DIVISION OF
CORPORATION FINANCE

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

August 23, 2016

David S. Huntington, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019

Re: In the Matter of Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P., and Apollo Commodities Management, L.P.
Apollo Global Management, LLC – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Huntington:

This is in response to your letter dated August 11, 2016, written on behalf of Apollo Global Management, LLC ("Company") and constituting an application for relief from the Company being considered an "ineligible issuer" under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, due to the entry on August 23, 2016, of a Commission Order ("Order") pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P., and Apollo Commodities Management, L.P. (together, the "Settling Firms"). The Order requires that, among other things, the Settling Firms cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

Based on the facts and representations in your letter, and assuming the Settling Firms comply with the Order, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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August 11, 2016

<u>FIRST CLASS MAIL AND EMAIL</u>

Tim Henseler, Esq.
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Re: <u>In the Matter of Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P. and Apollo Commodities Management, L.P. – Waiver Request Under Rule 405</u>

Dear Mr. Henseler:

We submit this letter on behalf of our client, Apollo Global Management, LLC ("<u>Apollo</u>"), in connection with the settlement of the above-referenced administrative proceeding by the Securities and Exchange Commission (the "<u>Commission</u>") against Apollo Management V, L.P. ("<u>AM V</u>"), Apollo Management VI, L.P. ("<u>AM VI</u>"), Apollo Management VII, L.P. ("<u>AM VII</u>") and Apollo Commodities Management, L.P. ("<u>ACM</u>") (together, the "<u>Settling Firms</u>"). The Settling Firms are private equity fund advisers and Apollo is their indirect parent company.

Pursuant to Rule 405 promulgated under the Securities Act of 1933, as amended (the "<u>Securities Act</u>"), Apollo hereby respectfully requests that the Commission determine that for good cause shown it is not necessary under the circumstances that Apollo be considered an "ineligible issuer" under Rule 405. Apollo requests that this determination be effective upon the entry of the Order described below.

BACKGROUND

The Settling Firms have engaged in settlement discussions with the staff of the Division of Enforcement in connection with the administrative proceedings referenced above, which were brought pursuant to Section 203(k) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). As a result of these discussions, the Settling Firms will submit an offer of settlement, pursuant to which they will consent to an Order of the Commission (the "Order"). Under the terms of the offer of settlement, the Settling Firms will neither admit nor deny any of the findings in the Order, except as to jurisdiction and subject matter.

The Order will find violations of the federal securities laws by the Settling Firms in connection with two breaches of fiduciary duty and a failure to supervise. The first breach of fiduciary duty relates to "monitoring fees" paid under monitoring agreements with portfolio companies of the funds advised by the Settling Firms. The Commission will find that from December 2011 through May 2015, the Settling Firms, while disclosing the existence of the monitoring fees, failed to disclose—prior to the commitment of capital by investors—the practice of accelerating the monitoring fees upon termination of the monitoring agreements.

The second breach of fiduciary duty relates to a loan made by Apollo Investment Fund VI, L.P. and its parallel funds (the "Lending Funds") to Apollo Advisors VI, L.P. ("Advisors VI"), an entity related to AM VI. The Lending Funds loaned Advisors VI approximately $19 million, an amount equal to carried interest that was then due to Advisors VI resulting from the recapitalization of two portfolio companies owned by the Lending Funds. The loan had the effect of deferring taxes the limited partners of Advisors VI would owe until the loan was extinguished. The Commission will find that financial statements of the Lending Funds showed that the interest income on the loan was accruing on behalf of the Lending Funds, but that AM VI always intended the income to be allocated to the capital account of Advisors VI, with the result that the financial statements were materially misleading. Such financial statements have not been included in, or incorporated by reference into, any of Apollo's filings under the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The failure to supervise relates to $290,000 in personal items and services improperly expensed by an Apollo senior partner (the "Partner"). The Commission found that the Settling Firms failed to discipline the Partner after discovering instances of improper expenses, and that his submission of expenses continued to go unsupervised.

The Commission will find that the Settling Firms violated Sections 206(2), 206(4) and 203(e)(6) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, and will order that the Settling Firms:

i. cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder;

ii. pay $40,254,552 in disgorgement and prejudgment interest to compensate funds that invested in private equity transactions that resulted in payment of undisclosed accelerated monitoring fees from December 2011 through May 2015, and to compensate the Lending Funds for interest improperly allocated to Advisors VI; and

iii. pay a civil monetary penalty in the amount of $12,500,000 to the Commission for transfer to the general fund of the United States Treasury.

