**LAZARD FRÈRES ASSET MANAGEMENT**

**February 12, 1996**

**TOTAL NUMBER OF LETTERS: 2**

**SEC-REPLY-1:**
**SECURITIES AND EXCHANGE COMMISSION**
**WASHINGTON, D.C. 20549**

**February 12, 1996**

**RESPONSE OF THE OFFICE OF CHIEF**
**COUNSEL DIVISION OF INVESTMENT MANAGEMENT**

**Our Ref. No. 95-399**
**Lazard Frères Asset Management**
**File No. 801-6568**

Your letter dated July 20, 1995 requests our assurance that we would not recommend enforcement action to the Commission under the Investment Advisers Act of 1940 ("Advisers Act") if Lazard Freres Asset Management ("LFAM"), a registered investment adviser, charges a performance fee to BPI Capital Management Corporation (BPI Capital) with respect to the performance of the BPI Global Opportunities Fund (the "Fund").

BPI Capital is an investment counsel and portfolio manager registered under the laws of the Province of Ontario and manages it publicly offered mutual funds. The Fund is an open-end fund organized under the laws of the Province of Ontario. The Fund was entered into a management agreement with BPI Capital under which BPI Capital is responsible for management of the Fund's investment portfolio and day-to-day management of the Fund.

Units of the Fund are offered to investors in the Provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia pursuant to prospectus exemptions under the laws and regulations each of these Provinces. Under such prospectus exemptions, minimum investment amounts are CAD $ 150,000 for investors in Ontario and Saskatchewan and CAD $ 97,000 for investors in Manitoba, Alberta and British Columbia. A lower minimum amount of CVAD $ 25,000 is available to investors in British Columbia designated as "sophisticated purchasers." No units of the Fund have been offered to any investors residing in the United States and there is no intention to offer any units of the Fund to U.S. investors.

Under the management agreement with the Fund, BPI Capital is entitled to a management fee from the Fund equal to 2.25% per year of the net asset value of the Fund. In addition, BPI Capital is entitled to the payment of a performance fee from each unitholder of the Fund. If the unitholders experience gains in the net asset value of the units held that exceed 10% per year, BPI Capital is entitled to receive, as a performance fee, 20% of any gain in excess of the 10% gain.

BPI Capital has entered into a subadvisory agreement with LFAM to provide investment advice with respect to the assets of the Fund. LFAM, in addition to being registered under the Advisers Act, is registered in the Province of Ontario as an international dealer and investment counsel and is permitted to serve as a subadviser to a Canadian Fund. Under the subadvisory agreement, LFAM will provide recommendations as to the purchase and sale of the Fund's portfolio securities on a basis consistent with the Fund's investment objectives and strategies, provided, however, that BPI Capital has the right to review and approve such recommendations by LFAM. Pursuant to the subadvisory agreement, BPI Capital pays LFAM an annual fee of 75 basis points of the net assets of the fund.

LFAM and BPI Capital propose to amend the subadvisory agreement to provide that the compensation payable to LFAM would be comprised of a base fee and a performance fee. The base fee would continue to be paid at an annual rate of 75 basis points of the net asset value of the Fund. The performance fee

would be equal to 10% of the net income of the Fund in excess of a time weighted return for the Fund of 10%. The net income of the Fund would be equal to the sum of net capital gains (realized and unrealized), dividends, interest and any other items of income, less expenses including management fees). The performance fee would be paid in arrears upon the completion of a twelve-month period of performance.

You represent that the proposed performance fee to be paid to LFAM satisfied the conditions of Rule 205-3 under the Advisers Act. In particular, you assert that BPI Capital should be viewed as the client of LFAM for purposes of Rule 205-3(b)(1). n1 You state that BPI Capital is a sophisticated financial institution with more than US $ 500,000 under management and a net worth of more than US $ 1,000,000. You further assert that the payment of a fee directly by the unitholders of the Fund to BPI Capital is not relevant the determination that BPI Capital the client of LFAM for purposes of Rule 205-3.

