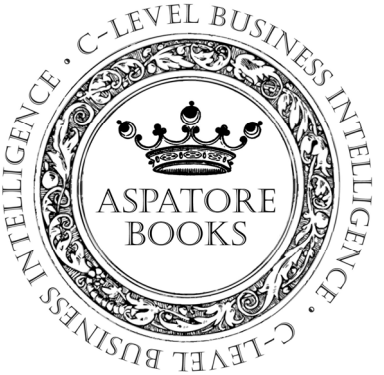
INSIDE THE MINDS

Private Equity and Venture Capital Law Client Strategies

Leading Lawyers on Understanding a Client's Goals, Formulating a Strategy, and Adding Value



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Key Issues in Private Equity/ Venture Capital Fund Formation and Operation

John D. Chambliss
Managing Director
Davis, Malm & D'Agostine PC

The Lawyer's Role

My principal role as a private equity/venture capital (VC) lawyer is to represent sponsors in connection with the formation of new funds. This primarily involves advising them about the appropriate structure of the funds and deal terms, preparing the forms of the subscription agreements, limited partnership agreements for the funds, and limited liability company agreements for the general partners, and advising the clients on how to conduct the offerings in accordance with applicable federal and state securities laws. I also represent funds and their sponsors as legal issues arise over the lives of the funds, and investors who are considering making investments or need assistance with respect to their rights and obligations arising from existing investments, in funds represented by other counsel. The following are the major areas as to which I can add value for a client.

Assisting in the Structuring the Offering Procedures

The principal focus of such assistance is to ensure that the offering will comply with applicable laws and regulations, current market conditions, and the client's expected investor base. In particular, private equity/VC funds are normally structured to allow the offerings of limited partnership interests in the funds to be made to investors in a manner exempt from the registration requirements under the Federal Securities Act of 1933, and to allow the funds to be exempt from registration under the Federal Investment Company Act of 1940.

Advising Clients with Respect to Deal Terms, and Negotiating Deal Terms with Counsel for Prospective Investors

For the limited partnership interests in a new fund to be successfully marketed, the terms of the new fund must be consistent with current market conditions for similar funds then being offered by sponsors with similar experience and track records. Some of the most important deal terms include the manner of calculating the "management fees" (which are usually based on an annual percentage initially of the capital commitments by the limited partners to the fund and then subsequently of the value of the fund's remaining assets over the fund life), the "carried interest" (which allows the sponsors to receive a higher share of fund distributions after the

investments or some other specified amount have been returned to the investors), and any "claw-backs" (which may require the sponsors to return a portion of the payments they have previously received from a fund if the aggregate returns to the investors over the fund life do not satisfy certain minimum standards). Other deal terms that are often negotiated include the provisions in the fund limited partnership agreements for resolving potential conflicts of interest so the concerns of investors are satisfied in a manner consistent with the sponsors' business plans. Such deal terms often include, for example, limitations on the sponsor's ability to invest the new fund's assets in portfolio companies in which other funds previously sponsored by the same sponsor (or an affiliated entity) already hold investments, or to create and market subsequent funds before a specified percentage of the new fund's capital has been committed to specific investments.

Preparing the Limited Liability Company Agreement of the New Fund's General Partner

The individual members of a sponsoring entity for a new fund will participate in the distributions and other benefits to be derived by the sponsoring entity from the new fund primarily in accordance with the terms of the limited liability company agreement of the new fund's general partner. That limited liability company agreement must therefore accurately reflect the agreement among the individual members of the sponsoring entity as to their respective rights to participate in management and in distributions derived by the general partner from the fund. Other important considerations include the vesting requirements in the general partner's limited liability company agreement to deal with the possibility that any of the individual members may leave the sponsor during the life of the new fund, and the manner for admitting additional individuals as members of the general partner (or a subsequently created general partner) for purposes of either the current or future funds.

Preparing the Subscription Documentation and Reviewing the Offering Materials

The primary purpose of such preparation and review is to ensure that prospective investors in the new fund have access to all material information about their proposed investment and that the offering of

limited partnership interests in the new fund will be conducted in a manner exempt from the registration requirements for offerings under the Federal Securities Act of 1933 and the state securities laws of the states where investors reside or have their principal offices.

Structuring the Terms of the Fund and the Offering to Permit the Admission of Certain Specific Types of Investors

If the client proposes to market the new fund to admit investors that are qualified plans subject to the Federal Employee Retirement Income Security Act (ERISA), IRA, and Section 401k plans, pension plans for the benefit of state and local governmental employees, and foreign investors, the terms of the new fund and the offering procedures must include certain specific provisions. In particular, the fiduciaries that make investment decisions on behalf of benefit plans subject to ERISA will want to make sure the investment of a portion of the plan's assets in the new private equity/VC fund being sponsored by my client will not subject them to any potential liability for violation of the "prohibited transaction" provisions of ERISA, and that no portion of the fund's income that flows through to the tax-exempt investors will be treated as "unrelated business taxable income" under the Internal Revenue Code. Foreign investors will want to make sure they will not be subject to withholding requirements in the United States and their ownership of limited partnership interests in the fund will not subject them to U.S. income taxation.

Principal Laws Applicable to Fund Formation and Operation

There are five major components of law that are applicable to fund formation and subsequent operation:

Partnership and Limited Liability Company Laws of the States Where the Fund and Its General Partner Are Organized

With respect to partnership and limited liability company laws of the states where the fund and its general partner are organized, I primarily assist the clients in determining which states are most suitable, drafting the certificates of formation and limited partnership or limited liability company agreements to comply with those laws, and forming the funds, general

partners, and initial limited partners as legal entities. Primarily because of the familiarity of many large investors and their counsel with Delaware law, most private equity or VC funds are organized as limited partnerships or limited liability companies under Delaware law, but general partners or managers of such funds are often organized either under Delaware law or the law of the states where the general partners or managers will have their principal offices.

