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Attention: NPRM - Section 352 Unregistered Investment Company Regulations

Following are some questions and comments on the proposed regulations applicable to unregistered investment companies, focusing primarily upon the concepts of purchase and redemption rights:

1. Many private equity funds are set up so that an investor makes a capital commitment at the time of the fund's formation, but capital is drawn down over the life of the fund.
 - a. Is the making of the capital commitment or the drawdown the relevant purchase for purposes of the proposed regulations?
 - b. Does it matter if an investor has the right to opt out of a specific investment, so that some discretion exists as to the making of capital contributions?
 - c. Does it matter if the right to opt out is limited (such as where the investor cannot own an interest in a certain type of company by applicable regulation, or would create unrelated business taxable income for a tax-exempt investor)?
2. If the fund agreement provides that it may cause a new fund (sub fund or split-off fund) to be created to make an investment in the event that not all participants in the fund can make the investment, is the creation of that sub fund or split-off fund a purchase?
 - a. Does it matter if the capital commitment to the original fund is reduced by the amount of the commitment transferred to the sub fund or split-off fund?
3. Some fund agreements permits an investor (otherwise entitled to receive a distribution) to make an election which causes the fund to retain the distribution in a separate account for the benefit of such investor, with the investor having a right to thereafter cause such funds to be distributed to it.
 - a. Is the making of such an election a purchase?
 - b. Is the purchase considered to occur at the time the election is made, or at the time that each subsequent distribution is withheld?

- c. Is the right to have the amounts held by the Fund subsequently distributed a right to a redemption?
 - d. If it is a right to a redemption, is it considered "active" at the time that the fund is formed, or does someone need to make an election before the right to redemption will be considered "active"?
 - e. If the fund agreement provides that the amounts so segregated cannot be distributed other than in connection with the liquidation of the fund is there still a right to a redemption?
4. Certain funds provide that they may require some amounts which have been distributed to investors to be recontributed to the fund, in addition to their original capital commitment.
- a. If a fund has such a provision, is the investor still considered to have made only one purchase within the meaning of the regulations, at the time of execution of the original subscription agreement?
 - b. Alternatively, is each distribution made by a fund which increases the amount which may be drawn down from such investor a purchase within the meaning of the regulations?
 - c. Alternatively, does the additional amount have to be actually called by the fund before an additional "purchase" is considered to have made?
5. Some funds provide that an investor may elect to receive either: (1) an in-kind distribution of stock or (2) cash from the fund's disposition of that stock. Does the right to make such an election constitute a redemption right within the meaning of the proposed regulations?
- a. Alternatively, a fund may provide that it will distribute all assets in kind, but will direct certain assets to a sub-fund or split-off fund (which is established to sell the assets). Does the creation of the sub fund or split-off fund constitute a purchase within the meaning of the proposed regulations?

Thanks very much for the opportunity to comment on the proposed regulations.

Very truly yours,

Timothy Burns
Lombard Investments, Inc.