UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

October 12, 2010

Robert Van Grover, Esq.
Seward & Kissell LLP
One Battery Park Plaza
New York, NY 10004 US

Re: Request for no-action relief under the Investment Advisers Act of 1940
Section 206(4) and Rule 206(4)-2

In your letter dated October 1, 2010, you asked the staff of the Division of Investment Management (the "staff") to provide guidance regarding compliance by certain investment advisers with rule 206(4)-2 (the "Custody Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act").

You represent that many investment advisers to one or more limited partnerships (or limited liability companies or other types of pooled investment vehicle ("private funds")) have custody of such private funds' assets as defined in the Custody Rule. Further, you represent that most of such investment advisers to private funds obtain annual audits of the private funds for purposes of complying with rule 206(4)-2(b)(4) (the "Annual Audit Provision"). Among other conditions, rule 206(4)-2(b)(4)(ii) requires that the annual audit of the private fund be conducted by "an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board ("PCAOB") in accordance with its rules."

Only auditors to public companies are currently subject to regular inspection by the PCAOB. However, Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), signed into law on July 21, 2010, provides the PCAOB with authority to develop rules to establish a regular inspection program for auditors of brokers and dealers as well.[1] You indicate that several of your investment adviser clients that manage private funds have engaged auditors that are auditors to brokers or dealers but not to public companies. These auditors are registered with the PCAOB but will not be subject to regular inspection until the PCAOB rules referenced above are adopted and take effect. As a result, such auditors' audits of private funds would not technically comply with the Annual Audit Provision of the Custody Rule. Furthermore, even after such PCAOB rules are adopted and take effect, such audit firms may not be able to represent that they were subject to regular inspection as of the commencement of the professional engagement period, depending upon when the rules became effective and when the engagement period commenced.

You represent that this aspect of the Custody Rule may be disruptive to certain advisers that would be required to replace such auditors until the auditors become subject to regular inspection by the PCAOB, as contemplated by the Act, even if the advisers contemplate re-

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1 See Dodd-Frank Act Section 982.

engaging the auditors once subject to PCAOB regular inspection. You also note that this change in auditors may result in additional expense to investors.

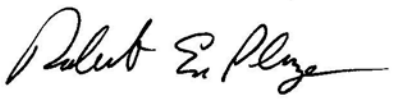
Based on the facts and representations in your letter, we would not recommend enforcement action to the Commission under Section 206(4) of the Advisers Act and rule 206(4)-2 thereunder against an investment adviser that engages an auditor that also audits a broker or a dealer to audit the financial statements in connection with the Annual Audit Provision, subject to the following conditions[2]:

- the auditor was engaged to audit the financial statements of one or more of the private funds for the most recently completed fiscal year;

- the auditor was registered with the PCAOB and engaged to audit the financial statements of a broker or a dealer on July 21, 2010 and is registered with the PCAOB and engaged to audit the financial statements of a broker or a dealer as of the issuance of audited financial statements used to satisfy the Annual Audit Provision; and

- the adviser provides written notification to each investor in each private fund prior to the distribution of the financial statements that the private fund's auditor is not subject to regular inspection by the PCAOB.

This response applies only to financial statements issued prior to the adoption of rules concerning the inspection of auditors of brokers and dealers by the PCAOB or July 21, 2011, whichever date is earlier.



Robert E. Plaze
Associate Director

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[2] Conditions conveyed during a telephone conversation between Bryan J. Morris of the staff and Robert Van Grover of Seward & Kissell LLP on October 8, 2010.

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October 1, 2010

Investment Advisers Act/206(4)-2

Robert E. Plaze, Esq.
Associate Director
Office of the Associate Director, Regulatory Policy & Investment Adviser Regulation
U.S. Securities and Exchange Commission
Division of Investment Management
100 F Street, NE
Washington, DC 20549

Re: Investment Advisers Act of 1940, as amended, Rule 206(4)-2

Dear Mr. Plaze:

We represent many advisers to limited partnerships, limited liability companies and other types of pooled vehicles (hereafter "private funds") that are deemed to have custody of such private funds' assets under Rule 206(4)-2 (the "Custody Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Most of such advisers to private funds rely upon obtaining annual audits of the private funds that satisfy Rule 206(4)-2(b)(4) (the "Annual Audit Provision") to comply with the requirements of the Custody Rule. Among other conditions, the annual audit of the private fund must be conducted by "an independent public accountant that is registered with, and *subject to regular inspection as of the commencement of the professional engagement period*, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules." Rule 206(4)-2(b)(4)(ii)(italics added).

Currently, only auditors to public companies are subject to inspection by the Public Company Accounting Oversight Board (the "PCAOB"). Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), signed into law on July 21, 2010, provides the PCAOB with authority to inspect auditors of brokers and dealers as well. Act Section 982. The PCAOB rules concerning inspections of broker-dealer auditors are not effective unless the SEC gives its prior approval under Sarbanes-Oxley Act Section 107(b), including an opportunity for public notice and comment. Such rules will not, in light of the required notice and comment periods, be effective in 2010.

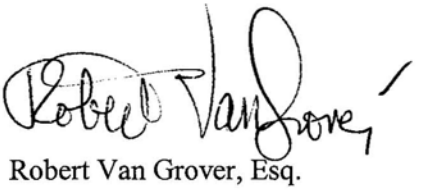
Several of our clients that manage private funds have engaged auditors that are auditors to brokers or dealers but not to public companies. Such firms' audits of private funds would not comply with the Annual Audit Provision of the Custody Rule until the PCAOB rules referenced above take effect subjecting those auditors to brokers and dealers to inspection. Furthermore, even after such PCAOB rules take effect, such audit firms may not be able to represent that they were subject to regular inspection *as of the commencement of the professional engagement period,* depending upon when the rules became effective and when the engagement period commenced. Accordingly, this aspect of the Custody Rule may be disruptive to certain advisers who would be required to replace such auditors until such auditors

become subject to regular inspection by the PCAOB, as contemplated by the Act, even if the adviser contemplates re-engaging the auditor once subject to PCAOB regular inspection.

In light of the above, we ask the staff to provide guidance that it would not recommend enforcement action against advisers that engage auditors to brokers or dealers that are not currently subject to regular inspection by the PCAOB during the period through enactment of PCAOB rules requiring the regular inspection of such auditors and further clarification on whether an auditor satisfies the Annual Audit Provision if it is registered with and subject to regular inspection by the PCAOB at any time during the engagement period.

If you have any questions please do not hesitate to contact me at (212) 574-1205 or vangrover@sewkis.com. We appreciate your attention to this issue.

Sincerely,



Robert Van Grover, Esq.

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