Federal Securities Laws

With respect to federal securities laws, I primarily assist the clients in preparing the offering memorandum and subscription documents, and other formation issues relating to the fund and the general partner, and the related offering procedures so the offering of limited partnership interests in the fund will be exempt from the registration requirements for offerings under the Securities Act of 1933, the fund will be exempt from registration under the Investment Company Act of 1940, and the general partner and its affiliates will be exempt from registration under the Investment Advisers Act of 1940.

Two structures are potentially available to satisfy these objectives:

- One structure involves an offering exclusively to "accredited investors" for which the number of limited partners, including beneficial owners of certain types of limited partners in the fund, must not exceed 100.
- An alternative structure involves an offering exclusively to "qualified purchasers" for which there is no limit on the number of limited partners but in which each limited partner must satisfy the much higher standards of a qualified purchaser as opposed to an accredited investor.

These two alternative structures are particularly different to the extent the offering will be made to high net worth individual investors as well as to institutional investors. To be classified as an accredited investor, an individual need only have either (i) a net worth (including equity in such individual's primary residence), either individually or jointly with such person's spouse, exceeding $1 million, or (ii) income in excess of $200,000,

or joint income with that person's spouse in excess of $300,000, in each of the last two years and reasonably expecting to reach the same level of income in the current year. In contrast, to be classified as a "qualified purchaser," an individual must generally own not less than $5 million of "investments" as defined in the Investment Company Act (which term includes only certain types of investments).

State Securities Laws

With respect to state securities laws, I primarily assist the clients in preparing the offering documents and procedures, and making related filings with state securities administrators, so the offering of limited partnership interests in the fund will be exempt from the registration requirements under the state securities laws in the jurisdictions where the investors reside or have their principal offices.

Federal Income Tax Law

With respect to federal income tax law, I primarily assist the clients in structuring the terms of the partnership agreements of the funds and the limited liability company agreements of the general partners so most of the economic benefit derived by taxable investors in the funds and by the individual members of the sponsoring entity will flow through as long-term capital gains (as opposed to ordinary income), tax-exempt investors in the fund will avoid unrelated business taxable income, and foreign investors in the fund will avoid withholding in the United States and any portion of their income derived from the new fund being subject to U.S. income taxation.

ERISA and the Department of Labor's Plan Asset Regulation

With respect to ERISA, I primarily assist clients in structuring the terms of the partnership agreements and the offerings so tax-exempt investors will be able to invest in a new fund without violating the "prohibited transaction" restrictions under ERISA. This generally requires that a new fund and its investments be structured in accordance with "plan asset regulation" issued by the U.S. Department of Labor under ERISA. This generally means the new fund must be structured as a "VC operating

company" (as defined in the Department of Labor's plan asset regulation), or the total investments by all "benefit plan investors" in the new fund is less than 25 percent of the total investments by limited partners in the new fund.

Provided the new fund makes only investments in operating companies, holds certain "management rights" with respect to each portfolio company, and does not take down any portion of the commitment of a "benefit plan investor" before making its initial investment in a portfolio company, it may be possible to structure a new VC or private equity fund so it will qualify as a venture capital operating company. However, certain types of private equity funds, and in particular hedge funds that make passive investments, will not be able to qualify as venture capital operating companies. For these funds, it is therefore essential, and for most VC and other private equity funds desirable, that the total investment by "benefit plan investors" in a new fund be kept to less than 25 percent of the total investments by limited partners in the new fund. Fortunately, the recently enacted Pension Protection Act of 2006 make this limitation more manageable (without severely restricting the sponsor's ability to market a new fund to tax-exempt investors), since the new law excludes from the definition of benefit plan investor for this purpose foreign plans, governmental plans, and most church plans. Therefore, for this purpose, benefit plan investors will include primarily only employees benefit plans that are subject to Title I of ERISA, IRAs, and Section 401k or similar plans.

Adding Value for the Client

Some examples of how I can add direct value for my clients with respect to the financial implications of fund formation and operation include carefully drafting the partnership agreements of a new fund and the limited liability company agreement of the general partner so the respective rights of parties are readily understood and potential disagreements that might arise over the life of the fund will be avoided; causing the terms of the partnership agreements to be consistent with current market conditions in such areas as the amount and manner of calculation of the annual management fee, the carried interest for the sponsors, and any claw-back requirements if the fund's performance over its life does not satisfy certain performance

requirements; and helping clients structure their offering documents and procedures to increase the likelihood that the fund offering will be successfully completed and thereafter operated.

In particular, I try to help my clients avoid trouble in the following areas:

- Structuring their offering terms in a manner that is unclear and therefore may potentially result in subsequent confusion, or disagreement over the fund's life if not corrected at the outset
- Not structuring their terms in a way that is consistent with current market conditions, thus making it difficult to attract investors
- Limiting prospective offerees to qualified purchasers if it appears unlikely the fund can successfully be marketed with that limitation. If the sponsor will be able to attract, based on prior track record and relationships with prospective investors, investments in the desired amount solely from qualified purchasers, this is clearly the desirable method for marketing the new fund because it will permit the fund to be much larger in size and have an unlimited number of investors. Unless a fund will be marketed only to qualified purchasers, it may be difficult to raise enough funds (because of the limitation to no more than 100 limited partners) to accomplish the goals of both the sponsor and the investors. However, a fund offered only to qualified purchasers cannot have even one limited partner who does not satisfy the much higher requirements for a qualified purchaser than for an accredited investor. Unless the sponsor has an excellent track record and extensive relationships with qualified purchasers as a result of their prior investment in earlier funds sponsored by the same sponsor, an election by the sponsor to make the offering only to qualified investors therefore runs a significant risk that the offering cannot be successfully completed.

Methods for Increasing the Likelihood of the Client's Success

My client's success will be determined by whether the client can sponsor a new fund and operate that fund over their anticipated life in a manner that is consistent with the expectations of both the sponsors and the investors. The ultimate success of the fund will be determined primarily by factors I cannot control, such as the client's ability to successfully market the fund to investors, the client's ability to locate and negotiate successful investments, and the economic conditions in the business sectors in which the fund invests over the fund's life. However, I can help my clients successfully sponsor new funds and thereafter avoid disagreements in the manner described above.

