dealer under the Securities Exchange Act of 1934, as amended.

Unlike the Man Structure, however, the Cayman Fund also would be offered to eligible non-U.S. investors (“Non-U.S. Investors”).⁴ While the Top-Tier Fund would not

regard to Man-Glenwood Lexington TEI, LLC and Man-Glenwood Lexington TEI, LDC (the “Man Letter”).

² The Retirement Plans consist of, among others: employee benefit trusts established in connection with employee benefit plans subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”) and related provisions of the Internal Revenue Code (the “Code”); individual retirement accounts and annuities; and other tax-exempt entities such as charitable and similar organizations that are tax-exempt under Section 501 of the Code.

³ Neither the Top-Tier Fund nor the Cayman Fund is expected to hold cash for any considerable period of time. The Top-Tier Fund or the Cayman Fund would hold cash only in an unusual circumstance, and only at the direction of the Top-Tier Fund Board once the Board has determined it to be in the best interests of the relevant fund and its shareholders.

⁴ Each Non-U.S. Investor would be required to invest at least \$25,000 in the Cayman Fund and would represent, among other things, that it is an “accredited investor” as defined in Regulation D

necessarily be the only investor in the Cayman Fund, it would continually monitor the sale of interests of the Cayman Fund to Non-U.S. Investors in order to ensure that at all times (i) the Non-U.S. Investors would not own in the aggregate more than 33% of the outstanding voting securities of the Cayman Fund and (ii) no single Non-U.S. Investor or group of related Non-U.S. Investors would own more than 25% of the outstanding voting securities of the Cayman Fund (collectively, the “Non-U.S. Investor Limitations”). Thus, the Top-Tier Fund would at all times own at least 67% of the outstanding voting securities of the Cayman Fund. In accordance with the organizational documents of the Cayman Fund (the “Articles”), the Board of Trustees of the Top-Tier Fund would conduct the management and the business of the Cayman Fund and will not delegate those responsibilities to any other person (other than limited administrative duties which may be performed by a delegate of the Top-Tier Fund’s Board of Trustees).⁵ In particular, the Articles would designate the Top-Tier Fund as the managing member of the Cayman Fund, and would direct the managing member to conduct the management and business of the Cayman Fund. The Cayman Fund would have no ability to act independently from the Top-Tier Fund. The Articles also would permit the Cayman Fund to redeem all or a portion of the shares held by one or more Non-U.S. Investors in order to ensure that the Non-U.S. Investor Limitations were complied with.⁶ The Articles would provide that the Top-Tier Fund may enforce in the United States any violations of the Articles as a matter of contract right. The Cayman Fund is expected to have minimal expenses. Those expenses allocated to the Top-Tier Fund would be paid by the Adviser or an affiliate. Those expenses allocated to the Non-U.S. Investors would be paid by the Non-U.S. Investors.⁷

In accordance with the Articles, the Cayman Fund would be required to pass through to all its shareholders (i.e., the Top-Tier Fund and the Non-U.S. Investors) any Master Fund issue that required the approval of Master Fund shareholders. The Top-Tier Fund would be required to pass through to its shareholders any Master Fund issue or Cayman Fund issue requiring shareholder approval.

The assets of the Cayman Fund will be maintained at all times in the United States and they will be maintained at all times in accordance with the requirements of Section 17(f) of the 1940 Act. The securities of the Master Fund that are owned by the Cayman Fund will be held in book-entry form in the United States with a securities depository that is registered and regulated by the Commission. The Cayman Fund’s cash will be maintained at all times in the United States by a bank that qualifies as a fund custodian under Section 17(f) of the 1940 Act. The Cayman Fund will have no other assets besides cash and securities of the Master Fund.

promulgated under the Securities Act. No Non-U.S. Investor that meets the definition of “investment company” in Section 3(a) of the 1940 Act, including any entity that is excluded from this definition by Section 3(c)(1) or 3(c)(7) of the 1940 Act, would be permitted to invest in the Cayman Fund.

⁵ The Cayman Fund would not have a Board of Directors.

⁶ Those redemptions would be effected in a manner that is consistent with the requirements of the 1940 Act, as if the Cayman Fund were registered as an investment company with the Commission.

⁷ The Top-Tier Fund’s prospectus would disclose the ability of the Cayman Fund to offer and sell its shares, to a limited extent, to Non-U.S. Investors as described herein.