DISCUSSION

A well-known seasoned issuer ("WKSI") is a category of issuer created under Rule 405 that is eligible for significant securities offering reforms adopted by the Commission in 2005 that have changed the way corporate finance transactions for larger issuers are planned, brought to market and executed.[1] At the same time, the Commission created another category of issuer under Rule 405, the "ineligible issuer." Rule 405 deems an issuer ineligible when, among other things, "[w]ithin the past three years . . . , the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that . . . [r]equires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws . . . ." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is thus prohibited from taking advantage of the significant securities offering reforms referred to above.

The entry of the Order would make Apollo, absent a determination by the Commission to the contrary, an ineligible issuer under Rule 405 for a period of three years. This result would preclude Apollo from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions of the securities offering reforms referred to above for three years.

Securities Act Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."

REASONS FOR GRANTING A WAIVER

Under the facts and circumstances of this action and considering the conduct involved as described in the Order, Apollo respectfully submits that according ineligible issuer status to Apollo is not necessary for the public interest or the protection of investors. In making this request, Apollo has carefully considered the policy statement on the framework for well-known

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1 *See* Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

seasoned issuer waivers[2] and, as discussed in more detail below, believes that the granting of the waiver request would be consistent with the policy statement.

Responsibility for and Duration of the Violations

The Order relates to findings of two breaches of fiduciary duty by the Settling Firms and a failure to supervise. None of the conduct underlying the Order (the "Conduct") pertains to activities undertaken by Apollo in connection with Apollo's role as an issuer of securities (or any disclosure related thereto). No conduct in respect of Apollo's disclosures pursuant to the Securities Act or the Exchange Act is implicated. Rather, the Conduct involved non-scienter-based violations by the Settling Firms. While the Conduct occurred from June 2008 through May 2015, it ended over a year ago and is not found to have recurred.

The Order does not find that any directors or senior executives of Apollo responsible for public company disclosure engaged in any deliberate misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the Conduct. The Commission did not find that Apollo's disclosure controls and procedures or filings with the Commission under the Securities Act or the Exchange Act during this time period were deficient.

Apollo believes that the Conduct does not call into question the reliability of Apollo's current and future public company disclosure and that designation as an ineligible issuer is not required for the protection of existing and potential investors in Apollo securities.

Remedial Steps

The Settling Firms have taken multiple measures that address each type of conduct underlying the Order and that are likely to prevent a recurrence of the Conduct. All of these facts concerning the Settling Firms' remedial efforts support the grant of the requested waiver.

With respect to the acceleration of monitoring fees, the Settling Firms had changed their practices with respect to such fees before the investigation began and have implemented further changes since the investigation began. As background, the Settling Firms offset a percentage of the monitoring fees paid by portfolio companies against the annual management fees paid by the limited partners of the funds holding such portfolio companies. Even before the investigation began, the Settling Firms had increased this percentage to 100% for Apollo Investment Fund VIII, L.P., which had its first close on June 28, 2013. They have maintained the 100% offset level in all subsequently launched private equity funds, including Apollo Natural Resources Partners II, L.P., which was launched August 21, 2015, and Apollo Special Situations Fund, L.P., which had its first close on March 18, 2016. The Settling Firms had also voluntarily waived monitoring fees for certain portfolio companies held by the funds at issue in the Order. Since the investigation, the Settling Firms have voluntarily decided to no longer accelerate any monitoring fee unless either (i) the Settling Firms have obtained prior approval from the relevant limited

2 Division of Corporate Finance "Revised Statement on Well-Known Seasoned Issuer Waivers," April 24, 2014.

partner advisory committee, or (ii) the limited partnership agreement for the relevant fund provides for a 100% management fee offset.

With respect to the loan made by Advisors VI, the Settling Firms have ensured that the details of both that particular loan and similar loan arrangements are fully and fairly disclosed. In regard to that particular loan, the year-end financial statements of the funds that entered into the loan disclosed in March 2014 that interest on the loan had been allocated solely to the capital account of the general partner of that fund. Moreover, the Settling Firms have voluntarily added disclosure language to the limited partnership agreements of newly launched funds, beginning with Apollo Investment Fund VII, L.P., and subsequent funds, expressly describing possible loan arrangements similar in nature to the one at issue in the Order. The disclosure language explains that all interest income related to any such loan will be allocated solely to the general partner of the relevant fund. While the Settling Firms have not in fact entered into any similar loan transactions since the one at issue in the Order, the current disclosure remediates the issues raised by the Commission staff pertaining to the loan made by Advisors VI.