My principal strategy is to work with a sufficient number of fund sponsors and investors, both in connection with forming new funds and in dealing with operational issues over the funds' lives. This enables me to prepare documents and review documents prepared by other counsel, to identify and resolve potential issues of relevance to my clients.

Staying in tune with developments in business law is part of my job. I participate, either as a lecturer or an attendant, in seminars run by both legal and business groups, make personal investments in private equity and VC funds and direct investments, and read numerous business and legal publications about private equity and VC investing.

Initial Planning for a New Fund

When a current or potential client proposes to sponsor a new private equity or VC fund, I ask the client to provide all documents and other information available about the client's previously sponsored funds, including in particular reports to the investors and offering memoranda. I also ask for any term sheets or other materials the client has prepared for the new fund, and discuss with the client their track record, existing contacts with prospective investors, and plans for how the fund will be marketed. Should the matter involve, as opposed to the client's formation of a new fund, a proposed investment by the client in a fund or an operational issue concerning a fund for which I am not or was not the

primary counsel, I ask the client to provide all relevant investor reports, offering memoranda, and copies of agreements the client has been provided by such fund.

When the matter involves the formation of a new fund, this information is important because it enables me to understand the principal issues the client will likely encounter and how to develop strategies for dealing with them. In particular, if the client is proposing to sponsor a new fund, I need to be able to evaluate early in the process whether the fund can likely be successfully launched in the manner and under the terms the client proposes and, if not, how the likelihood for the client's success can be improved by considering changes in the proposed terms or offering procedures.

Should the matter involve a proposed investment by my client, or an operational issue concerning a fund for which I am not or was not the primary counsel, this information will enable me to understand the proposed or existing rights and obligations of the client and develop strategies for helping the client make sound decisions and potentially improve the client's position.

Obtaining this information in advance of the initial meeting enables me to focus our first discussion on identifying the principal potential issues and suggesting potential strategies for dealing with them. During that discussion, I may need to refine my requests for information based on what is disclosed at that meeting and what is relevant to my client's situation and objectives.

Only by analyzing the existing documentation, in light of my client's objectives and plans, can a suitable strategy be developed. Furthermore, obtaining this information is essential for determining whether my client will be likely to succeed if they proceed in the manner described and, if success is not likely, making changes that will improve the possibility of success.

Avoiding Potential Disputes

My practice primarily involves fund formation, investments in existing funds, and operational issues for funds and general partners, and my practice focuses heavily on avoiding potential future disputes through anticipating problems that may arise and careful preparation of agreements and other related documents to avoid ambiguity that might result in subsequent disputes. To the extent disputes nevertheless arise, I request the clients to provide all relevant information about what has happened or is likely to happen, the client's objectives and the likely objectives of other parties to the dispute, and copies of all relevant documentation to the extent I did not prepare such documentation or otherwise do not have it available. I then attempt to work with the client and counsel for the other party to resolve the current or potential dispute in a manner that is consistent with both the rights and obligations of the respective parties under that documentation and the objectives of the respective parties.

I always consider the non-legal ramifications of my client's private equity/VC matters in connection with the formation of new funds, investments in existing funds, and operational matters. In providing legal advice to them, I take into account the extent to which the proposed terms of such funds are consistent with current market conditions and the likelihood that the clients will be able to achieve their objectives. For example, for a fund to operate in a manner that will allow for adequate diversification of investments and for the sponsors to cover their normal operating costs through management fees paid on a periodic basis, it is essential that a fund have a significant level of investments by limited partners. To achieve this objective, the terms of the offering must be consistent with current market conditions, and I work with my clients to make sure this is the case.

The formation of private equity/VC funds, investment in such funds, and operational issues involves sizable amounts of money and requires a thorough knowledge of partnership, limited liability company, securities, tax, and ERISA law. Most of the other lawyers with whom I deal in connection with such matters are therefore sophisticated and experienced, and I rarely encounter lawyers who regularly make mistakes with regard to

developing and implementing client strategies. Rather, most of the lawyers I encounter are both capable and willing to work together with me to produce results that are mutually satisfactory to the respective clients involved.

John D. Chambliss is a managing director with the Boston law firm of Davis, Malm & D'Agostine PC. His primary practice is representing clients with respect to venture capital and private equity fund formation and operation, securities law, corporate law, and financings.

Mr. Chambliss has been a lecturer in numerous seminars in the area of partnership and limited liability company law. Prior to joining the firm in 1991, he was a partner in Gaston & Snow, a national law firm with offices in Boston, New York, Miami, Phoenix, San Francisco, and Palo Alto. He received his A.B. degree from Princeton University and his J.D. from Harvard Law School.

APPENDIX A

SAMPLE SUMMARY OF PRINCIPAL TERMS FOR INCLUSION IN THE PRIVATE OFFERING MEMORANDUM FOR A NEW VENTURE CAPITAL FUND

The Partnership.....	Clean Energy Fund, L.P., a Delaware limited partnership.
Purpose.....	The primary purpose of the Partnership is to identify and invest in companies developing technologies and products for solar, wind, geothermal and other clean energy production. The Partnership will seek to make investments that offer opportunities for substantial growth in value and timely realization of superior returns for investors through a variety of exit strategies.
The General Partner and the Principals.....	Clean Energy GP, LLC, a Massachusetts limited liability company, will be the general partner (the "General Partner") of the Partnership. The managers of the General Partner are Edward White, James Brown and Susan Green (the "Principals"). The General Partner, owned and managed by the Principals, will be responsible for managing the affairs of the Partnership and will make all investment and policy decisions on behalf of the Partnership. The General Partner shall be devoted exclusively to the Partnership. The managers of the General Partner shall devote substantially all of their professional time to the management of the affairs of the Partnership and any affiliated