The Cayman Fund will maintain duplicate copies of its books and records at an office located within the United States, and the Commission and its Staff will have access to the books and records consistent with the requirements of Section 31 of the 1940 Act and the rules thereunder. The Cayman Fund will designate either its custodian or the Top-Tier Fund as agent in the United States for service of process in any suit, action or proceeding before the Commission or any appropriate court, and the Cayman Fund will consent to the jurisdiction of the U.S. courts and the Commission.

The Proposed Structure is designed to address the tax consequences to Retirement Plans of investing directly in the Master Fund. The interpositioning of the Cayman Fund between the Master Fund and the Top-Tier Fund will allow investors in the Top-Tier Fund to receive dividend income, which is income upon which tax-exempt entities are not required to pay income tax, rather than UBTI.⁸ The Top-Tier Fund will receive an opinion of counsel to the effect that the Proposed Structure should prevent the receipt of UBTI by the Retirement Plans and is consistent with the Code and the regulations thereunder.

We seek the Staff's assurance that the Top-Tier Fund and the Cayman Fund can rely on the no-action relief granted by the Staff in the Man Letter notwithstanding the fact that the securities of the Cayman Fund will be offered and sold to the Top-Tier Fund and, to a limited extent, to Non-U.S. Investors.

LEGAL ANALYSIS

Section 7(d) of the 1940 Act. Section 7(d) of the 1940 Act prohibits an investment company that is not organized or otherwise created under U.S. law (a "non-U.S. investment company") from utilizing any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which it is the issuer.⁹ The Section similarly prohibits any underwriter for a non-U.S. investment company from engaging in those activities. Section 7(d) generally authorizes the Commission, notwithstanding the prohibitions identified above, to issue an order permitting a non-U.S. investment company to register with the Commission and make a public offering of its securities if the Commission finds that it is both legally and practically feasible effectively to enforce

⁸ The Proposed Structure to prevent the receipt of UBTI by Retirement Plans is consistent with the Code and the regulations thereunder.

⁹ Section 7(d) states that:

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. Notwithstanding the provisions of this subsection and of Section 8(a) [15 USCS § 80a-8(a)], the Commission is authorized, upon application by an investment company organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this title and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of this title against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

the provisions of the 1940 Act against the company and the issuance of the order is otherwise consistent with the public interest and the protection of investors. Congress enacted Section 7(d) to enable the Commission to enforce the investor protections of the 1940 Act against non-U.S. investment companies operating in the United States.¹⁰

We believe the Cayman Fund does not present facts warranting a consideration of the policy implications of registration of non-U.S. investment companies generally. We are concerned, however, that the Proposed Structure raises the same potential issue under Section 7(d) of the 1940 Act as was discussed in the Man Letter, namely whether the Cayman Fund, which is organized under the laws of the Cayman Islands, could be deemed to violate Section 7(d) of the 1940 Act by offering its securities indirectly to the United States public through the Top-Tier Fund under the Proposed Structure. Similarly, under Section 2(a)(40) of the 1940 Act, the Top-Tier Fund may be deemed to be acting as an underwriter that is engaged in the distribution of the Cayman Fund's shares.¹¹ We believe that the Proposed Structure does not raise the concerns that Section 7(d) was designed to address.¹² As was the case in the Man Letter, the concerns underlying Section 7(d) may be addressed through enforcement of the 1940 Act against the Top-Tier Fund and the Master Fund, which are registered with, and fully regulated by, the Commission.¹³ Further, it is legally and practically feasible to effectively enforce the 1940 Act against the Cayman Fund for purposes of Section 7(d) because it is largely a conduit between two registered investment companies. As described below, the Cayman Fund will engage in very limited activities that could necessitate the enforcement of the 1940 Act against the Cayman Fund.¹⁴ In the unlikely event that such enforcement would

¹⁰ See, e.g., *Protecting Investors: A Half Century of Investment Company Regulation, 192-93* (Division of Investment Management, U.S. Securities and Exchange Commission, May 1992) ("Protecting Investors").

¹¹ See Section 2(a)(40) of the 1940 Act (definition of underwriter), Section 2(a)(11) of the Securities Act (definition of underwriter), and Rule 140 under the Securities Act (definition of "distribution" in Section 2(a)(11) for certain transactions). See also Hub and Spoke Report, footnote 2 *supra* (discussing application of Rule 140 to the hub and spoke structure).

