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November 1, 2013

VIA COURIER

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: New Mountain Finance Corporation
New Mountain Finance AIV Holdings Corporation
New Mountain Finance Holdings, L.L.C.

Dear Mr. Scheidt:

We are writing on behalf of New Mountain Finance Corporation (***"NMF Corp"***), New Mountain Finance AIV Holdings Corporation (***"AIV Holdings"***) and New Mountain Finance Holdings, L.L.C. (the ***"Operating Company"***) to seek the assurance of the staff of the Division of Investment Management (the ***"Staff"***) that it would not recommend enforcement action to the Securities and Exchange Commission (the ***"Commission"***) against either NMF Corp or AIV Holdings under Section 12(d)(3) of the Investment Company Act of 1940, as amended (the ***"1940 Act"***), if the Operating Company registers as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended (the ***"Advisers Act"***), or if NMF Corp acquires additional common membership units of the Operating Company subsequent to its registering under the Advisers Act.[1]

Background

The Parties

As described in more detail in the no-action letter issued by the Staff in connection with NMF Corp's initial public offering,[2] both NMF Corp and AIV Holdings serve as feeder vehicles for the Operating Company, which in turn serves as the "master" fund that owns all of the

[1] All section and rule references herein are to the 1940 Act and the rules thereunder unless otherwise specified.

[2] *See New Mountain Finance Corporation, et al.*, SEC No-Action Letter (April 27, 2011) (the ***"Prior Letter"***).

portfolio investments and conducts all of the business operations of the combined structure (the ***"NMF Structure"***). To that end, the assets of both NMF Corp and AIV Holdings consist solely of their respective equity interests in the Operating Company. In addition, each of the three vehicles that comprise the NMF Structure currently has the same board of directors, and the shareholders of both NMF Corp and AIV Holdings vote on a "pass through" basis with respect to any matters involving the Operating Company. The NMF Structure, which as noted in the Prior Letter was designed to have beneficial U.S. federal income tax consequences for the public stockholders of NMF Corp, will ultimately be collapsed at the point when all of the common membership units of the Operating Company that are held by AIV Holdings have been exchanged for shares of NMF Corp. At that point in time, the Operating Company will be wholly-owned by NMF Corp and there will be no reason for the two-tiered structure to exist. Accordingly, as soon as practicable thereafter, the Operating Company will merge into NMF Corp or will liquidate and transfer all of its assets and liabilities to NMF Corp, and the relief requested herein will no longer be necessary.

Proposed Advisers Act Registration

The Operating Company is presently contemplating the formation of one or more private funds for each of which it would serve as investment adviser (collectively, the ***"Funds"***).[3] The Operating Company would expect to receive fees in connection with its management of the Funds similar to those received by similar private fund advisers. All of the equity of the Funds would primarily be held by third-party investors. The Operating Company believes that the formation of the Funds could provide it with a greater pool of available capital to invest, which it believes will in turn provide it with access to increased deal flow and potentially larger investment opportunities, along with the potential for management fee income.

Applicable Law

Section 203 of the Advisers Act

Section 203(a) of the Advisers Act generally provides that it is unlawful for an investment adviser to engage in business without registering under that Act, unless an exemption is available. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" broadly to include any person who, for compensation, provides advice about securities as part of a regular business. Section 203(m) of the Advisers Act and Rule 203(m) thereunder exempts

[3] The Operating Company's investment portfolio will continue to be managed by New Mountain Finance Advisers BDC, L.L.C., an investment adviser registered under the Advisers Act.

from registration any investment adviser that acts solely as an adviser to qualifying private funds and manages less than $150 million from a place of business in the United States.[4]

Given the expected size of the private funds it contemplates establishing, the Operating Company believes that it would likely be required to register under the Advisers Act shortly after launching any such private funds to the extent its "assets under management" exceed the applicable threshold for exemption therefrom.[5] The Operating Company's assets under management would solely consist of the assets held by any private funds for which it serves as investment adviser.

