WILLKIE FARR & GALLAGHER LLP

OF INTEREST

IMPACT OF HEDGE FUND REDEMPTIONS UNDER ERISA

Many hedge funds avoid regulation under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), by maintaining participation by "benefit plan investors" (generally, ERISA plans, IRAs and entities investing on behalf, or with the assets, of such plans) below 25% of the value of each class of equity interest issued by the fund (the so-called "25% Test"). For such funds, it is important not to lose sight of the requirements for satisfying the 25% Test, in light of an unprecedented number of redemption requests due to general turmoil in the financial markets.

The 25% Test must be satisfied at the time of each new investment or redemption with respect to the fund. It is therefore essential to monitor ownership percentages prior to and following each redemption, as a redemption by non-benefit plan investors will necessarily increase the relative ownership percentage of benefit plan investors in the class post-redemption. Compliance with the 25% Test should be analyzed whenever redemption requests are received. In the event that a redemption would result in a violation of the 25% Test, fund managers may be able to rely on the fund's operating documents to avoid or delay such redemption or otherwise force a corresponding redemption of benefit plan investor assets, in each case in order to satisfy the 25% Test.

As long as the 25% Test is satisfied, the assets of the fund will not be subject to ERISA, and importantly will not be covered by the fiduciary requirements and prohibited transaction rules imposed thereunder.

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If you have any questions concerning the foregoing or would like additional information, please contact Frank A. Daniele (212-728-8216, fdaniele@willkie.com), David E. Rubinsky (212-728-8635, drubinsky@willkie.com), Jordan A. Messinger (212-728-8799, jmessinger@willkie.com), or the attorney with whom you regularly work.

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