¹² In fact, the staff has provided no-action relief from Section 7(d) in situations where a registered investment company establishes and invests in wholly-owned offshore funds in order to avoid certain taxes on its investments in the equities of foreign companies. Templeton Vietnam Opportunities Fund, Inc. SEC No-Action Letter (September 10, 1996); South Asia Portfolio, SEC No-Action Letter (March 12, 1997). Cf. The France Growth Fund, Inc., SEC No-Action Letter (July 15, 2003) (where the staff addressed Section 7(d) in the context of a registered investment company investing in the securities of a number of foreign investment companies.) While the Cayman Fund would not be wholly-owned by the Top-Tier Fund under the Proposed Structure, we believe it presents less concern than in these situations where the staff previously has granted relief because the Top-Tier Fund controls the Cayman Fund, and the Cayman Fund acts simply as a conduit between two registered investment companies (i.e., the Cayman Fund would not be making investments directly in foreign companies and would not have any investment discretion).

¹³ The Top-Tier Fund will not in any way use the Cayman Fund to evade the provisions of the 1940 Act and the Master Fund will not in any way use the Cayman Fund to evade the provisions of the 1940 Act or the Advisers Act.

¹⁴ Specifically, the Cayman Fund will engage in investing in the securities of the Master Fund (which are book entry only) by forwarding cash from the Top-Tier Fund and Non-U.S. Investors, and passing through to the Top-Tier Fund and Non-U.S. Investors income that is received from the Master Fund. The Cayman Fund will forward immediately to the Top-Tier Fund and Non-U.S. Investors any cash or other assets it receives from the Master Fund, unless otherwise directed by the Top-Tier Fund.

be necessary, the Commission could take action against the Cayman Fund, including in U.S. courts.

We believe the Section 7(d) analysis set forth in the Man Letter should apply to the Proposed Structure. The Top-Tier Fund will control the Cayman Fund, notwithstanding the presence of Non-U.S. Investors in the Cayman Fund. While the Non-U.S. Investors could own in the aggregate up to 33% of the outstanding voting securities of the Cayman Fund, the Top-Tier Fund at all times would own at least 67% of such outstanding voting securities, and no single Non-U.S. Investor or group of related Non-U.S. Investors would own more than 25% of such outstanding voting securities. Given the Non-U.S. Investor Limitations, the Non-U.S. Investors would not have the ability to affect the very limited business and operations of the Cayman Fund. The Top-Tier Fund would have the ability to veto any proposal to remove the managing member or to amend the Cayman Fund's investment objective or strategies, its organizational documents or its governance procedures.¹⁵ Thus, the Top-Tier Fund, and no other person, would at all times control the Cayman Fund. See, e.g., American Century Companies, Inc./J.P. Morgan & Co. Incorporated (pub. avail. December 23, 1997) and Templeton Investment Counsel Ltd. (pub. avail. January 22, 1986).

Finally, the Cayman Fund would offer its interests to the Non-U.S. Investors pursuant to Regulation S under the Securities Act.¹⁶ In Touche, Remnant & Co. (pub. avail. August 27, 1984), the Staff stated that a foreign fund's private U.S. offering in accordance with Section 3(c)(1) of the 1940 Act would be viewed as separate from the fund's simultaneous offshore public offering and concluded, therefore, that Section 7(d) does not prohibit a foreign fund from conducting a private U.S. offering simultaneously with an offshore public offering, provided the foreign fund does not use U.S. jurisdictional means in connection with the offshore offering. This analysis was extended in Goodwin Procter & Hoar (pub. avail. February 28, 1997) to foreign funds simultaneously offering their securities in the United States on a private placement basis pursuant to Section 3(c)(7) of the 1940 Act and outside the United States in a public offering pursuant to Regulation S. Similarly, we would argue that the Cayman Fund would remain largely a conduit entity for Section 7(d) purposes, notwithstanding that it would simultaneously be offering its securities to the Non-U.S. Investors, because it would not be using U.S. jurisdictional means in connection with the offshore offering.

Because the Proposed Structure is not a traditional master-feeder structure, and to provide further assurances, the Cayman Fund will conform its operations to the extent possible

¹⁵ Under Cayman law, certain corporate matters relating to limited duration companies, including changing the Memorandum of Association or Articles of Association of a limited duration company, reducing the company's capital, changing the name of the company, and a voluntary winding up of the company and various matters related thereto, require the vote of at least 66-2/3% of the company's outstanding voting securities.