In Copeland Financial Services (pub. avail. Sept. 21, 1992) ("Copeland"), the staff granted no-action relief with respect to performance fees paid by a registered adviser to certain subadvisers who provided advice to the adviser regarding a timing program for participants in variable annuity contracts issued by certain separate accounts. The staff deemed the adviser, rather than the participants, to be the subadvisers' client for purposes of Rule 205-3(b)(1) because, among other things, the fees charged by the adviser to the participants did not vary with the subadvisers' investment performances. n2

In contrast, the fees paid by the unitholders to BPI Capital will vary with the investment performance of LFAM. In addition, a portion of the performance fees paid by the unitholders to BPI Capital will in turn be passed on to LFAM. Given these facts, we believe that it is more appropriate to view the Fund, rather than BPI Capital, as the client of LFAM for purposes of paragraph (b)(1) of Rule 205-3. n3 You represent that the Fund constitutes a company as defined in Rule 205-3(b), and is not excluded from such definition pursuant to Rule 205-3(b)(2). n4

Based on the facts and representations set forth in your letter, we would not recommend any enforcement action to the Commission under Section 205 of the Advisers' Act or Rule 205-3 thereunder, if LFAM enters into a subadvisory contract with BPI Capital as described in your letter. n5 You should note that different facts or circumstances may require a different conclusion.

We note that if the Fund were to sell its units to U.S. residents in reliance on the staff's position in Touche & Co. (pub. avail. Aug. 27, 1984) (granting no-action relief under Section 7(d) of the 1940 Act to an unregistered foreign fund that offered its securities privately in the United States, so long as after the offering the fund had no more than 100 beneficial owners resident in the United States), the Fund would fall within the definition of "private investment company" in Rule 205-3(g)(2). In such a case, under subparagraph (b)(2) of Rule 205-3, each U.S. resident owner of the Fund's units would have to be an eligible client under the rule.

Phillip S. Gillespie
Senior Counsel

**Footnotes**

n1 Rule 205-3(b)(1) limits the clients of a registered investment adviser that may be charged a performance fee to (i) a natural person or company that, immediately after entering in the advisory contract, has at least $ 500,000 under the management of the investment adviser or (ii) a person who the investment adviser reasonably believes is a natural person or company whose net worth at the time of contract exceeds $ 1,000,000.

n2 See, also, Kempner Capital Management, Inc. (pub. avail. Dec. 7, 1987) (granting no-action relief with respect to performance fee paid to a registered investment adviser by the trust department of a national bank for services to fiduciary accounts, where fees charged by bank to such accounts did not vary not vary with the fees or performance of the adviser).

n3 We agree that the unitholders should not be viewed as clients of LFAM for purposes of Rule 205-3 simply because they pay performance fees directly to BPI Capital. The investment advice provided by LFAM appears to relate to the Fund's assets and is not tailored to the specific investment needs of the unitholders. The fact that the fees are paid separately by unitholders rather than by a reduction in he value of their units or other charge to their accounts not does not affect the nature of the services provided by LFAM.

n4 Rule 205-3(b)(2) excludes as an eligible client (a) a "private investment company" (i.e., a company that is excluded from the definition of investment company under Section 3(c)(1) of the Investment Company Act of 1940 (the "1940 Act"); (b) an investment company registered with the Commission under the 1940 Act; or (3) a business development company as defined under section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of such company individually meet the qualifications to be an eligible client under Rule 205-3(b)(1). In Rosenberg Institutional Equity Management (pub. avail. Mar. 14, 1990, the staff concluded that a fund organized under the laws of a country other than the United States and not otherwise subject to the provisions of the 1940 Act was not a "private investment company" as defined in Rule 205-3(g)(2).

n5 Our response is limited to the issue of whether the Fund is LFAM's client for purposes of Rule 205-3. We express no opinion as to whether the proposed arrangement otherwise would comply with the requirements of Rule 205-3.

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**INQUIRY-1:**

**LAZARD FRERES ASSET MANAGEMENT**
**ONE ROCKEFELLER PLAZA**
**NEW YORK, N.Y. 10020**
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**Advisers Act/Rule 205-3**

**July 20, 1995**

**Jack W. Murphy. Esq.**
**Chief Counsel**
**Division of Investment Management**
**Securities and Exchange Commission**
**450 Fifth Street, N.W.**
**Washington, D.C. 20549**

**Re: BPI Global Opportunities Fund**

Dear Mr. Murphy:

Lazard Freres Asset Management ("LFAM") a division of Lazard Freres & Co. LLC ("LF&Co.") hereby requests that the staff of the Division of Investment Management (the "Staff") of the Securities and Exchange Commission (the "Commission") advise that it would not recommend to the Commission any enforcement action under the Investment Advisers Act of 1940 (the "Act") against LFAM if, as described herein, LFAM charges a performance fee to BPI Capital Management Corporation ("BPI Capital") with respect to the performance of the BPI Global Opportunities Fund (the "Fund").

