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August 12, 2019

VIA EMAIL

Mr. Paul Cellupica
Division of Investment Management
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: No-Action Relief Under Section 7 of the Investment Company Act of 1940

Dear Mr. Cellupica:

On behalf of Lehman Brothers Holdings Inc. ("**Lehman**"), we respectfully request that the staff of the Division of Investment Management (the "**Staff**") confirm that it will not recommend enforcement action to the Securities and Exchange Commission (the "**SEC**") against certain Lehman employee security companies (the "**ESCs**"), their Replacement GPs (as defined below) or Third-Party Advisers (as defined below), if such ESCs continue to operate in the fashion described below without registration as investment companies under the Investment Company Act of 1940, as amended (the "**1940 Act**"). Specifically, Lehman seeks assurance that each ESC for which Lehman or a Lehman affiliate serves as general partner and for which certain Third-Party Advisers serve as investment adviser may continue operations, without registering as an investment company under Section 8 of the 1940 Act, following the Lehman liquidation, discussed below, with the Replacement GPs serving as general partner, in reliance on the exemption in Section 7 of the 1940 Act for companies that are engaged in "transactions which are merely incidental to the dissolution of an investment company."[1]

[1] The ESCs for which Lehman seeks assurance are Co-Investment Capital Partners L.P.; Co-Investment Capital Partners Cayman AIV I, L.P.; Offshore Co-Investment Capital Partners Holdings L.P.; Secondary Opportunities Capital Partners II L.P.; Offshore Secondary Opportunities Capital Partners II L.P.; Crossroads Capital Partners II L.P.;

I. BACKGROUND

In May 1998, the SEC granted an order to Lehman pursuant to Sections 6(b) and 6(e) of the 1940 Act exempting certain partnerships and investment vehicles established for Lehman employees from all provisions of the 1940 Act, except Section 9, certain provisions of Sections 17 and 30, Sections 36 through 53 and the rules and regulations thereunder (File No. 813-178) (the "**1998 Order**"). These ESCs were established, among other reasons, to invest on a side-by-side basis with Lehman-sponsored private equity funds for third-party investors (the "**Third-Party Funds**"). As described in the application for the 1998 Order, the ESCs are organized as partnerships, with a Lehman entity serving as the general partner. The investments held by the ESCs consist primarily of interests in underlying private equity funds that are managed exclusively by parties that are not Third-Party Advisers (defined below) or affiliated persons[2] thereof (collectively, "**Underlying Funds**"[3]) or direct interests in portfolio companies.

On September 15, 2008, Lehman filed for Chapter 11 bankruptcy protection. After that date, the advisory relationships for a majority of funds in the Lehman Brothers Private Equity Division, including the Third-Party Funds, were transferred to third-party advisers (the "**Third-Party Advisers**"). The Third-Party Advisers include NB Alternatives Advisers LLC, Silverpeak Real Estate Partners, Tenaya Capital LLC and Trilantic Capital Management LP. In each case, substantially the same teams that managed the ESCs and the corresponding Third-Party Funds prior to September 15, 2008 are currently still in place at the Third-Party Advisers and continue to manage such ESCs and the corresponding Third-Party Funds.

Lehman emerged from bankruptcy on March 6, 2012, and is progressing toward a final liquidation. To comply with its plan of liquidation, Lehman will sell or otherwise

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Silverpeak Legacy Capital Partners L.P.; Silverpeak Legacy Offshore Capital Partners L.P.; Silverpeak Legacy Capital Partners II L.P.; Silverpeak Legacy Offshore Capital Partners II L.P.; Silverpeak Legacy Capital Partners III L.P.; Silverpeak Legacy Offshore Capital Partners III L.P.; Lehman Brothers Venture Capital Partners II, L.P.; and TCP Capital Partners VI, L.P.

[2] The term "affiliated persons" is defined in Section 2(a)(3) of the 1940 Act.