¹⁶ Interests in the Cayman Fund would be offered pursuant to a Confidential Private Placement Memorandum that would describe the Proposed Structure, including, among other things, that (i) the Top-Tier Fund will at all times control the Cayman Fund and (ii) while the Cayman Fund is not registered under the 1940 Act, it will provide the Commission with access to its books and records and will consent to the jurisdiction of the U.S. courts and the Commission.

with the substantive provisions of Rule 7d-1 under the 1940 Act,¹⁷ as described in the Man Letter, except that, as described above, Non-U.S. Investors can own up to 33% of the outstanding securities in the Cayman Fund. Regarding the service of process issue, we believe it is appropriate for either the Top-Tier Fund's custodian or the Top-Tier Fund itself to serve as the Cayman Fund's agent to accept service of process on behalf of the Cayman Fund. We understand that this differs from the applicable representation made in the Man Letter, but we believe the Top-Tier Fund, a registered investment company that controls the management of the Cayman Fund, is an appropriate entity to accept service of process in that the Top-Tier Fund's Board will ultimately have to determine how the Cayman Fund will respond to the relevant legal proceeding. With respect to Rule 7d-1(b)(7) under the 1940 Act, we acknowledge that a Canadian investment company must authorize its U.S. custodian as the agent for service of process, but we would argue that the U.S. custodian is in all likelihood the only appropriate U.S. entity to serve in such capacity (i.e., the adviser and the officers and directors of the Canadian investment company all are likely to be located in Canada). By contrast, in the Proposed Structure, there are two appropriate entities to serve in such capacity – the Top-Tier Fund's custodian and the Top-Tier Fund itself.

We believe that the Proposed Structure, which is a good faith attempt to harmonize the requirements of the 1940 Act with the requirements of the Code and ERISA, is consistent with prior Commission and Staff efforts to harmonize other parts of the 1940 Act with the Code and ERISA, as well as with other statutory schemes, as discussed in the Man Letter.

Section 12(d)(1)(E) of the 1940 Act. Section 12(d)(1)(A) of the 1940 Act, in pertinent part, prohibits a registered investment company and any company controlled by it from acquiring the securities of another registered investment company in excess of certain limits. Section 12(d)(1)(C) of the 1940 Act prohibits any investment company and any company controlled by the acquiring company from purchasing or otherwise acquiring any security issued by a registered closed-end investment company in excess of certain limits. Section 12(d)(1)(E) of the 1940 Act provides conditional relief from the limitations of Section 12(d)(1) to permit an investment company to own the shares of another investment company if, among other conditions, those shares are the only investment securities held by the investment company. Congress apparently recognized that the abuses that Section 12(d)(1) was intended to prevent are not present when an investment company complies with the requirements of Section 12(d)(1)(E).

The Proposed Structure also raises the same potential issue under Section 12(d)(1) of the 1940 Act as was discussed in the Man Letter in that the Top-Tier Fund intends to acquire securities of the Cayman Fund in excess of the limits of Section 12(d)(1)(A) and the Cayman Fund intends to acquire securities of the Master Fund in excess of the limits of Sections 12(d)(1)(A) and 12(d)(1)(C) of the 1940 Act. We believe that the Proposed Structure will comply with Section 12(d)(1)(E), which provides conditional relief from the limitations of Section 12(d)(1), because the Proposed Structure will operate under substantially the same conditions as those outlined in the Man Letter.

¹⁷ See Adoption of Rule N-7d-1 Relating to Registration of Management Investment Companies Organized Under Canadian Law, Inv. Co. Act. Rel. No. 1973 (April 27, 1954).

Congress included Section 12(d)(1) in the Investment Company Act to prevent a registered investment company from controlling other investment companies and creating complicated pyramid structures.¹⁸ Congress believed that a fund holding company's exercise of control over another investment company could result in a number of abuses, including: (1) the pyramiding of voting control in a manner that puts control in the hands of those having only a nominal stake in the controlled investment company, to the disadvantage of the controlled investment company's minority owners; (2) the undue influence over the adviser of the controlled company through the threat of large scale redemptions and loss of advisory fees to the adviser, resulting in the disruption of the orderly management of the company through the maintenance of large cash balances to meet potential redemptions; (3) the difficulty on the part of an unsophisticated shareholder in appraising the true value of his investment due to the complex holding company structure; and (4) the layering of sales charges, advisory fees, and administrative costs.

