

Mr. Richard Bourgeois

Reavis & McGrath

345 Park Avenue

New York, New York 10154

Dear Mr. Bourgeois,

This is in response to your letter of May 23, 1983, addressed to Mr. Darrell Proctor of the National Association of securities Dealers, Inc. ("NASO"), in which you request, on behalf of Baer & Company ("Baer"), concurrence in your interpretation of the application to Baer of Securities Exchange Act Rule 1Sc3-1 (17 CFR 240.1Sc1-1).

I understand the pertinent facts to be as follows: Baer, a New York limited partnership, will conduct a general securities broker-dealer business after it has registered with the Securities and Exchange Commission and become a member of the NASO. In addition, Baer intends to act as sole general partner of a New York limited partnership formed to make venture capital investments (the "Fund").

Baer will offer limited partnership interests in the Fund to certain sophisticated individuals and institutions in a private offering that will not be registered under the securities Exchange Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) thereof. Baer will invest an amount equal to at least one percent of the Fund's initial equity capital as a general partnership interest and may invest additional sums in limited partnership interests. Baer expect~ to sell approximately \$10,000,000 to \$15,000,000 of such limited partnership interests (but may in its discretion sell a lesser amount) to a limited number of investors.

Capital contributions derived from this offering will be invested for the Fund by Baer primarily in securities of non-public companies, both in the early development and emerging growth stages, and a portion of the Fund 's capital may be committed to investments in small, publicly traded companies.

Under the terms of the Fund's limited partnership agreement Baer would not be obligated to return to the limited partners any funds contributed by them which were depleted by, net losses of the Fund allocated to the limited partners.

Accordingly, Baer would have no legal liabilities to the limited partners on account of the organization and operation of the Fund other than to distribute net profits, if any, and to distribute the amount of the capital contributions which exceed net losses allocated to the limited partners.

It is also anticipated that Baer's legal liabilities to persons other than the limited partners of the Fund will be limited by the Fund's limited partnership agreement, which will prohibit the Fund from borrowing money or incurring indebtedness, except that the Fund would not be prohibited from (i) guaranteeing the obligations of issuers of securities acquired by the Fund to the extent of the Fund's cash and cash equivalents and (ii) issuing notes in connection with the repurchase of limited partnership interests to permit a limited partner, by withdrawing from the Fund, to remain in compliance with the Employee Retirement Income Security Act ("ERISA") and any laws or regulations related thereto or promulgated thereunder.

Accordingly, the Fund's ability to incur liabilities of any nature is severely restricted. Baer intends to reserve the right to refuse to admit as a limited partner any person who is subject to ERISA regulations.

Based on the foregoing facts and representations, the Division is of the view that since Baer is a general partner in the Fund, it is in effect guaranteeing all the liabilities of the Fund. This would ordinarily require a consolidation under Appendix C to the net capital rule, between Baer and the Fund for net capital purposes. Rather than requiring a consolidation, the Division will raise no question nor recommend any action to the Commission if Baer deducts from its net worth in computing its net capital any net capital deficit the Fund may have after computing net capital in accordance with Rule 15c3-1. Baer's carrying value of its general and limited partnership interests in the Fund will be considered as non-allowable assets for purposes of the net capital rule.

You should understand that the position expressed herein is a staff position with respect to enforcement only and does not purport to express any legal conclusion on this matter. The Division's position is necessarily confined to the facts as you have represented them: any material change therein may warrant a different result and should be brought to the Division's attention.

If you have further questions, please contact us.

Sincerely,

Steven J. Gray

Staff Attorney

cc: Darrell Proctor

National Association of

Securities Dealers, Inc.

May 23, 1983

Mr. Darrell Proctor

Surveillance Department

National Association of Securities Dealers, Inc.

1735 K Street, N.W.

Washington, D.C. 20006

Dear Mr. Proctor:

On behalf of Baer & Company ("Baer"), we hereby request your concurrence in our interpretation of the application to Baer of the net capital rules set forth in Rule 15c3-1 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 15 c3-1"), under the following circumstances. Baer, a New York limited partnership, will conduct a general securities broker-dealer business after it has registered with the Securities and Exchange Commission and become a member of the National Association of Securities Dealers, Inc. ("NASD"). Baer does not at this time intend to be a member of any national securities exchange. Subject in part to your response to this letter, Baer intends to act as sole general partner of a New York limited partnership formed to make venture capital investments (the "Fund"). We base our interpretation of Rule 15c3-1 on our experience with other clients who are members of the New York Stock Exchange, American Stock Exchange and the NASD and who formed venture capital investment limited partnerships (the "Prior Funds") for which they act as general partners. The structure and purpose of the Fund will

be substantially the same as the structure of the Prior Funds. The net capital treatment for Baer that we propose in this letter is substantially identical to that required to be applied to the general partners of the Prior Funds by the New York Stock Exchange .

Baer will offer limited partnership interests in the Fund to certain sophisticated individuals and institutions in a private offering that will not be registered under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) thereof. Baer will invest an amount equal to at least one percent of the Fund's initial equity capital as a general partnership interest and may invest additional sums in limited partnership interests. Baer expects to sell approximately \$10,000,000 to \$15,000,000 of such limited partnership interests (but may in its discretion sell a lesser amount) to a limited number of investors.