	entities, subject only to the time required to complete divestiture of existing portfolio companies, or to commence activities on a permitted subsequent fund (see "Subsequent Funds" below).
Advisory Committee	The General Partner will have an Advisory Committee to be comprised of representatives of the Limited Partners. The Advisory Committee will advise on such matters as portfolio valuations and resolving any potential conflicts of interest.
Limited Partnership Interests	$100 million of limited partnership interests (the "Interests") are being offered by the Partnership solely to "accredited investors" as defined in Regulation D of the Securities Act of 1933.
The Principal's Investment	The Principals of the General Partner will commit to invest, as Limited Partners, not less than 2% of the aggregate investments of the other Limited Partners, up to $2 million.
Minimum Investment	The minimum investment in the Partnership by any single Limited Partner will be $2.5 million. The General Partner reserves the right to accept commitments in amounts less than $2.5 million and also reserves the right, at its sole discretion, to reject any subscription that is tendered.
Closings	An initial closing will take place as soon as practicable. The General Partner may establish the Partnership with $25 million of commitments. Subsequent closings may be held at the discretion of the General Partner for a period of

	up to nine months following the initial closing.
Subsequent Limited Partners.....	Limited Partners participating in subsequent closings will contribute to the Partnership their pro rata share of existing contributions, plus an interest-equivalent amount calculated at the prime rate plus 2% from the date of the initial capital contribution to the applicable closing date and shall have allocated to them their proportionate share of Partnership expenses incurred to such date.
Call of Capital Commitments.....	The General Partner and each Limited Partner (collectively, the "Partners") will make capital contributions from time to time on an as-needed basis, when called by the General Partner with at least 10 days' prior notice.
Term of the Partnership.....	The Partnership will have a term of 10 years from the final closing, subject to two one-year extensions.
Investment Limitations; Diversification.....	Without the consent of the Advisory Committee, total net investment by the Partnership, as a percentage of total commitments, may not exceed 20% in any one portfolio company.
Management Fee.....	An annual management fee equal to 2 ½% of the Fund's aggregate capital commitments will be payable quarterly in advance to Clean Energy Management Company, Inc. (the "Management Company"), a Massachusetts corporation owned and managed by the Principals. The Management Fee will be assessed as though all Limited Partners had made their commitments as of the initial

	closing. The management fee will decline as follows: 2 ½% for five years; 2% for the next two years; 1 ½% thereafter. Should a comparable sized new fund be raised, the management fee will be reduced to 1 ½% during the Partnership's term.
Expenses	The Management Company will be responsible for all normal operating expenses of the Partnership, including salaries of the Principals and the other employees of the Management Company, rent, travel and all normal expenses incurred in the investigation and management of investment opportunities. The Partnership shall be responsible for all legal, audit and banking fees and expenses, brokerage, finder and other transaction fees.
Subsequent Funds.....	Without the approval of the Advisory Committee, the General Partner shall not form a subsequent fund until the Partnership is 66-2/3% invested, expended or reserved for future investments in existing or proposed portfolio companies.
Distributions.....	Net proceeds of the disposition of portfolio investments, together with any dividends or interest earned on such investments, will be distributed to the Partners on a cumulative basis in the following order and priority: **First**, (a) 99% to all Limited Partners in proportion to their commitments until such distributed proceeds equal 125% of the aggregate amount of their funded commitments (the "Preferred

	Return") and (b) 1% to the General Partner; **Second**, 100% to the General Partner until it has received distributions equal to 20% of the difference between (i) the Preferred Return previously distributed to the Limited Partners and (ii) the Capital Contributions of the Limited Partners; and **Third**, thereafter, 80% to all Limited Partners in proportion to their funded commitments and 20% to the General Partner.
	The Partnership will generally make a cash distribution (in the proportions described above) with respect to each fiscal year to all Partners in order to assist them in defraying their tax liabilities attributable to interests in the Partnership.
Allocations	Net profits or losses for tax purposes of the Partnership generally will be allocated among the Partners to reflect entitlement to the distributions described above. Distributions in kind will be treated as sales for purposes of determining the Partnership's profits and losses. Liquidating distributions will be made in accordance with capital account balances.
Organizational and Offering Expenses	The Partnership will pay the organizational and offering expenses (other than placement agent fees, if any, which shall be paid by the General Partner) of the Partnership up to a maximum of $500,000.

ERISA	The Partnership will be operated as a "venture capital operating company" within the meaning of US Department of Labor regulations so that the assets of the Partnership will not be considered "plan assets" under the Employee Retirement Income Security Act of 1974.
US Tax-Exempt Limited Partners.....	The General Partner will use its best efforts to avoid the realization of "unrelated business taxable income" with respect to tax-exempt Limited Partners.
Counsel to the Partnership.....	Davis, Malm & D'Agostine, P.C.
Auditors to the Partnership.....	Big Four Auditors, LLP

Courtesy of John D. Chambliss, Davis, Malm & D'Agostine PC

APPENDIX B

SAMPLE SUBSCRIPTION AGREEMENT FOR A NEW VENTURE CAPITAL FUND

Investor Name: _____

CLEAN ENERGY FUND, L.P.
SUBSCRIPTION AGREEMENT

Date: _____, 200_

To: Clean Energy Fund, L.P.
One Boston Center, 50th Floor
Boston, Massachusetts 02110

Ladies and Gentlemen:

Reference is made to the Confidential Private Placement Memorandum dated _____, 200__ (the "Private Placement Memorandum"), the Limited Partnership Agreement dated as of _____, 200__ of the Partnership (the "Partnership Agreement"), and the Management Agreement dated as of _____, 200__ (the "Management Agreement") which have previously been furnished to the undersigned (the "Investor") with respect to the offering of Limited Partnership Interests in Clean Energy Fund, L.P. (the "Partnership"). The Private Placement Memorandum, the Partnership Agreement and the Management Agreement are hereinafter called the "Offering Materials." Other capitalized terms used, but not defined, herein shall have the respective meanings given them in the Partnership Agreement.

