SadisGoldberg LLP
ATTORNEYS AT LAW

551 Fifth Avenue, 21st Floor
New York, New York 10176
T: (212) 947-3793
F: (212) 947-3796

50 California Street, Suite 2320
San Francisco, California 94111
T: (415) 490-0561
F: (415) 391-1377

January 21, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100F Street, NE
Washington, DC 20549-1090

**Re: SEC Release IA-3110, File No. S7-36-10 ("Release")**

Dear Ms. Murphy:

On November 19, 2010, the Securities and Exchange Commission (the "Commission" or "SEC") proposed rules and rule amendments designed to give effect to provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). These rules would increase the statutory threshold for registration by investment advisers with the Commission pursuant to the Investment Advisers Act of 1940, as amended ("Advisers Act"). In particular, the rules would require certain managers to "private funds" to register with the Commission and would impose certain reporting requirements on investment advisers that are exempt from registration.

We support the Commission's efforts to provide additional oversight under the Advisers Act through requiring timely registration for a broader cross-section of investment advisers. We believe, however, that it is appropriate for the Commission to recognize and/or clarify certain exemptions that the Release does not currently address, as follows:

## 1. Extend Rule 203(m)(1) for Investment Advisers with *De Minimis* Number of Separately Managed Accounts.

We respectfully request that the Commission extend the exemption provided under proposed Rule 203(m)-1 of the Advisers Act to investment advisers who provide advisory services to a *de minimis* number of separately managed accounts, in addition to, their private fund clients. An exemption from registration under the Advisers Act is warranted for those investment advisers who otherwise would qualify for the "private fund adviser exemption" under Rule 203(m)-1, but for also providing advisory services to a *de minimis* amount of five (5) or fewer separately managed accounts.

In 2008 and 2009, many private fund managers were forced to allow large investors in their private funds to withdraw capital and reinvest such capital in separately managed accounts managed by the private fund managers, based on the withdrawing investor's need for transparency and control over their investment. This need for transparency and control was a

result of the devastating Ponzi schemes and the global financial crisis, which manifested in 2008 and 2009. Thus, faced with losing large investors, and possibly the viability of their private funds, many private fund managers acquiesced to their investors' requests to open separately managed accounts. These separately managed accounts of prior private fund investors are generally managed in the same manner as the private fund from which they withdrew. Under the proposed rules, investment advisers who would otherwise be exempt from registration under Rule 203(m)-1 but for these separately managed accounts, must now register even though such investment advisers did not actively seek separately managed account clients. Accordingly, we respectfully request that the Commission recognize an additional exemption from registration for investment advisers to private funds which also manage five (5) or fewer separately managed accounts.

**2. Extend the Proposed Sixty (60) Day Window for New Registrants: Clarification of Whether the Grace Periods Provided During the Transition Period Immediately Following the Effective Date are Temporary.**

We respectfully request that the Commission extend the proposed grace period to new registrants upon the effective date of the Dodd-Frank Act (i.e., July 21, 2010) due to the administrative burden for covered investment advisers to register within the currently contemplated sixty (60) day window.

In addition, the Release does not appear to address whether the grace periods identified are intended to be interim grace periods, or if the proposed grace periods permanently will replace the current grace periods allotted for withdrawing or transitioning from SEC to state registration. The Commission proposes that an investment adviser that is already registered with the SEC as of July 21, 2010 (the "effective date" of the Dodd-Frank Act) and which, as of that date, is no longer eligible for Commission registration, would have to withdraw its SEC registration by filing a Form ADV-W no later than sixty (60) days after the required re-filing of its Form ADV. The proposed deadline for re-filing the Form ADV for currently registered investment advisers is no later than thirty (30) days after the effective date, i.e., August 21, 2011. The purpose of this re-filing is to establish the investment adviser's assets under management. Since the sixty (60) day period is described in terms of the initial transitions from SEC to state registration that will be required as of the effective date, it seems that the sixty (60) day period is intended to be temporary. Please clarify this aspect of proposed Rule 203A-5(b). If this grace period is temporary and intended to assist only in the orderly and prompt transition between SEC and state registration upon the effective date of the Dodd-Frank Act, please amend the rules to address the ongoing withdrawal and transition grace periods under the Advisers Act.

