

June 8, 2006

SEC ISSUES LETTER AFFIRMING THAT PRIVATE INVESTMENT FUND WOULD NOT BE ACTING AS A “PRINCIPAL” FOR PURPOSES OF SECTION 206(3) UNLESS INVESTMENT ADVISER AND/OR ITS CONTROLLING PERSONS OWNED MORE THAN 25% OF FUND

The staff of the Securities and Exchange Commission (the “SEC”) on June 7, 2006 has issued a letter regarding the status of a private investment fund for principal transaction purposes which we believe is of major significance to private investment funds. At issue was whether a private investment fund in which the controlling person of the investment adviser had an ownership interest could engage in certain cross transactions (e.g., rebalancing trades) with other clients or funds managed by the investment adviser without such transactions being viewed as “principal transactions” under Section 206(3) of the Investment Advisers Act of 1940.

In general, Section 206(3) of the Act prohibits transactions between a client and a “principal” unless certain notice and consent is obtained in accordance with Section 206(3) and the rules thereunder. In the case of private investment funds, the SEC had previously declined to provide guidance as to what level of ownership in a private investment fund by the investment adviser and/or its controlling persons would be sufficient to consider transactions with the fund to be principal transactions for purposes of Section 206(3). See Letter to the American Bar Association, dated December 8, 2005 (“ABA Letter”).

In this letter, Gardner, Russo & Gardner (June 7, 2006, File No. 801-41357), the SEC, while noting that different facts from Gardner, Russo & Gardner could require a different conclusion, stated in general that ownership by the investment adviser and/or its controlling persons of 25% or less in the private investment fund would result in transactions with the fund not being treated as principal transactions for purposes of Section 206(3).

We are pleased to have assisted our client in obtaining this important guidance. If you have any questions, please contact any member of Seward & Kissel LLP’s Investment Management Group.

Seward & Kissel LLP