The Investor hereby agrees as follows:

1. Subscription for a Limited Partnership Interest.

(a) Purchase of Interest. Subject to the terms and conditions set forth in this Subscription Agreement (including, without limitation, the authority of the General Partner to reduce or reject this subscription as provided in

Section 8 hereof) and in the Partnership Agreement, the Investor hereby (i) agrees to purchase from the Partnership a Limited Partnership Interest (the "Interest") in the Partnership, (ii) makes a Commitment to pay aggregate Capital Contributions to the Partnership up to the amount set forth on the signature page below, and (ii) agrees to become a party to the Partnership Agreement and an Additional Limited Partner in the Partnership.

(b) Access. The Investor acknowledges that all materials pertaining to this investment have been made available for inspection by the Investor and representatives of the Investor to its and their respective satisfaction, and that the books and records of the Partnership will be available, upon reasonable notice, for inspection by Limited Partners during normal business hours at its principal office in accordance with the Partnership Agreement.

(c) Limited Partner Signature Page. Along with this Subscription Agreement, the Investor is submitting two copies of the Limited Partner Signature Page to the Partnership Agreement, each of which has been duly executed by the Investor. Provided the Investor shall be admitted to the Partnership as an Additional Limited Partner as described in Sections 3 and 5 hereof, the General Partner is hereby authorized at the closing at which the Investor is admitted to the Partnership (the "Closing") to attach such copies to counterparts of the Partnership Agreement.

2. Representations of the Investor. The Investor hereby represents and warrants to the Partnership and to the General Partner as follows:

(a) Suitability. THE INVESTOR HAS READ CAREFULLY AND UNDERSTANDS THE OFFERING MATERIALS AND HAS CONSULTED ITS OWN ATTORNEY, ACCOUNTANT OR INVESTMENT ADVISER WITH RESPECT TO THE INVESTMENT CONTEMPLATED HEREBY AND ITS SUITABILITY FOR THE INVESTOR. ANY SPECIFIC ACKNOWLEDGMENT SET FORTH BELOW WITH RESPECT TO ANY STATEMENT CONTAINED IN THE OFFERING MATERIALS SHALL NOT BE DEEMED TO LIMIT THE GENERALITY OF THIS REPRESENTATION AND WARRANTY.

(b) Opportunity to Verify Information. The Investor acknowledges that representatives of the Partnership have made available to the Investor, during the course of this transaction and prior to the purchase of any Interests, the opportunity to ask questions of and receive answers from them concerning the terms and conditions of the offering described in the Offering Materials, and to obtain any additional information necessary to verify the information contained in the Offering Materials or otherwise relative to the proposed activities of the Partnership.

(c) Purchase for Investment. The Investor understands that the Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and therefore cannot be resold or otherwise disposed of unless the Interest is subsequently registered under the Securities Act or unless an exemption from such registration is available; that the Partnership is not being registered as an "investment company" as the term "investment company" is defined in Section 3(a) of the United States Investment Company Act of 1940, as amended (the "Investment Company Act"); that the Investor is purchasing the Interest for its own account and without a view toward distribution thereof; that the Investor will not be able to resell or otherwise dispose of all or any part of the Interest purchased by the Investor, except as permitted by law, including, without limitation, any and all applicable provisions of the Partnership Agreement and any regulations under the Securities Act; that the transfer of the Interest and the substitution of another Limited Partner for the Investor are restricted by the terms of the Partnership Agreement; that Rule 144 under the Securities Act will not be available as a basis for exemption from registration of any Interest; and that there is no public or other market for the Interest, and it is not anticipated that such a market will ever develop. For the foregoing reasons, the Investor understands and agrees that the Interest will be required to retain ownership of the Interest and bear the economic risk of this investment for an indefinite period.

(d) Full Contribution. The Investor understands that, except as otherwise provided in the Partnership Agreement, the Investor may not make aggregate Capital Contributions to the Partnership in an amount less than the Investor's Commitment set forth in the Signature Page hereto (except to the extent that the General Partner may reduce such amount pursuant to Section 8 hereof), and that Section 7.02 of the Partnership

Agreement contains default provisions pursuant to which the Investor may lose a material portion of its investment in the Partnership if the Investor defaults in its obligation to make such Capital Contributions.

(e) Accredited Investor and Qualified Purchaser Status. One or more of the categories set forth in Exhibit 1 and Exhibit 2 hereto correctly and in all respects describes the Investor, and the Investor has so indicated by signing on the blank line or lines following a category on each such Exhibit which so describes it.

(f) No Need for Liquidity. The Investor has no need for liquidity in connection with its purchase of the Interest.

(g) Investment Objectives. The purchase of the Interest by the Investor is consistent with the general investment objectives of the Investor.

(h) Securities Laws. The Investor received the Offering Materials and first learned of the Partnership in the state and/or country listed as the address of the Investor set forth on the Investor's signature page hereto, and intends that the securities laws of that jurisdiction alone shall govern this transaction.

(i) Investment Company Act Representations. If the Investor is a corporation, trust, partnership or other organization:

(1) The Investor was not, or will not be, formed or "recapitalized" (as defined below) for the specific purpose of acquiring the Interest;

(2) The Investor's stockholders, partners or other beneficial owners have no individual discretion as to their participation or non-participation in the Interest and will have no individual discretion as to their participation or non-participation in particular investments made by the Partnership;

(3) The Investor has not and will not invest more than 40% of its "committed capital" (as defined below) in any single entity,

including the Partnership, which is excluded from the definition of "investment company" solely by reason of Section 3(c)(1) of the Investment Company Act; and

(4) If the Investor is contributing 10% or more of the total capital to be contributed by the Limited Partners to the Partnership, either (i) all of the outstanding securities (other than short-term paper) of such Investor are beneficially owned by one natural person, or (ii) such Investor is not an "investment company" under Section 3(a) of the Investment Company Act or an entity which would be an "investment company" but for the exception provided for in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

For purposes of this Section 3(i), the following definitions shall apply: "committed capital" includes all amounts which have been contributed to the Investor by its shareholders, partners or other equity holders plus all amounts which such persons remain obligated to contribute to it. The term "recapitalized" shall include new investments made in the Investor solely for the purpose of financing its acquisition of the Interest and not made pursuant to a prior financial commitment.