**LFAM**

LFAM is the investment division of LF&Co., conducting its investment management business as LFAM, has been registered with the Commission since 1970. A copy of LFAM's Form ADV is enclosed as Exhibit

A. LFAM provides investment management services with respect to domestic and international equity and fixed income securities. As of March 31, 1995, LFAM managed over $ 24 billion on a discretionary basis for over 1,100 clients.

LF&Co. provides investment banking, and corporate, municipal and real estate investment finance advice in addition to the asset management services of LFAM. LF&Co. has its origins in a business that commenced in 1848 and became one of the world's first investment banks. LF&Co. is a New York limited liability company with 85 members, comprised of 64 general members, referred to as Managing Directors, and 21 limited members, referred to as Limited Managing Directors. Eight of the Managing Directors are assigned to LFAM. As of March 31, 1995, LF&Co. had approximately 900 employees, 213 of which were assigned to LFAM.

**The Fund**

The Fund is an open-end fund established under the laws of the Province of Ontario by BPI Capital by declaration of trust dated March 31, 1995. BPI Capital is the trustee, promoter and manager of the Fund. BPI Capital is a subsidiary of BPI Financial Corporation, a Canadian public company, the shares of which are listed for trading on the Toronto Stock Exchange and the Alberta Stock Exchange. A copy of the offering memorandum of the Fund, dated April 1995 (the "Memorandum"), is enclosed Exhibit B.

The Fund has entered into a management agreement with BPI Capital under which BPI Capital is responsible for the day to day business of the Fund, including management of the Fund's investment portfolio. BPI Capital is an investment counsel and portfolio manager registered under the laws of Ontario Canada and is the manager of 16 publicly offered mutual funds. Mutual fund asset under administration by BPI Capital as of March 31, 1995 were in excess of CAD 1.2 billion with over 128,000 accounts.

Effective as of March 31, 1995, BPI Capital entered into a subadvisory agreement with LFAM to provide investment advice with respect to the assets of the Fund. Investment decisions as to the purchase and sale of the Fund's portfolio securities are made by the Adviser on a basis consistent with the Fund's investment objective and strategies, provided that BPI Capital has reserved to itself the right to review and approve such investment decisions utilizing the investment recommendations provided by LFAM. LFAM is registered in the Province of Ontario as an International Dealer and Investment Counsel. Pursuant to applicable Ontario regulations, it is permitted to serve as subadvisor to a Canadian mutual fund.

Units of the Fund ("Units") were initially offered at $ 10 per Unit from April 17 until May 12, 1995 and thereafter at their net asset value. The Units are offered to investors in the Provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia (the "Provinces"). Units are offered pursuant to prospectus exemptions under the laws and/or regulations of each of the Provinces. Pursuant to such prospectus exemptions, minimum investment amounts in the Fund were CAD 150,000 for investors in Ontario and Saskatchewan and CAD 97,000 for investors in Manitoba, Alberta and British Columbia. A lower minimum investment of CAD 25,000 is available for investors resident in British Columbia designated as "sophisticated purchasers". The definition of "sophisticated purchasers" is set forth in Exhibit C.

Units have not been offered to any investors resident in the U.S. and there is no intention to offer any Units to U.S. investors.

**Fees Pavable**

BPI Capital is entitled to a management fee from the Fund equal to 2.25% per annum of the net asset value of the Fund, calculated and paid as the last trading day of each month. In addition, BPI Capital is entitled to the payment of a performance fee from each unitholder of the Fund (a "Unitholder"). If a Unitholder experiences gains in the net asset value of the Unitholder's Units which exceed 10% per annum (determined on an annualized basis for Units purchased during a calendar year), BPI Capital is entitled to receive from the Unitholder 20% of the gain in excess of a 10% gain as a performance fee (the "BPI Performance Fee"). The BPI Performance Fee will be calculated and payable as of the last trading day on the Toronto Stock Exchange of each calendar year.

BPI Capital retained LFAM pursuant to an advisory agreement dated as of March 31, 1995 (the "Subadvisory Agreement"). A copy of the Subadvisory Agreement is set forth in Exhibit D. Pursuant to the Subadvisory Agreement, BPI Capital pays LFAM an annual fee of 73 basis points of the net asset value of the Fund. LFAM currently provides investment advice pursuant to an advisory agreement dated as of January 10, 1992, as amended, in respect of the portfolios of the following Canadian mutual funds sponsored by BPI Capital: BPI American Small Companies Fund, BPI American Equity Value Fund, BPI Global Equity Fund, BPI Global Small Companies Fund, BPI Global Real Estate Securities Fund and the BPI International Equity Fund. LFAM receives a management fee equal to a percentage of the assets of each fund under its management.