[3] The ESCs that invest in Underlying Funds invest exclusively in unaffiliated Underlying Funds with the narrow structuring exceptions that in some cases the ESCs invest (i) in other ESCs or (ii) into aggregators or special purpose vehicles formed to facilitate participation by related parties, which in both cases in turn invest exclusively in unaffiliated Underlying Funds or direct interests in portfolio companies. Despite such structuring, the ultimate investments are in unaffiliated Underlying Funds or direct interests in portfolio companies.

dispose of its remaining interests in the ESCs (*i.e.*, its general partner and limited partner interests), along with all other assets held on Lehman's balance sheet.

Each of the Third-Party Funds that invests alongside the ESCs for which relief is being sought is winding down its operations, and the assets will be sold across the Third-Party Funds and the ESCs in the relative near-term, although some assets will likely not be sold prior to Lehman's final liquidation. At present, current and former Lehman employees hold approximately $63 million as assets in the ESCs, representing approximately 5,000 individual owners.

Lehman believes there will be circumstances where it would be contrary to the best interests of the ESC limited partners to liquidate or otherwise dispose of the assets held by each ESC in connection with the liquidation of Lehman, particularly because the ESCs hold long-dated, illiquid assets. Further, dissolution of a general partner would trigger dissolution of the ESCs. If Lehman were to transfer its general partner interests, the ESCs would no longer be able to rely on the 1998 Order, consequently requiring the ESCs to register as investment companies under the 1940 Act absent an exemption from such registration. Such registration would be burdensome due to significant increased compliance expenses and even impractical as the ESCs may not be in compliance with certain provisions of the 1940 Act. Instead, Lehman believes that in substantially all circumstances it will be in the best interest of an ESC to maintain each of its investments for the same period of time as the Third-Party Funds, unless pursuant to its fiduciary duty, Lehman determines it is better to liquidate the assets of an ESC.

Rather than prematurely dissolving these ESCs with the dissolution of the general partner, Lehman seeks to transfer its remaining role as general partner of the ESCs to the Third-Party Advisers or their affiliated persons (the "**Replacement GPs**") for any ESC that is unlikely to be fully liquidated prior to Lehman's dissolution and for which disposition of the underlying assets is not in the ESC's best interest, in Lehman's view and the applicable Third-Party Adviser's view. Because the Third-Party Advisers already manage the ESCs' portfolios and owe fiduciary duties to the ESCs, the Third-Party Advisers (or their respective affiliated persons) would be the natural organizations to take over as general partners of the ESCs, thereby allowing the ESCs to maintain investments for the same period of time as the respective Third-Party Funds. Upon and following any such transfer, the ESCs would be managed with a view toward liquidation as described herein.

II. DISCUSSION

A. Elimination of Lehman as the General Partner

Currently, Lehman or a Lehman affiliate serves as the general partner to the ESCs, the majority of which are now advised by the Third-Party Advisers.[4] As noted, the

[4] Lehman is not seeking relief with respect to any ESC which is not advised by a Third-Party Adviser.

application in connection with the 1998 Order contemplated that Lehman would be the general partner of the ESCs. Thus, if Lehman transferred its general partner interest in each ESC to a third party, certain facts and representations upon which the 1998 Order was granted would no longer be accurate. At the time the 1998 Order was granted, it was not contemplated that Lehman could face dissolution prior to termination of the ESCs, and thus no provision is made for such eventuality in the application.[5]

B. Treatment of ESCs as "In Dissolution"

Sections 7(a) and 7(b) of the 1940 Act exempt from the registration requirements of the 1940 Act an unregistered investment company that engages in "transactions which are merely incidental to the dissolution of an investment company." Several Staff no-action letters have interpreted this dissolution exception and its applicability. In granting prior no-action relief, the Staff appears to have based its analysis on the following factors[6]: (1) the trust will exist solely to liquidate its assets and distribute the proceeds, (2) the trust will not hold itself out as an investment company, but rather as an entity in the process of liquidation, (3) the trust will not conduct a trade or business and will be limited to making temporary investments in short-term government securities, certain time deposits, certificates of deposit, bankers' acceptances, commercial paper, and money market funds, (4) the trust will terminate on the earlier of (i) the date on which all of the assets have been liquidated and the proceeds distributed to holders of interests, or (ii) a specified period of time after the effective date of the plan of liquidation, (5) the trust will not list interests on an exchange and the trust will not take steps designed to facilitate the development of a secondary market in the interests and (6) the trust will be required to provide periodic reports containing financial statements and certain other information to beneficiaries of the trust.[7] We analyze each of these factors below in turn.