Section 12(d)(3) of the 1940 Act

Section 12(d)(3) of the 1940 Act provides that it is unlawful for a registered investment company to purchase or otherwise acquire any security issued by any person who is, among others, an investment adviser registered under the Advisers Act, unless (i) after such acquisition, all of the outstanding securities of the acquired person are held by one or more registered investment companies, and (ii) the acquired person is "primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such related activities, and the gross income of such person normally is derived principally from such business or related activities."[6] Section 60 of the 1940 Act makes Section 12(d)(3) of the 1940 Act applicable to a business development company as if it were a registered closed-end investment company. Given their ongoing operations as business development companies, the interests of each of NMF Corp and AIV Holdings in the Operating Company, if it is required to register as an investment adviser under the Advisers Act, would fall outside the statutory carve-out set forth in Section 12(d)(3).

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[4] Section 203(m) of the Advisers Act was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Dodd-Frank Act repealed Section 203(b)(3) of the Advisers Act. Section 203(b)(3) exempted any investment adviser from registration if the investment adviser (i) had fewer than 15 clients in the preceding 12 months, (ii) did not hold itself out to the public as an investment adviser and (iii) did not act as an investment adviser to a registered investment company or a company that has elected to be a business development company. 15 U.S.C. 80b-3(b)(3) as in effect before July 21, 2011.

[5] An adviser that qualifies for the exemption could choose to register with the Commission, subject to section 203A of the Advisers Act, which generally prohibits most advisers from registering with the Commission if they do not have at least $100 million in assets under management. *See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers*, Release No. IA-3222 (June 22, 2011), at 7.

[6] We note that had the NMF Structure already been collapsed into a single-tier structure, no regulatory relief or approval under Section 12(d)(3) would be required. Accordingly, the requested relief will no longer be required once the NMF Structure has accomplished its desired purpose and the two-tier structure is collapsed.

Rule 12d3-1(a) under the Act provides a conditional exemption from Section 12(d)(3) for the acquisition of securities issued by persons that derive 15 percent or less of their gross revenues from "securities related activities," as defined in Rule 12d3-1(d)(1), unless the acquiring company would control such person after such acquisition. Rule 12d3-1(b) provides an additional exemption where the acquiring company holds not more than five percent of any class of such person's equity securities, not more than 10 percent of the outstanding principal amount of such person's debt securities, and has invested not more than five percent of the value of its total assets in securities of such acquired person. Rule 12d3-1(c), however, provides that, notwithstanding paragraphs (a) and (b) of the rule, the rule does not exempt the acquisition of general partnership interests and the securities of certain affiliated persons of the acquiring company.

Because each of NMF Corp and AIV Holdings currently holds greater than 25 percent of the common membership units of the Operating Company, which is sufficient to create a presumption of "control" under Section 2(a)(9) of the Act, and the common membership units of the Operating Company represent 100 percent of the total assets of both NMF Corp and AIV Holdings, the exemptions from Section 12(d)(3) under Rule 12d3-1(a) and (b) would not be satisfied if the Operating Company is required to register with the Commission as an investment adviser under the Advisers Act. In addition, none of the exemptions in Rule 12d3-1(c) apply to the interests of NMF Corp and AIV Holdings in NMF LLC.

As a result, if the Operating Company is required to register as an investment adviser under the Advisers Act, both NMF Corp and AIV Holdings could be in violation of the provisions of Section 12(d)(3) of the 1940 Act. In addition, any subsequent purchase of additional common membership units of the Operating Company by either NMF Corp or AIV Holdings could potentially violate the plain language of Section 12(d)(3).[7] Notably, the Operating Company's limited liability company operating agreement requires that NMF Corp use the net proceeds of any public offerings of its common stock to purchase additional common membership units of the Operating Company in order to maintain the current master-feeder structure.

Discussion

The Operating Company's registration as an investment adviser under the Advisers Act, could cause both NMF Corp and AIV Holdings to be in violation of Section 12(d)(3) of the 1940 Act by virtue of their owning interests in the Operating Company. However, we believe that the

[7] *See Acquisitions of Securities or Interests*, Investment Company Act Release No. 3542 (Sept. 21, 1962) (indicating that the prohibited acquisitions under section 12(d)(3) are not limited to the original acquisitions of stock, but may occur as a result of subsequent events).