**The Proposal**

LFAM and BPI Capital have proposed to amend the Subadvisory Agreement (the "Proposal") to provide that the compensation payable by BPI Capital to LFAM would be comprised of a base fee and a performance fee. The base fee would be at an annual rate of 75 basis points of the net asset value of the Fund, and would be payable quarterly in arrears. The performance fee would be equal to 10% of the Net Income of the Fund in excess of a time weighted rate of return for the Fund of 10%. The Net Income of the Fund would be equal to the sum of net capital gains (both realized and unrealized), dividends, interest and any other items of income, less expenses (inclusive of management fees). The performance fee would be paid annually, in arrears, based upon the completion of a twelve-month period of performance.

**Analysis**

(a) Overview. The Fund is the type of fund for which performance fees are usually charged. The Fund has an aggressive investment style, including the of short selling, leveraging and investment in derivatives, with a concomitant level of risk and volatility. Payment of a performance fee typically recognizes the greater level of commitment necessary for the investment manager to select appropriate investments for this type of fund.

LFAM believes that the Proposal satisfies the requirements of Rule 205.3 under the Act as promulgated by the Commission. BPI Capital satisfies the definition of an eligible client and the performance will be measured over a twelve-month period and will include realized losses and unrealized depreciation as well as expenses. LFAM seeks the concurrence of the Staff that the Proposal would not be considered to violate Rule 205-3.

(b) BPI Capital is an Eligible Client Under Rule 205-3. Rule 205-3 permits an investment advisor to charge a fee based upon a share of the capital gains upon, or capital appreciation of, a client's funds provided that (i) the client is a natural person or company that has at least US $ 500,000 under the management of the investment advisor or (ii) a person who the investment advisor reasonably believes is a natural person or company whose net worth at the time of the contract formation exceeds US $ 1,000,000. In addition, the advisory fee must be based on a formula which includes realized capital losses and unrealized capital depreciation of the securities and be based upon the gains less the losses in the client's account for a period of at least one year.

Pursuant to the Subadvisory Agreement, BPI Capital is LFAM's Client, LFAM's fees are currently paid by BPI Capital paid, under the Proposal, will continue to be paid by BPI Capital, BPI Capital is a sophisticated financial institution that satisfies the eligible client conditions of Rule 205-3. BPI Capital is a company with more than US $ 500,000 under the management of LFAM and has a net worth exceeding US $ 1 million.

The Fund could also be interpreted as LFAM's client, although we do not believe that this is the correct interpretation. Assuming arguendo that, for purposes of applying Rule 205-3, the Fund were considered LFAM's client, the Fund would also satisfy the definition of an eligible client. As of June 15, 1995, approximately CAD 3.5 million of the Fund's assets were under management by LFAM. The Fund constitutes a company as defined in Rule 205-3(b) and is not excluded from such definition pursuant to Rule 205-3(b)(2). The Staff has previously opined, in its response to Rosenberg Institutional Equity Management (avail March 14, 1990, hereinafter "Rosenberg"), that the exclusion of Rule 205-3(b)(2) did

not apply to investment funds organized under the laws of a county other than the U.S. and which, therefore, were not subject to the jurisdiction of the investment Company Act of 1940, as amended.

In addition, under the Proposal, the fee payable by BPI Capital to LFAM would be determined based upon the performance of the Fund over twelve-month periods and Performance would be calculated inclusive of realized losses and unrealized depreciation.

(c) Previous Staff No-Action Advice. The Staff has previously provided no action advice with respect to the payment of a performance fee to a subadviser. In each case, the Staff took the position that the primary advisor was the client of the subadvisor for purposes of applying Rule 205-3. In its response to Copeland Financial Services (avail. Sept. 21, 1992, hereinafter "Copeland" the Staff provided no-action advice with respect to the payment of a performance fee to subadvisors participating in a timing program available to participants in variable annuity contracts issued by insurance company separate accounts. The investment management services provided by the subadvisors related solely to the aggregate assets of all Copeland clients and not to any particular participant in the timing service.