With respect to the improper expenses of the Partner, the Settling Firms have taken steps to remedy any harm to investors and to prevent future harm. In 2012, the Settling Firms voluntarily initiated a firm-wide expense review and, through counsel, engaged an independent audit firm to conduct the review. At the Settling Firms' request, that review included a review of the Partner's expense practices. In June 2013, the independent auditor flagged the Partner's expenses for additional review. The Settling Firms then retained outside counsel and an accounting firm to do a complete review of the Partner's expenses. Following that review, the Settling Firms required that the Partner—who separated from the Settling Firms—reimburse the Settling Firms for expenses improperly charged, as well as to pay the costs of the professional fees associated with the review that was conducted. The Settling Firms, in turn, reimbursed any funds that were improperly charged for the Partner's expenses.

In June 2013 and December 2014, the Settling Firms also voluntarily adopted enhanced policies and procedures for reimbursement of expenses. These enhanced policies and procedures include enhanced documentation requirements for expense reimbursements, as well as enhanced approval processes and testing protocols. The Settling Firms' policy enhancements required, among other things, that any expense submitted for reimbursement that fell outside the Settling Firms' policy have explicit and documented approval from the employee's business unit head. In addition, the policy enhancements require Apollo's "Shared Services" department to review every expense report line item and to provide quarterly reporting to the business unit heads. The Settling Firms' policy enhancements also require employees to certify the accuracy of their expense reports prior to submission.

Apollo has not previously submitted a request for waiver of ineligible issuer status under Rule 405.

Impact on Issuer

The Order is the result of substantial negotiations between the Settling Firms and the staff of the Division of Enforcement. The Order requires the Settling Firms to cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, to pay $40,254,552 in disgorgement and prejudgment interest, and to pay a civil monetary penalty in the amount of $12,500,000. Determining to maintain ineligible issuer status for Apollo would be disproportionately severe given the non-scienter-based violations that are the subject of this action, the lack of any nexus to Apollo's public disclosures, the duration of time that has passed since the relevant events, and the remedial steps taken.

As the Staff is aware, Apollo is an issuer of securities that are registered with the Commission and offered and sold under its shelf registration statements on Form S-3 (the "WKSI shelf"). Apollo most recently filed two automatically effective WKSI shelf registration statements on May 9, 2016. These shelf registration statements replaced two automatically effective shelf registration statements that recently expired and were originally filed on May 7, 2013. Another automatically effective shelf registration statement filed on May 7, 2013 on behalf of selling shareholders remains outstanding. Since May 7, 2013, approximately 41,310,483 Class A shares have been sold pursuant to these shelf registration statements in multiple transactions between 2013 and 2016. Apollo expects that the shelf registration statements will continue to be used on a regular basis in the future.

As an ineligible issuer, Apollo would lose significant flexibility, most importantly the ability to register additional securities not covered by the WKSI shelf, by filing a new registration statement, filing a new registration statement to replace the WKSI shelf upon its expiration or filing a post-effective amendment, in each case on an automatically effective basis. "File and launch" for the public offering of new securities has developed as the market standard for large issuers since the advent of the Commission's securities offering reform in 2005. By the time Apollo may be able to enter the market if it were an ineligible issuer (*i.e.*, after it files an amendment to its non-WKSI shelf registration statement subject to staff review and approval), market conditions may have changed, so that there may not be the same level of demand or pricing terms may have become disadvantageous.

* * *

In sum, Apollo respectfully submits that, based on the factors set forth in the framework, the loss to Apollo of certainty and flexibility if it were to become an ineligible issuer would be a disproportionate hardship in light of the non-scienter-based violations that are at issue in this action. More importantly, because the Conduct at issue in this matter does not implicate Apollo's ability to produce reliable disclosures to its public shareholders, including in its role as an issuer of securities, granting a waiver in this instance is consistent with the public interest and the protection of investors. We respectfully request that the Commission make that determination.

Please do not hesitate to contact me at (212) 373-3124 should you have any questions regarding this request.

Sincerely yours,

David S. Huntington

cc: John Suydam
Chief Legal Officer
Apollo Global Management, LLC