NMF Structure fails to raise the concerns regarding the types of entrepreneurial risks or conflicts of interests that Section 12(d)(3) was intended to prevent. The Commission has stated that Section 12(d)(3) was intended to safeguard investment companies from (i) entrepreneurial risks of securities related businesses, and (ii) conflicts of interest and reciprocal practices between investment companies and securities related businesses.[8]

With respect to Congress's concerns about entrepreneurial risks, this concern stemmed from the fact that, in 1940, when Section 12(d)(3) was adopted, most securities related businesses were organized as privately held general partnerships.[9] Thus, if such a business failed, the investment company, as general partner, could have been held accountable for the partnership's liabilities. The latter concern arose in situations in which brokers, securities dealers and other financial intermediaries were in a position to dominate investment companies. The Commission provided examples of such situations in the Report on the Study of Investment Trusts and Investment Companies (the "Investment Trust Study").[10] For example, the Commission was concerned that investment company sponsors, such as investment banks, were using affiliated investment companies as a receptacle for illiquid and distressed securities.[11] It was also concerned that investment banks were using investment companies to acquire securities that were subject to the investment banks' underwriting endeavors in an effort to increase the banks' underwriting capacity.[12] Another problematic practice that Section 12(d)(3) was intended to address is commonly referred to as "propping." Propping occurred where a securities related business was in a position to exercise control and influence over an investment company and took advantage of this position to advance its own pecuniary interests by forcing the investment company to purchase or otherwise acquire the outstanding securities of the affiliated securities related business, regardless of the value to the investment company, in an effort to "prop" up the value of the affiliate's stock. As discussed in the Investment Trust Study, bank-sponsored

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[8] *See Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities Related Businesses*, Investment Company Act Release No. 19204 (Jan. 4, 1993) (proposing release), at nn. 10-11 and accompanying text; *Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities-Related Businesses*, Investment Company Act Release No. 19716 (Sept. 16, 1993) (adopting release), at n. 4 and accompanying text; *Exemption for Acquisition by Registered Investment Companies of Securities Issued by Persons Engaged Directly or Indirectly in Securities Related Businesses*, Investment Company Act Release No. 13725 (Jan. 17, 1984) (proposing release).

[9] *Id.*

[10] H.R. Doc. N. 707, 75th Cong. (3d Sess. 1938).

[11] *Id.*, part I, at 76-77.

[12] *Id.*

investment companies were particularly susceptible to propping.[13] The concerns raised in the Investment Trust Study, however, do not apply to the ownership by NMF Corp and, AIV Holdings of the Operating Company because most of the specific concerns identified by Congress relate to an investment company's ownership of a brokerage or underwriting business, rather than ownership of an advisory business.[14]

In this regard, we believe that the legislative history of Section 12(d)(3) supports interpreting the phrase "related activities" contained in Section 12(d)(3)(B) to include advisory services, particularly when comparing the changes to the carve-out language from its original form in the proposed legislation to the final adopted text. [15] Although there is no testimony or explanation in the legislative history to explain the changes to the carve-out language, we believe that the revised carve-out language was intended to allow activities that a registered investment company could lawfully itself engage in, and accordingly that the phrase "related activities" in Section 12(d)(3) was intended to exclude wholly owned subsidiaries that engaged only in investment advisory activities. We believe this interpretation is supported in Congressional testimony and House and Senate reports that focus exclusively on brokerage and underwriting in connection with Section 12.[16] Due to this focus on brokerage and underwriting activities, we

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[13] *Id.*, part III, at 131 ("Following the market crash of October of 1929, the funds of the Chatham Phenix Allied Corporation were utilized to support the market price of the stock of Chatham Phenix National Bank & Trust Company.").

[14] *Compare* Section 12(c)(2)(B) in H.R. 8935, 76th Cong. (3d Sess. 1940) at 30 ("**House Bill**"), S. 3580, 76th Cong. (3d Sess. 1940) at 30 ("**Senate Bill**"), *and Investment Trusts and Investment Companies: Hearings on S. 3580 before the Subcomm. on Securities and Exch. of the Senate Comm. on Banking and Currency*, 76th Cong (3d Sess. 1940), pt. 1, at 10 ("**Senate Hearings**") *with* Section 12(d)(3)(B) of the 1940 Act; *See also* H.R. Rep. No. 76-2639, at 16 (1940); S. Rep. No. 76-1775, at 15-16 (1940); Senate Hearings, pt. 1, at 243.