IF THE INVESTOR IS A CORPORATION, TRUST, PARTNERSHIP OR OTHER ORGANIZATION, PLEASE INITIAL BELOW TO ACKNOWLEDGE THE CORRECTNESS OF THESE REPRESENTATIONS:

_____

(initials)

(j) Investment Purpose. If the Investor is a corporation, trust, partnership or other organization, it was not organized for the specific purpose of acquiring the Interest and has the requisite power and authority to execute and deliver this Subscription Agreement and the Partnership Agreement and such execution and delivery does not violate, or conflict with, the terms of any agreement or instrument to which the Investor is a party or by which it is bound.

(k) Knowledge and Experience. The Investor and its purchaser representative (if any) currently have, and (unless the Investor has a purchaser representative) the Investor had immediately prior to receipt of any offer regarding the Partnership, such knowledge and experience in financial and business matters as to be able to evaluate the merits and risks of an investment in the Partnership.

(l) Purchaser Representative. If the Investor has utilized a purchaser representative, the Investor has previously given the Partnership notice in writing of such fact, specifying that such representative would be acting as the Investor's "purchaser representative" as defined in Rule 501(h) of Regulation D under the Securities Act.

(m) No View to Tax Benefits. The Investor is not acquiring the Interest with a view to realizing any benefits under United States federal income tax laws, and no representations have been made to the Investor that any such benefits will be available as a result of the Investor's acquisition, ownership or disposition of the Interest.

(n) Publicly Traded Partnership. The following representations are included with the intention of enabling the Partnership to qualify for the benefit of a "safe harbor" under Treasury Regulations from treatment of the Partnership as an entity subject to corporate income tax. Either:

> (1) The Investor is not a partnership, grantor trust, or Subchapter S corporation for federal income tax purposes, or
>
> (2) The Investor is a partnership, grantor trust, or Subchapter S corporation, but (i) at no time during the term of the Partnership will 65% or more of the value of any beneficial owner's direct or indirect interest in the Investor be attributable to the Investor's interests in the Partnership, (ii) less than 65% of the value of the Investor is attributable to the Investor's interests in the Partnership, and (iii) permitting the Partnership to satisfy the 100-partner limitation set forth in Section 1.7704-1(h)(1)(ii) of the Treasury Regulations is not a principal purpose of any beneficial owner of the Investor in investing in the Partnership through the Investor.

IF THE INVESTOR IS A PARTNERSHIP, GRANTOR TRUST OR SUBCHAPTER S CORPORATION, PLEASE INITIAL BELOW TO ACKNOWLEDGE THE CORRECTNESS OF ONE OF THESE REPRESENTATIONS.

_____
(initials)

If the Investor is unable to make either of such representations, the Investor hereby agrees to provide the General Partner, prior to the Closing, with evidence (including opinions of counsel) satisfactory in form and substance to the General Partner relating to the status of the Partnership under Section 7704 of the Code.

(o) No Borrowings. The Investor has not borrowed and will not borrow any portion of its Capital Contribution to the Partnership, either directly or indirectly, from the Partnership, the General Partner, or any Affiliate of either of them.

(p) Foreign Ownership. The Investor is not either:

(1) an entity organized under the laws of the jurisdiction other than those of the United States or any state, territory or possession of the United States (a "Foreign Entity");

(2) a government other than the government of the United States or of any state, territory or possession of the United States (a "Foreign Government");

(3) a corporation of which, in the aggregate, more than one-fourth of the capital stock is owned of record or voted by Foreign Citizens, Foreign Entities, or Foreign Corporations (a "Foreign Corporation");

(4) a general or limited partnership of which any general or limited partner is a Foreign Citizen, Foreign Entity, Foreign Government, Foreign Corporation or Foreign Partnership (a "Foreign Partnership"); or

(5) a representative of, or entity controlled by, any of the entities listed in items 1 through 4 above.

IF THE INVESTOR CAN MAKE THE FOREGOING REPRESENTATION, PLEASE INITIAL BELOW TO ACKNOWLEDGE THE CORRECTNESS OF SUCH REPRESENTATION.

_____
(initials)

If the Investor is unable to make the above representation, the Investor is providing to the General Partner in writing a description of the Investor's form of entity and jurisdiction of organization and the percentage of each of (i) the Investor's aggregate Capital Commitments that will be contributed directly or indirectly by any person or entity listed in items 1 through 5 above, (ii) for a pension fund, the Investor's non-U.S. beneficiaries, (iii) for a corporation, the Investor's direct and indirect foreign ownership, (iv) for a trust, the trustee's foreign beneficial interest, and (v) for a partnership or limited liability company, the Investor's direct and indirect foreign ownership.

3. Capital Contributions.

(a) Initial Capital Contribution. Subject to the terms and conditions of the Partnership Agreement (including, in particular, Sections 6.01, 6.02 and 7.01 thereof), the initial Capital Contribution for the purchase of the Investor's Interest shall be made at the Closing to be held on such date as shall be selected by the General Partner upon not less than ten (10) days' prior written notice to the Investor. As soon as practicable following the Closing, the General Partner will deliver to the Investor a counterpart of the Partnership Agreement and of this Agreement executed by the Investor and the General Partner.

(b) Additional Capital Contributions. The Investor will, subject to the terms and provisions of the Partnership Agreement (including, in particular, Section 7.01 thereof) make additional Capital Contributions to the Partnership in accordance with the terms set forth in the Partnership

Agreement when called by the General Partner upon not less than ten (10) days' prior written notice.

4. Agreements with Other Limited Partners. The Partnership represents that each other Additional Limited Partner has or will execute and deliver a subscription agreement substantially identical to this Subscription Agreement in which each such other Additional Limited Partner will agree to subscribe for and purchase an Interest in the Partnership and make the same representations and warranties as are made by the Investor in Section 2 hereof, only with changes that are appropriate to reflect the respective Commitment and other information applicable to such other Additional Limited Partner. The purchases of the Interests by the Investor and the other Additional Limited Partners shall be separate purchases from the Partnership and the sales of the Interests to the Investor and the other Additional Limited Partners shall be separate sales by the Partnership. This Subscription Agreement and such other subscription agreements are sometimes collectively referred to herein as the "Subscription Agreements."

