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September 20, 2002

BY E-MAIL – regcomments@fincen.treas.gov
FinCEN
P.O. Box 39
Vienna, Virginia 22183-1618
Attention: NPRM – Section 352 Unregistered Investment Company Regulations

Re: Comment on Proposed Anti-Money Laundering Program for Unregistered Investment Companies

Gentlemen:

The purpose of this letter is to comment on the Notice of Proposed Rulemaking with respect to anti-money laundering programs for unregistered investment companies. I have two comments regarding the release:

1. There should be a clear exemption for broker-dealers and futures commission merchants (FCMs) registered respectively with the Securities and Exchange Commission or the Commodity Futures Trading Commission. All of these organizations are currently subject to anti-money laundering regulation and their inclusion would result in duplicative and unnecessary regulation.

2. The two year Redemption Rights requirements should not apply to investors and particularly employee investors who are terminated, die or become totally disabled. Most privately held companies have stock purchase or similar agreements that provide that their owners that are employees will have the right to put their interest to the company in the event of termination by the company or in the event of total disability or death. Likewise, many individual investors in privately held companies have similar rights in the event of an individual's total disability or death. The two year holding period should also not apply to the organization's right to redeem within two years in the event of certain circumstances.

Broker-Dealers and FCMs

The Investment Company Act of 1940 in Section 3(c)(2) excludes many broker-dealers and FCMs from the definition of an investment company. However, Section 3(c)(2) does not exclude all registered broker-dealers or FCMs. For that reason, there should be an express exclusion excluding broker-dealers registered with the Securities and Exchange Commission and FCMs registered with the Commodity Futures Trading Commission from the provisions of the proposed rules. All broker-dealers and FCMs are already subject to anti-money laundering regime and rules that adequately address all of the issues raised in the release.

Redemption Rights Under Shareholder and Similar Agreements

The proposed rule provides that an unregistered investment company would include only those organizations that preclude an investor from redeeming any portion of his or her ownership within two years after that interest was purchased. There are many organizations with more than $1 million in assets that would fall within the definition of an unregistered investment company and would not be excluded by reason of the redemption right provision. Almost all private companies have a shareholder agreement, operating agreement or similar agreement that restricts the purchase or sale of interest in the entity. In most of those agreements, there are significant limitations on the right of a person to sell or dispose of an interest in the company. But in almost all of the agreements, the company may under a number of circumstances redeem the stock at its volition. For example, in the event that an employee interest holder has been terminated or an employee interest holder dies or is totally disabled. In other cases, the agreements provide the company with a right of first refusal if the interest holder (employee or investor) proposes to sell his interest. This is generally required under the anti-alienation of interest provisions of state law throughout the country. As a result, almost all of these agreements have a right of first refusal by the company. The two year limitation on redemption should not include the company's right to redeem at its own volition for whatever reason from an investor or employee. Likewise, the redemption restriction should not include an exchange of shares, sale of substantially all of the assets or other entity reorganization that results in redemption of shares.

We would suggest that the term "redemption rights" be defined to mean the sole right of the individual to require the entity to redeem his shares. However, the redemption right limitation should not include the obligation of an organization to redeem within two years (with or without the election of the employee or investor) from an investor or an employee in the event of death or total disability of the investor or employee.

We would also recommend that the two year period be one year. One year is more than enough time to avoid any money laundering concerns. Two years would interfere with and limit investment by bona fide investors in a number of private corporations that might otherwise inadvertently qualify as investment companies under the proposed rule.

I would be pleased to discuss any of these questions with the staff. Please contact me at the above number or by e-mail.

Very truly yours,

Paul B. Uhlenhop

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