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[5] We note that we are not seeking to have any of the Third-Party Advisers or the Replacement GPs deemed to be successors to Lehman under the 1998 Order, despite the continuity of management of the ESCs in all cases.

[6] While the Staff has issued a number of no-action letters to investment companies that have formed trusts to hold assets pending their eventual sale or disposition, no-action relief has been issued where the investment company disposed of its assets directly, without the use of a separate liquidating trust. Liquidation trusts are typically set up for purposes of bankruptcy proceedings rather than securities law reasons. *See, e.g.*, The Fund American Companies, Inc., SEC No-Action Letter (Nov. 16, 1990); LDX Group, Inc., SEC No-Action Letter (May 4, 1990); Keyes Offshore Limited Partnership, SEC No-Action Letter (Oct. 20, 1986); Merit Clothing Company, SEC No-Action Letter (Mar. 29, 1982); Sinclair Venezuelan Oil Company, SEC No-Action Letter (Nov. 8, 1979); American Recreation Group, Inc., SEC No-Action Letter (Dec. 4, 1975).

[7] *See, e.g.*, Life Partners Holdings, Inc., SEC No-Action Letter (Dec. 2, 2016); Newhall Investment Properties, SEC No-Action Letter (Sep. 21, 1998); I.C.H. Corporation, SEC No-Action Letter (Feb. 26, 1997); Integrated Resources, Inc., SEC No-Action Letter (Aug.

1. The trust will exist solely to liquidate its assets and distribute the proceeds.

The Third-Party Funds are private equity style funds (including private equity funds of funds), with stated investment periods during which they may make new investments, and thus the ESCs themselves have corresponding investment periods. For every Third-Party Fund and ESC, this investment period has ended other than the limited ability to make follow-on investments as necessary to preserve the value of the existing investments. In the current lifecycle of the Third-Party Funds and the ESCs, the Third-Party Advisers are not seeking new investment opportunities.

Other than the possibility of follow-on investments through Underlying Funds (directly or indirectly), the ESCs are not subject to any binding commitments to invest capital into any new or existing investments. Therefore, the ESCs will not make any new investments other than follow-on investments through Underlying Funds (directly or indirectly) to preserve the value of existing investments. Thus, the ESCs will not call capital from limited partners of the ESCs except (1) to fund a capital call issued, directly or indirectly, by an Underlying Fund with respect to a follow-on investment, (2) to the extent the ESCs are legally required, directly or indirectly, to return distributions to an Underlying Fund, (3) as otherwise required pursuant to a currently existing legally binding obligation under the governance documents of the applicable Underlying Fund, or (4) with respect to a direct investment by an ESC in a portfolio company, as required pursuant to a currently existing legally binding obligation under the governance documents of such portfolio company or the existing terms of the ESC's investment in the portfolio company. The ESCs, pursuant to their governing agreements, may also withhold distributions or establish reserves to fund future capital calls issued by Underlying Funds or other obligations described above. We believe that this limited ability to call capital to satisfy pre-existing binding obligations is consistent with existing "solely to liquidate assets and distribute proceeds."