5. Conditions to Closing. The Investor's obligation to purchase the Interest at the Closing is subject to the fulfillment prior to or at the Closing of each of the following conditions:

5.1 Minimum Subscriptions. The Partnership shall have received and accepted Subscription Agreements providing, together with the Commitment of the Initial Limited Partner, for aggregate Commitments of not less than $25,000,000.

5.2 Sale of Interests. The Investor shall at the Closing be duly admitted to the Partnership as an additional Limited Partner.

5.3 Representations and Warranties. The Partnership and the General Partner shall represent and warrant to the Investor that, at the time of the Closing:

(a) Organization and Standing of the Partnership. The Partnership is duly and validly organized and validly existing as a limited partnership under the laws of the State of Delaware and has all requisite power and authority

under the Partnership Agreement, its Certificate of Limited Partnership and such laws to enter into and carry out the terms of the Subscription Agreements, to conduct its activities as described in the Partnership Agreement, to admit Additional Limited Partners to the Partnership and to issue and sell to such Additional Limited Partners Interests in the Partnership. The General Partner is duly and validly organized and validly existing as a limited liability company under the laws of the Commonwealth of Massachusetts and has all requisite power and authority under its limited liability company agreement, certificate of formation and such laws to conduct its activities and to enter into and perform the Partnership Agreement.

(b) Compliance with Other Instruments. Neither the Partnership nor the General Partner is in violation of any term of its Partnership Agreement or other governing documents or the Subscription Agreements, and neither the Partnership nor the General Partner is in violation of any term of any mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation applicable to it resulting in any material adverse change in the business, prospects, condition, affairs or operations of the Partnership or in any material liability on the part of the Partnership or the General Partner. The execution and delivery of the Partnership Agreement and the Subscription Agreements do not result in the violation of, constitute a default under, or conflict with, any mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation applicable to the Partnership or the General Partner, or result in the creation of any mortgage, lien, encumbrance or charge upon any of the properties or assets of the Partnership or the General Partner.

(c) Governmental and Regulatory Approval. Neither the execution and delivery of the Subscription Agreements, nor the offer or sale of the Interests, requires any consent, approval or authorization from any federal, state or local governmental or regulatory authority (including, without limitation, registration under the Securities Act), on the part of the Partnership or the General Partner, except for compliance by the Partnership and the General Partner with the requirements of any securities laws of the states or other jurisdictions in which the Investors may be domiciled.

(d) Litigation. There are no actions, proceedings or investigations pending or threatened which have a substantial possibility of resulting in any material adverse change in the business, prospects, condition, affairs or operations of the Partnership or in any material liability on the part of the Partnership or the General Partner.

(e) Disclosure. Neither the Private Placement Memorandum, the Subscription Agreements nor the Partnership Agreement furnished to any Limited Partner by or on behalf of the General Partner or the Partnership in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which they are or were made. The Investor understands and acknowledges that his or its investment in the Partnership shall be subject to the terms and conditions of this Subscription Agreement, the Partnership Agreement and the Management Agreement in such final forms as shall be executed by the parties thereto, and as the same may be amended from time to time in accordance with their respective terms. The Investor further understands and acknowledges that certain changes in the terms and conditions of the offering originally set forth in the Private Placement Memorandum may have been modified and, as modified, will be reflected in the final forms of the Partnership Agreement and the Management Agreement.

(f) Partnership Liabilities. Except as set forth in the Offering Materials or as otherwise disclosed to the Investor, the Partnership has not engaged in any material transactions and does not have any material liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise (including, without limitation, liabilities as guarantor or otherwise with respect to obligations of others) and whether due or to become due (other than liabilities and obligations arising out of the offering under the Offering Materials and the transactions described therein, including expenses of the offering, legal and accounting fees, and travel and travel-related expenses).

(g) Sale of the Interests. All action required to be taken by the General Partner and the Partnership as a condition to the sale of the Interest purchased by the Investor has been taken, such Interest will represent a

duly and validly issued limited partnership interest in the Partnership, and the Investor will be a Limited Partner of the Partnership entitled to all the benefits, and subject to all the obligations, of a Limited Partner under the Partnership Agreement and the Delaware Revised Uniform Limited Partnership Act.

(h) Certificate of Limited Partnership. The Certificate has been duly filed for record with the Secretary of State of Delaware.

(i) Investment Company Act Status. Based in part upon the representations of the Investors contained in the Subscription Agreements, the Partnership is not required to be registered as an Investment Company within the meaning of the Investment Company Act, after giving effect to the transactions contemplated in the Offering Materials.

5.4 Performance of the Partnership and the General Partner. The Partnership and the General Partner shall have performed and complied with all agreements and conditions required by this Subscription Agreement and the Partnership Agreement to be performed or complied with by them prior to or at the Closing and there shall exist no condition or event which constitutes a default under the Partnership Agreement or which with notice or lapse of time, or both, would constitute such a default.

5.5 Compliance Certificate. The Partnership and the General Partner shall have executed and delivered to the Investor a certificate certifying the fulfillment of the conditions specified in Sections 5.1, 5.2, 5.3 and 5.4.

5.6 Opinion of Counsel for the Partnership and the General Partner. The Investor shall have received an opinion, dated the Closing date, from Davis, Malm & D'Agostine, P.C. in substantially the form of the draft attached to this Subscription Agreement as Exhibit 3 hereto.

6. Expenses. Each party hereto will pay its own expenses relating to this Subscription Agreement and the purchase of the Investor's Interest in the Partnership hereunder.

7. Amendments. Neither this Subscription Agreement nor any term hereof may be changed, waived, discharged or terminated except with the written consent of the Investor and the General Partner.

8. Reduction or Rejection of Subscription. The Investor acknowledges that the subscription for the Interest contained herein (as stated in the Commitment set forth on the signature page hereto) may be reduced or rejected by the General Partner in its sole discretion at any time prior to the Closing.