In its response in Copeland, the Staff specifically considered Copeland as the client for purposes of applying Rule 205-3, noting that the subadvisory agreements with Copeland had to satisfy the requirements of the rule and noting Copeland's representation that it qualified as an eligible client.

In response to an earlier no action request from Kempner Capital Management, Inc. (avail Dec. 7, 1987, hereinafter "Kempner"), the Staff provided no action advice with respect to the receipt of a performance fee by Kempner for providing investment management services to the trust department of a national bank. The Staff granted the no action request to consider the Bank,

In its response in Rosenberg, the Staff also provided no action advice for the payment of performance fees by certain Japanese open-end investment funds to a U.S.-based investment adviser registered under the Act. The adviser had entered into both advisory and subadvisory agreements with the funds. In Rosenberg the Staff clearly considered the funds to be the clients of the advisor as it addressed an interpretation of the definition of private investment company found in Rule 205-3(g)(2).

(d) Payment of Performance Fee by Unitholders Not Relevant. The arrangement between BPI Capital and LFAM is substantially the same as the subadvisory arrangements considered by the Staff in Copeland and Kempner, except that the participants in the timing service considered in Copeland, and the beneficiaries of the trust accounts of the bank considered in , paid a fee based upon a percentage of assets under management and not a performance fee. The arrangement for the payment of a performance fee by Japanese investment funds as considered in Rosenberg is also very analogous to the arrangement between BPI Capital and LFAM and supports our conclusion that the Proposal is consistent with Rule 205-3. In Rosenberg the performance fee was payable by the funds which meant that each shareholder of the funds would, in effect, be paying the performance fee by virtue of a reduction of the outstanding value of the funds.

We do not believe that the payment of a performance fee by the Unitholders to BPI Capital is relevant to the determination of the applicability of Rule 205-3 to the Proposal and we do not believe that such payment should result in the Unitholders, rather than BPI Capital or the Fund, being considered the "clients" of LFAM for purpose of applying Rule 205-3.

In addition to the Staff opinions previously cited, we believe that policy considerations support our opinion that the Proposal satisfies Rule 205-3 and that the Unitholders should not be considered the clients of LFAM for purposes of applying such rule. Section 205(a)(1) of the Act prohibits an investment adviser from entering into any investment advisory contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of the client The Staff has previously opined that Congress included the performance fee prohibition because of concern that performance fees created incentives for advisers to take inappropriate risks in managing a client's account in order to increase advisory fees.

In its response to Copeland, the Staff noted that performance fees in use prior to the enactment of the Act rewarded an adviser above and beyond its customary fee for good performance without penalizing it for poor performance. The Staff noted that Congress had concluded that performance fees encouraged

advisors to speculate unduly because they had everything to gain and little to lose.

The performance fee payable by BPI Capital to LFAM should not provide LFAM with the incentive to take inappropriate risks with the assets of the Fund. Consistent with the policy underlying Rule 205-3, the performance fee payable by BPI Capital to LFAM will penalize LFAM for poor performance. The base fee payable to LFAM is set at a comparatively low annual rate for this type of investment fund. LFAM will not receive any performance payment until the Fund achieves at least a 10% return. If the Fund fails to attain such performance hurdle, LFAM's fees with respect to the Fund will be comparatively low. Further, in accordance with Rule 205.3, the performance of the Fund will be determined by taking into account realized losses and unrealized depreciation of the assets of the Fund. Thus, the Congressional concern about the intrinsic incentive of a performance fee to cause an adviser to take inappropriate risks for a client's assets has been substantially ameliorated by the actors mentioned above.

Any potential risk to the Unitholders from the performance fee embodied in the Proposal is no greater than the risk that existed with the performance fees charged by the subadvisers in the arrangements considered by the Staff in Copeland and Kempner. In each of those cases, the advisor and the subadvisors were making investment decisions that affected the portfolios of the clients of the advisers. To the extent that the performance fee provided an incentive to take inappropriate risks, the effect of those risks would have been felt by the holders of interest in the Japanese funds as considered in Rosenberg participants in the timing program considered in Copeland or the trust beneficiaries considered in Kempner. Thus, whether the primary adviser charged a performance fee to the participants and trust beneficiaries was not a relevant consideration as the entity making portfolio investments was being paid an incentive fee.