While a follow-on investment by an Underlying Fund ordinarily will be made in an existing portfolio company or its affiliate, the form of such investment will be determined by the manager of the applicable Underlying Fund using its business judgment based on the then prevailing circumstances. Such investment may be in the same security as the original investment by the ESC, or it may be in a different security (by type of security or by liquidation preference). The ESCs would be required to make their pro rata contribution to

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5, 1994); MPC Liquidating Trust, SEC No-Action Letter (Mar. 10, 1994); Oppenheimer Landmark Properties, SEC No-Action Letter (Mar. 9, 1993); VHA Enterprises, Inc., SEC No-Action Letter (Jan. 7, 1993); Grubb & Ellis Realty Income Trust, SEC No-Action Letter (May 26, 1992); Graphic Scanning Corporation, SEC No-Action Letter (Aug. 21, 1991); Timber Realization Company, SEC No-Action Letter (June 15, 1987); ASI Communications, Inc., SEC No-Action Letter (Mar. 12, 1987); United Western Corporation, SEC No-Action Letter (Dec. 26, 1984); Pasco, Inc., SEC No-Action Letter (Nov. 28, 1976).

such follow-on investment, though the follow-on investments are generally unlikely to occur and unlikely to be material if they do occur.

2. *The trust will not hold itself out as an investment company, but rather as an entity in the process of liquidation.*

Since the ESCs do not currently offer their interests to new investors, nor will they do so in the future, we believe this requirement is satisfied. The ESCs do not and will not hold themselves out as investment companies or, following the transfers by Lehman or its affiliates contemplated herein, as "employee security companies."

3. *The trust will not conduct a trade or business and will be limited to making temporary investments in short-term government securities, certain time deposits, certificates of deposit, bankers' acceptances, commercial paper, and money market funds.*

The ESCs will not have an objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the ESCs being treated as "in dissolution." Except with respect to certain follow-on investments described above, the ESCs will continue to hold securities and other instruments, but will only hold such securities and instruments if they were held prior to the ESC being treated as "in dissolution." As the ESCs will not engage in any ongoing trade or business and will only operate to maintain their assets, we believe this requirement is satisfied.

4. *The trust will terminate on the earlier of (i) the date on which all of the assets have been liquidated and the proceeds distributed to holders of interests, or (ii) a specified period of time after the effective date of the plan of liquidation.*

Lehman will, on behalf of any ESC for which it transfers its general partner interest, adopt a formal plan of liquidation prior to the transfer of each such interest, which plan will continue in effect upon transfer of that interest and through the ultimate liquidation of the ESC. Any such plan of liquidation will be prepared by Lehman together with the applicable Third-Party Adviser to allow for an orderly winding down of the ESCs over the coming years. While it is currently expected that the ESCs will be wound down and liquidated within five years, in no event will such liquidation process last more than fifteen years.

The Staff has on numerous occasions permitted dissolving entities to avail themselves of the exception in Section 7(a) for periods longer than five years. For example, in *Western Airlines, Inc.*, the Staff did not object to a 12-year liquidation period because one of the assets in the liquidating trust at issue was not scheduled to terminate for 12 years and liquidation prior thereto could only be accomplished at very deep discounts.[8] In *Merit Clothing Company*, the Staff did not object to a 10-year period to permit a liquidating

[8] Western Airlines, Inc., SEC No-Action Letter (Jan. 28, 1992).

company to address its liabilities and pay them in full.[9] In *Timber Realization Company*, the Staff did not object to a term of 15 years for a liquidating trust to operate for the limited purpose of collecting uncollected assets, defending unknown or contingent claims and addressing matters concerning missing beneficiaries.[10]

Similar to the liquidating trusts and companies at issue in precedents, in order for the ESCs to wind down at the same time as the Third-Party Funds and avoid diminution in value, we respectfully request the Staff to permit the ESCs to liquidate fully upon the final disposition of each asset with respect to each ESC.

5. The trust will not list interests on an exchange and the trust will not take steps designed to facilitate the development of a secondary market in the interests.