9. General. This Agreement (i) shall be binding upon the Investor and the legal representatives, successors and assigns of the Investor, (ii) shall survive the admission of the Investor as a Limited Partner of the Partnership, and (iii) shall, if the Investor consists of more than one person, be the joint and several obligation of all such persons. Two or more duplicate originals of this Agreement may be executed by the undersigned and accepted by the Partnership, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement for the purchase of a limited partnership interest in Clean Energy Fund, L.P. (the "Partnership").

_____
(Print or Type Name of Investor)

[Sign Here]: _____

By: _____

(Title, if applicable) _____

Amount of Commitment:

US$_____

Typed or printed name and address of Investor: _____

_____

Telecopier No.:_____

Social Security or Federal Tax Identification No.: _____

Please check any applicable boxes:
Foreign Entity:
ERISA Partner:
Tax-Exempt Limited Partner:
Subject to Bank Holding Company Act:

Preferred address for receiving communications (Do not complete if already listed on prior column):

_____

_____

Type of Entity (e.g. individual, corporation, estate, trust, partnership, tax-exempt organization, nominee, custodian):

_____

State of residence for tax purposes: _____

Country of residence for tax purposes: _____

The foregoing Subscription Agreement is hereby accepted by the undersigned as of the date set forth below:

CLEAN ENERGY FUND, L.P.
By: Clean Energy, GP
General Partner (For itself and for the Partnership)

By: _____
Manager

Date of Acceptance: _____, 200_

EXHIBIT 1

The Investor hereby represents and warrants, pursuant to Section 2(e) of the attached Subscription Agreement, that he, she or it is correctly and in all respects described by the category or categories set forth below directly under which the Investor has signed his, her or its name.

[SIGN BELOW THE CATEGORY OR CATEGORIES WHICH DESCRIBE THE INVESTOR]

1. The Investor is a natural person whose net worth, either individually or jointly with such person's spouse, at the time of his purchase, exceeds $1,000,000.

_____

2. The Investor is a natural person who had individual income in excess of $200,000, or joint income with that person's spouse in excess of $300,000, in 200_ and 200_ and reasonably expects to reach the same income level in 200_.

_____

3. The Investor is a corporation, partnership or other organization described in Section 501(c)(3) of the Internal Revenue Code, or Massachusetts or similar business trust, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000.

_____

4. The Investor is an entity which falls within one of the following categories of accredited investors set forth in Rule 501(a) of Regulation D under the Securities Act ("Regulation D"):

(a) A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or a fiduciary capacity.

_____

(b) A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.

_____

(c) An insurance company as defined in Section 2(13) of the Securities Act.

_____

(d) An investment company registered under the Investment Company Act of 1940 or as a business development company as defined in Section 2(a)(48) of that Act.

_____

(e) A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

_____

(f) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such a plan has total assets in excess of $5,000,000.

_____

(g) Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

_____

(h) An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company or registered investment adviser or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.

_____

(i) A trust, with total assets in excess of $5,000,000 not formed for the specific purpose of acquiring the securities offered, whose purpose is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D.

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5. The Investor is an entity in which all of the equity owners are accredited investors as defined in one or more of the categories set forth in paragraphs 1 through 4 above.

EXHIBIT 2

The Investor hereby represents and warrants, pursuant to paragraph 2(e) of the attached Subscription Agreement, that he, she or it is correctly and in all respects described by the category or categories set forth below directly under which the Investor has signed his, her or its name.

[SIGN BELOW THE CATEGORY OR CATEGORIES WHICH DESCRIBE THE INVESTOR]

QUALIFIED PURCHASER STATUS

A. The Investor is a "qualified purchaser" as defined in Section 2(a)(51)(A) of the Investment Company Act:

1. The Investor is a natural person who owns not less than $5,000,000 in investments.[1]

_____

2. The Investor is a company that owns not less than $5,000,000 in investments that is owned directly or indirectly by or for two (2) or more persons, persons related as siblings or spouse (including former spouses), or direct lineal descendants by birth, adoption, spouses of such persons, or foundations, charitable organizations or trusts established by or for the benefit of such persons.

_____

3. The Investor is a trust not covered by clause (2) that was not formed for the purpose of acquiring Interests, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust is a person described in clause (1), (2) or (4).

_____

[1] For definition of "investments," see Securities and Exchange Commission ("SEC") Rule 2a51 1 [a copy of which is attached].

4. The Investor is either (x) a person,[2] acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis not less than $25,000,000 in investments or (y) a qualified institutional buyer (as defined in paragraph (a) of Rule 144A promulgated under the Securities Act) meeting the requirements of Rule 2a51-1(g) promulgated under the Investment Company Act.

---

5. The Investor is a company all of the securities of which are beneficially owned by "qualified purchasers."

B. The Investor is not a "qualified purchaser" as described in any of the above categories.

Courtesy of John D. Chambliss, Davis, Malm & D'Agostine PC

[2] If such person is a company that, but for the exceptions provided for in paragraph (1) or (7) of Section 3(c) of the Investment Company Act, would be an investment company (an "excepted investment company"), all beneficial owners of its outstanding securities (other than short term paper), determined in accordance with Section 3(c)(1)(A) on the Investment Company Act, that acquired such securities on or before April 30, 1996 (as "pre amendment beneficial owners"), and all pre amendment beneficial owners of the outstanding securities (other than short term paper) of any excepted investment company that, directly or indirectly owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. See SEC Rule 2a51 2(e).

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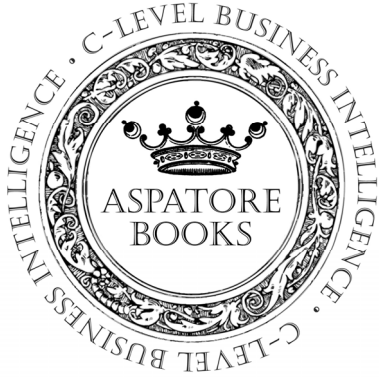
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