[15] The original language provided that a registered investment company could purchase interests in a wholly-owned subsidiary, if the "business of such person is confined to activities in which the registered company may lawfully engage." *See* House Bill at 30; Senate Bill at 30. Registered investment companies were at the time, and continue to be, lawfully permitted to act as investment advisers. The language was subsequently changed, carving out persons "primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such related activities." *See* Section 12(b)(3)(B).

[16] Senate Hearings, pt. 1, at 243 (statement from David Schenker saying that the Section "merely states that an investment company cannot buy an interest in a brokerage firm, a distributing company or an investment banking house. It goes further and says that if it is engaged in the underwriting business itself – if engaged in that business through a wholly-owned subsidiary – it is permissible to do so … 'if you want to go into the underwriting business and want to do it through a wholly-owned subsidiary, there is no difficulty with that situation.'"). *See also* H.R. Rep. No. 76-2639, at 16 (1940) (explaining that the Subsection "prohibits investment companies from acquiring securities of persons engaged in the brokerage business or in the business of underwriting and dealing in securities unless the investment company will, after such acquisition, own all the outstanding securities of such person and the principal business of such company is that of underwriting securities"); S. Rep. No. 76-1775, at 15-16 (1940)

believe the final text of Section 12 was revised to clarify that registered investment companies could engage, themselves or through a wholly-owned subsidiary, in brokerage and underwriting activities. We further believe that the new phrase "related activities" was included to encompass the original draft language that prohibited the purchase by a registered investment company of "any person who is a broker, dealer, underwriter, manager, or investment adviser, unless ... the business of such person is confined to activities in which such registered company itself may lawfully engage."[17] Accordingly, we believe the phrase "related activities" in Section 12(d)(3)(B) should be interpreted to include advisory activities, and although the legislative history speaks primarily in terms of one investment company wholly-owning a subsidiary, we believe that under the facts presented herein the Operating Company should be permitted to conduct advisory activities as an investment adviser registered with the Commission under the Advisers Act.

By providing advisory services through the Operating Company, NMF Corp and AIV Holdings are each limiting shareholder exposure to potential liability arising out of the Operating Company's investment advisory activities due to the fact that the Operating Company is structured as a limited liability company and not a partnership. In addition, the potential for conflicts of interest or reciprocal practices is mitigated due to the fact that NMF Corp and, AIV Holdings control the Operating Company in the NMF Structure and each of the three vehicles that comprise the NMF Structure currently has the same board of directors, and the shareholders of both NMF Corp and AIV Holdings vote on a "pass through" basis with respect to any matters involving the Operating Company,[18] and that this concern in the context of Section 12(d)(3) was raised by Congress primarily with respect to an investment company's ownership of a brokerage or underwriting business, rather than the ownership of an advisory business. Last, we believe that permitting the Operating Company to register as an investment adviser would ultimately be beneficial to each of NMF Corp and AIV Holdings and their respective shareholders and members as the formation of one or more Funds could provide the Operating Company with potential management fee income.

Conclusion

For the reasons discussed above, we request the Staff's assurance that the Staff will not recommend enforcement action to the Commission under Section 12(d)(3) of the 1940 Act

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(referring solely to "persons engaged in the brokerage business or in the business of underwriting and dealing in securities" in connection with Section 12).

[17] *See supra* n. 15.

[18] New Mountain Finance Advisers BDC, LLC, will continue to provide advisory services in connection with the Operating Company's investment portfolio.

against NMF Corp or AIV Holdings if the Operating Company registers with the Commission as an investment adviser under Section 203 of the Advisers Act, or if NMF Corp acquires additional common membership units of the Operating Company subsequent to its registering under the Advisers Act.

Should you have any questions or require any additional information concerning this request, please contact the undersigned at (202) 383-0176 or (202) 383-0515, respectively.

Sincerely,

Steven B. Boehm

John J. Mahon

cc: Robert A. Hamwee / New Mountain Finance Corporation