If an entity takes actions to facilitate trading in its shares, such actions may not be deemed "merely incidental to the dissolution." The Staff has favorably looked upon representations that an active trading market in liquidating trust interests will not develop, interest in a liquidating trust will not be listed on any national securities exchange, and the liquidating trust will not take steps designed to facilitate the development of a secondary market in their interests.[11] The ESC interests are not currently exchange-listed, nor will they be. The governing agreements of the ESCs contain transfer restrictions, including that the transferee must be an eligible investor under the terms of the 1998 Order. Such transfer restrictions will continue to exist and be enforced until the liquidation of the ESCs. In addition, no fees or gains accrue to Lehman by virtue of serving as the general partner, and neither the Replacement GPs nor the Third-Party Advisers will receive a fee in connection with the transfer of the general partner interests. Lehman is not expected to be compensated for transferring the general partner interest to the Replacement GPs. Since the ESCs would comply with each of these representations, the ESCs cannot be considered to facilitate trading in their interests while "in dissolution."

6. The trust will be required to provide periodic reports containing financial statements and certain other information to beneficiaries of the trust.

The ESCs will issue financial statements to investors showing the assets and liabilities at the end of each fiscal year. The financial statements contained in such reports will be prepared in accordance with generally accepted accounting principles and audited by independent public accountants.

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[9] Merit Clothing Company, *supra* note 6.

[10] Timber Realization Company, *supra* note 7.

[11] *See* I.C.H. Corporation, *supra* note 7; Integrated Resources, Inc., *supra* note 7; MPC Liquidating Trust, *supra* note 7.

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Based on the foregoing, we believe each ESC (1) will exist solely to liquidate its assets and distribute the proceeds, (2) will not hold itself out as an investment company, but rather as an entity in the process of liquidation, (3) will not conduct a trade or business and will be limited to making temporary investments in short-term government securities, certain time deposits, certificates of deposit, bankers' acceptances, commercial paper, and money market funds, (4) will terminate in the manner described herein, (5) will not list interests on an exchange and the trust will not take steps designed to facilitate the development of a secondary market in the interests and (6) will provide periodic reports containing financial statements and certain other information to investors.

C. Existing Order

As discussed above, the ESCs operate pursuant to SEC relief granted in May 1998. Notwithstanding anything to the contrary in the 1998 Order, each ESC will maintain and preserve all records for the life of such ESC and at least six years thereafter. Further, if the requested relief is granted, each ESC and its respective Third-Party Adviser agree that the ESC, and any company controlled by such ESC, will not buy from or sell any security or other property to any (i) "affiliated person" of such ESC, as such term is defined in Section 2(a)(3) of the 1940 Act, or (ii) affiliated person of such person, in contravention of Section 17 of the 1940 Act, and the rules and regulations thereunder, treating each ESC as if it were a registered company for such purposes. Further, in the event of a disposition of interests by a Third-Party Fund, each ESC will have the right to participate in such disposition on a basis that is proportionate to its outstanding investments in the issuer immediately preceding the disposition. In addition, any agreement or contract transferring general partner interests will include a term requiring the recipient to comply with the terms and conditions of the 1998 Order, as well as any terms of this letter.

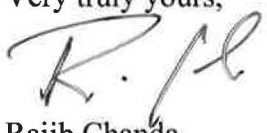
The ESCs, the Third-Party Advisers and the Replacement GPs will also agree that the ESCs will comply with the terms of the requested no-action relief and that the ESCs will continue to comply with the conditions set forth in the 1998 Order (as modified by the terms of the requested relief) while "in dissolution." Despite the changed circumstance of the ESCs' general partners, Lehman will ensure that each Third-Party Adviser and each Replacement GP who receives a general partner interest in an ESC has agreed to comply with select 1940 Act sections pursuant to the 1998 Order, namely, Section 9, certain provisions of Sections 17 and 30, Sections 36 through 53 and the rules and regulations thereunder, in each case as modified in the manner outlined in this letter.

III. CONCLUSION

For the reasons set forth herein, we respectfully request a no-action position by the Staff as described above. The Staff is not being asked to take any position with respect to the existing 1998 Order.

If you have any questions or require any further information, do not hesitate to contact me at 202-636-5543.

Very truly yours,



Rajib Chanda

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