In fact, it can be argued that the participants and beneficiaries in Copeland and Kempner may have been less susceptible to the risks of performance fees, as enunciated by Congress, if they had been charged a performance fee. In the arrangements considered in Copeland and Kempner, the primary adviser stood to benefit, at least in the short term, if the performance of the funds was average or poor as the primary adviser would collect his fee as a percentage of assets under management while having to pay out a reduced amount to the subadviser. Conversely, if the performance of the funds was very good, the amount paid to the subadvisers would increase while the amount paid to the primary adviser would remain the same, thus reducing the primary adviser's return. Thus, the fact that the participants and beneficiaries in the programs considered in Copeland were not charged a performance fee had the potential to result in exactly the type of evil that Congress attempted to prevent.

The primary policy concern as evidenced by Rule 205-3 is that a client that is to be charged a performance fee should have sufficient business acumen and sophistication as to be able to understand the risks associated with entering into a performance fee. If, in a subadvisory relationship, the primary advisor has that sophistication, there would appear to be no compelling policy reason to look through the subadvisory relationship and treat the client of the primary advisor as the client of the subadvisor for purposes of applying the prohibitions of Section 205(a)(1) and the exemption under Rule 205-3. We believe that the fact that there was a competent primary advisor in Copeland and a national bank outside of the regulatory jurisdiction of the Act in Kempner underlay the Staff's position in Copeland and Kempner. In each case, the primary advisor was perfectly capable of carefully protecting the interest of its clients. In Rosenberg, the Staff specifically noted that the information required by Rule 205-3(d) had been disclosed to all of the Japanese funds' management and directors.

We believe that the same considerations are true for the Fund, As noted, BPI Capital is a major financial institution and its representatives have years of experience and astute business acumen sufficient to carefully assess the performance charged by LFAM. In addition, the unique nature of the Canadian prospectus exemptions assures that each of the Unitholders is likely to have substantial business acumen as well and is capable of assessing the risks of investing in the Fund.

(e) Non U.S. Law Considerations. We believe that Canadian law considerations are also relevant to a determination of the applicability of Rule 205-3 to the Proposal. Under the laws of the Province of Ontario, LFAM is considered a subadvisor of the Fund and BPI Capital is considered to be its client. LFAM's current registration status in Ontario would preclude it from serving as an adviser directly to any Unitholder unless the Unitholder had a net worth of CAD $ 5 million, excluding the Unitholder's principal residence.

In addition, because Canadian law permits a performance fee to be charged to the Unitholders regardless of the identity of, or fees charged by, any subadviser, the provisions of the Act are unlikely to offer additional protection to the Unitholders. For example, if BPI Capital had contracted for the provision of subadvisory services with an investment adviser not subject to the Act, the subadviser would likely have been able to charge a performance fee to BPI Capital without any impediment.

The Staff has previously recognized that while the provisions of the Act should apply to the activities of an adviser registered under the Act, regardless of the location of the client, certain foreign law considerations are applicable. For example, in Rosenberg the Staff noted that its position in its Oct. 29, 1986 response with respect to the applicability of Rule 205-3 to foreign clients was distinguishable from the advisory arrangements considered in Rosenberg as there would be no U.S. investors present in the Japanese funds. As noted above, there will not be any U.S. investors present in the Fund.

(g) Additional Considerations. Finally, we believe it is important to reiterate that the circumstances surrounding the Fund mitigate any potential concerns of abuse stemming from the payment of a performance fee to LFAM. The Fund is part of a much larger relationship between BPI Capital and LFAM. Therefore, LFAM has a strong incentive to produce good performance for the Fund. Further, the Fund is a small part of BPI Capital's operations. Therefore, BPI Capital has a strong incentive for the Fund to be successful.

Finally, we also believe that it is significant that many of the Unitholders would be likely to meet the eligible client requirements of Rule 205-3. As noted above, the initial minimum amount that had to be invested in the Fund was high. Given that the nature of the Fund is somewhat speculative, it is likely that the Unitholders have considerable other assets and, therefore, are likely to have a net worth exceeding U.S. $ 1 million: however, because that is not precondition to the purchase of a Unit, there can be no assurance that each of the Unitholders would be an eligible client under Rule 205-3.

In conclusion, we believe that the Proposal satisfies the requirements of Rule 205-3 and we ask the Staff's concurrence with our opinion. Please do not hesitate to contact me at (212) 632-6331 if you have any questions. In the event that you disagree with the views expressed in this request, I would ask that you so inform me before you issue a written response. I have enclosed herewith, two additional copies of this no-action request.

Sincerely,

William G. Butterly, III
Vice President, Legal Affairs