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**VIA ELECTRONIC MAIL RULE-COMMENTS@SEC.GOV**

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Paul Hastings Comments on Certain Regulatory Initiatives under the Dodd-Frank Act – File No. DF Title IV Exemptions**

Paul, Hastings, Janofsky & Walker, LLP is a global law firm that represents investment managers, private investment fund sponsors and other financial institutions located in the United States, Europe, Asia and elsewhere. We are pleased that the Commission is seeking comments on the implications of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ( "Dodd-Frank) and the Commission's development of Dodd-Frank implementing rules. We ask the Commission to provide guidance on a number of questions respecting the registration exemptions for foreign private advisers and small private fund advisers contained, respectively, in Sections 403 and 408 of Dodd-Frank.

## Foreign Private Adviser Definition

Place of Business in the U.S. We urge the Commission to provide guidance to foreign advisers in determining if they have a "place of business in the U.S." for purposes of the foreign private adviser definition. In our view, a foreign adviser that does not conduct advisory business from within the United States should meet this element of the definition. Clarification of this will be very important to diversified global companies that have a non-advisory presence in the United States and conduct their investment advisory activities outside of the United States.

Fewer than Fifteen Clients and Investors in the U.S. We urge the Commission to provide guidance for determining if a client or fund investor is "in the U.S." for purposes of the foreign private adviser exemption, and to consider for that purpose the definition of "U.S. person" contained in Regulation S promulgated under the Securities Act of 1933, as amended. We also urge the Commission to consider an entity that is formed or organized in the United States (e.g., a corporation, limited liability company or partnership), and that is directly or indirectly beneficially owned only by persons not otherwise considered to be "in the U.S." (e.g., a Delaware limited liability company

beneficially owned by natural persons who are neither residents nor citizens of the United States), not to be "in the U.S." for purposes of the foreign private adviser exemption.

Aggregate AUM Attributable to Clients in the U.S. and Investors in the U.S. in Private Funds Advised by the Adviser of less than $25 Million. We urge the Commission to provide guidance for determining "assets under management that are attributable to clients in the U.S. and investors in the U.S.". In our view, the relevant factor should be the location of the fund investor (or the ultimate beneficial owners of the investor if it is an entity), and not the location of the fund itself or the fund's portfolio securities. Furthermore, in determining "assets under management" only assets that meet the definition of "security" under the Investment Advisers Act of 1940, as amended, should be included.

**Small Private Fund Adviser Exemption**

We urge the Commission to avoid what in our view would be unintended discrimination against non-U.S. advisers by confirming that a non-U.S. adviser (1) that would meet the definition of foreign private adviser but for managing more that $25 million attributable to clients or investors in the U.S., and (2) that has less than $150 million of assets under management in the U.S. may avoid registration with the Commission as an investment adviser in reliance on the small private fund adviser exemption.

We appreciate the magnitude and importance of the task that faces the Commission and its Staff in developing implementation rules for Dodd-Frank, and the opportunity to provide comments.

Very truly yours,

Mitchell E. Nichter
of PAUL, HASTINGS, JANOFSKY & WALKER LLP