We do not believe that the Proposed Structure implicates any of these concerns, and is not functionally different than a traditional master-feeder arrangement. As discussed in this letter, the Cayman Fund acts largely as a conduit and is the functional equivalent of a master-feeder relationship between the Top-Tier Fund and the Master Fund such that the Proposed Structure should be allowed as a matter of policy to rely on Section 12(d)(1)(E) of the 1940 Act. There is no possibility that the Cayman Fund could be employed as a device for pyramiding control in the hands of an individual or group of individuals with a nominal interest in all the constituent companies of the group. The Top-Tier Fund, as a feeder fund, does not have an investment adviser, and the Top-Tier Fund's administrator also serves as the Master Fund's investment adviser. Because the Cayman Fund exists largely as a conduit to enable the Top-Tier Fund to invest its assets in a more tax-efficient manner, there should be no concern that portfolio management will be unduly influenced by a threat of the loss of advisory fees to the Adviser. Additionally, the Top-Tier Fund controls the Cayman Fund and will have no difficulty understanding the nature of its investment, and an investor in the Top-Tier Fund is not investing in an arrangement functionally different from a typical master-feeder arrangement, which is widely used. Nor will the Cayman Fund add any layers of cost, as its expenses of operations are expected to be minimal. Those expenses allocated to the Top-Tier Fund will be borne by the Adviser or an affiliate. Those expenses allocated to the Non-U.S. Investors will be borne by the Non-U.S. Investors.

In seeking to rely on Section 12(d)(1)(E), the funds will operate under the Proposed Structure in accordance with the conditions outlined in the Man Letter, namely that:

- the principal underwriter to the Top-Tier Fund will be a broker or dealer registered as such with the Commission;¹⁹

¹⁸ See Hearings before the House Subcomm. of the Comm. On Interstate and Foreign Commerce on H.R. 10065, 76th Cong., 3d Sess at 112 (1940).

¹⁹ The Cayman Fund's securities are not publicly offered and will be privately placed with the Top-Tier Fund. We note that it is unclear whether a firm that privately places securities would be considered an "underwriter" or a "principal underwriter" as defined in sections 2(a)(29) and (40) of the 1940 Act. The staff has, in certain contexts under the 1940 Act, taken the position that a firm that privately places securities acts as an "underwriter." See, e.g., John Nuveen & Co. (pub. avail. Jan. 24, 1989) (placement

- the securities issued by the Cayman Fund will be the only investment securities that are held by the Top-Tier Fund and, in turn, the securities issued by the Master Fund will be the only investment securities held by the Cayman Fund;
- the Cayman Fund's purchase of the Master Fund shares will be made pursuant to an arrangement among the Top-Tier Fund, the Cayman Fund and the Master Fund, or its principal underwriter, whereby the Cayman Fund is required to seek instructions from the shareholders of the Top-Tier Fund and the Non-U.S. investors, with regard to the voting of all proxies with respect to the Master Fund's securities that are held by the Cayman Fund and to vote such proxies only in accordance with such instructions;
- the Top-Tier Fund's purchase of the Cayman Fund's securities will be made pursuant to an arrangement with the Cayman Fund, whereby the Top-Tier Fund will be required to seek instructions from its shareholders, with regard to the voting of all proxies with respect to the Cayman Fund's securities held by the Top-Tier Fund and to vote such proxies only in accordance with such instructions;²⁰ and
- the Cayman Fund shall refrain from substituting securities of the Master Fund unless the Commission shall have approved such substitution in the manner provided in Section 26 of the 1940 Act.

CONCLUSION

We respectfully request the Staff's assurance that, if the Proposed Structure were implemented, it would not recommend enforcement action to the Commission and that the Top-Tier Fund, the Cayman Fund and the Master Fund can rely on the no-action relief provided in the Man Letter notwithstanding the fact that the Cayman Fund will offer and sell its securities to the Top-Tier Fund and, to a limited extent, to Non-U.S. Investors.

If you have any questions or require any additional information, please contact Richard Horowitz at (212) 878-8110 or Sheelyn Michael at (212) 878-4985.

Sincerely,

Richard Horowitz

agent was underwriter for purposes of Section 10(f)(3)). Regardless of such designation, the principal underwriter to the Top-Tier Fund, which is a registered broker-dealer and the principal underwriter for the Top-Tier Fund, will enter into an agreement with the Cayman Fund to place the Cayman Fund's securities with the Top-Tier Fund and the Non-U.S. investors.

²⁰ While the Non-U.S. Investors also will have the right to vote, the Top-Tier Fund will at all times control the Cayman Fund.