Capital contributions derived from this offering will be invested for the Fund by Baer primarily in securities of non-public companies, both in "the early development and emerging growth stages, and a portion of the Fund's funds may be committed to investments in small, publicly traded companies.

Neither Baer nor the Fund will be registered pursuant to the Investment Advisers Act of 1940, as amended, in reliance upon the exemptions afforded by that Act, at the time of formation of the Fund, although Baer and the Fund will reserve the right to register under that Act at a later time.

Baer anticipates that the limited partnership agreement for the Fund will be substantially similar in all material respects to the limited partnership agreements for the Prior Funds.

Consistent with the accounting treatment accorded the general partners of the Prior Funds, it is our understanding that generally accepted accounting principles for brokers and dealers prescribe that investments of broker/dealers for which market quotations are not available should be carried on the books of Baer at fair value. Because the Fund will periodically revalue the securities in its portfolio, fair value would best be determined by applying the equity method of accounting for Baer's investment in the Fund. Our understanding is that under the equity method, Baer's investment would be carried on the books of Baer, in the Long-Term Investments -- Not Readily Marketable account or similar account, at the amount of

capital contributed to the Fund by Baer as general partner plus or minus Baer's equity in all increases and decreases (subject to the limitations of the partnership agreement) in the Fund's net assets. Baer's share of the net income or loss of the Fund would be included in its income statement, with distributions received from the Fund being credited to the investment account. The financial statements of Baer would also include appropriate disclosure of the investment, the basis of accounting, and other pertinent information.

Based on our experiences with the Prior funds, it is our understanding that, under generally accepted accounting principles, should the Fund sustain a net loss, the only effect on the balance sheet of Baer would be to reduce the value of Baer's interest in the fund in proportion to Baer's interest in net losses in the Fund as determined by the limited partnership-agreement of the Fund.

It is anticipated that the Fund's limited partnership agreement will provide that Baer, as general partner, will be allocated 20% of net losses until the balance in Baer's capital account is reduced to zero at which point all net losses are allocated to the limited partners. Accordingly, assuming \$10,000,000 of limited partnership interests are sold, and Baer contributes \$100,000 as general partner, Baer's \$100,000 investment would be reduced by 20% of the first \$ 500,000 of net losses (at which point Baer's entire \$100,000 capital contribution will be eliminated) and thereafter all net losses would reduce the capital accounts of the limited partners. Under the terms of the Fund's limited partnership agreement Baer would not be obligated to return to the limited partners any funds contributed by them which were depleted by net losses of the Fund allocated to the limited partners. Accordingly, Baer would have no legal liabilities to the limited partners on account of the organization and operation of the Fund other than to distribute net profits, if any, and to distribute the amount of the capital contributions which exceed net losses allocated to the limited partners.

Further, it is also anticipated that Baer's legal liabilities to persons other than the limited partners of the Fund will be limited by the Fund's limited partnership agreement, which will prohibit the Fund from borrowing money or incurring indebtedness, except that the Fund would not be prohibited from (i) guaranteeing the obligations of issuers of securities acquired by the cash and cash equivalents and (ii) issuing notes in connection with the repurchase of limited partnership

interests to permit a limited partner, by withdrawing from the Fund, to remain in compliance with the Employee Retirement Income Security Act ("ERISA") and any laws or regulations related thereto or promulgated thereunder. Accordingly, the Fund's ability to incur liabilities of any nature is severely restricted. We note that Baer intends to reserve the right to refuse to admit as a limited partner any person who is subject to ERISA regulations.

Based upon the foregoing and upon our experiences with the Prior Funds, it is our understanding that Baer may form the Fund and act as general partner thereto subject to the following requirements:

- (i) Baer ' s investment in the Fund will be considered as a non-allowable asset in accordance with the ~revisions of Rule 15c3-I. Baer will be required to assume an additional charge for any liabilities of the Fund that exceed the Fund's assets.
- (ii) With respect to the treatment of non-marketable securities in the hands of the Fund or which may be distributed to Baer by the Fund, Rule 15c3-I requires a deduction of 100\ of the carrying value of such securities.
- (iii) Since the Fund ' s limited partnership agreement will allow the Fund to guarantee indebtedness of a portfolio company under certain circumstances and to issue notes to purchase the interest of a limited partner subject to ERISA, Baer will be required to charge its net capital with any or all guarantees or notes issued to the extent the obligations represented by such guarantees or notes exceed Fund assets.
- (iv) Baer will file with the NASO all required FOCUS Reports, with any necessary adjustments as a result of the Fund's activities.

Please contact us concerning your concurrence in our interpretation of the net capital requirements as soon as possible so that organization of the Fund may be completed promptly. If you have any questions or comments with respect to the foregoing or if you require any additional information, please do not hesitate to contact the undersigned or, in my absence, Paul Jacobs, Esq. of this office.

Very truly yours,

Richard P. Bourgeois