**3. Clarify the Number of Days Within Which a New Registrant Must Become Eligible for Registration.**

Currently, the Commission does not appear to address whether the one hundred twenty (120) day time period within which a newly registered investment adviser must become eligible for registration or withdraw from the Commission has changed. Since the eligibility amount of assets under management has, in general, increased from $25 million to $100 million or $150 million, depending on the type of advisory clients, we propose that the existing one hundred

twenty (120) day time period should be extended at least to one hundred eighty (180) days. Otherwise, an investment adviser may face the burden and cost of transferring multiple times between SEC and state registration before its assets under management qualify it for SEC registration.

**4. Clarification of Grace Period for Registration as an Investment Adviser.**

The Commission has proposed that an investment adviser relying on the private fund adviser exemption would have three (3) months from the end of a calendar quarter at which the investment adviser failed to qualify for the exemption, due to the fluctuation of assets within the private fund it advises, to apply to the Commission for registration. *See*, footnote 143 of the Release. We propose that this time frame should be extended to six (6) months from the end of a calendar quarter at which the investment adviser failed to qualify for the exemption. Three (3) months provides an insufficient amount of time for an investment adviser to (i) complete its ADV Parts 1, 2A and 2B, including the newly required narrative brochure and brochure supplement; (ii) submit its completed application to the Commission through IARD; and (iii) receive its approval from the Commission, which may take up to forty-five (45) days. This proposed transition period is shorter than the traditional one hundred eighty (180) day transition period afforded investment advisers withdrawing from the SEC or switching from SEC to state registration. Given that it takes substantially more time to complete a registration than to effect a withdrawal, it is counterintuitive that the Commission would require an investment adviser to register in merely half the time (ninety (90) days) as an investment adviser currently is allotted to withdraw (one hundred eighty (180) days).

**5. Clarification of Registration Requirements for "mid-sized advisers".**

The text of the Release appears to contradict itself in certain areas of the discussion related to "mid-sized advisers." For example, on page 8 of the Release, the Commission states that, "Unlike a small adviser, a mid-sized adviser is **not prohibited** from registering with the Commission: (i) if the adviser is not required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the state in which it maintains its principal office and place of business; (ii) if registered, the adviser would not be subject to examination as an investment adviser by that securities commissioner …." (Emphasis added.) This statement suggests that a mid-sized adviser may elect to register with the Commission so that it can either (x) be registered with a regulatory authority or (y) be subject to a more rigorous oversight process.

However, on page 33, in section 7(a) of the Release, the Commission suggests that a mid-sized adviser **must** either be registered with the Commission or a state, unless an exemption from registration with the Commission is otherwise available. Specifically, the Release says, "A mid-sized adviser that can and does rely on an exemption under the law of the state in which it has its principal office and place of business such that it is "not required to be registered" with the state securities authority **must** register with the Commission ...." (Emphasis added.) As you can see, these two varying sentences create uncertainty as to whether the Commission is proposing that "mid-sized advisers" may or must register with the Commission if the home states of such "mid-sized advisers" would exempt them from registration.

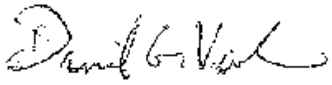
Clarification of these registration requirements is vital to the compliance of mid-sized advisers in states, like New York, which do not have routine examination programs in place for its investment advisers. The Office of the New York Attorney General enforces New York's securities laws, commonly known as the Martin Act, and its Investor Protection Bureau is charged with registering investment advisers. Under this regime, it is not clear whether New York "subjects" its registered investment advisers to "examination" under the Martin Act, as required under the Dodd-Frank Act. Moreover, what constitutes a "routine" examination program administered by a state? Additionally, how many routine exams would a state need to administer annually? Although New York does not "subject" its investment advisers to routine examinations, the Martin Act and New York case law show that investment advisers are subject to some form of examination. Please clarify the registration requirements for mid-sized advisers so that it is clear whether a mid-sized adviser located in a state like New York would be permitted or required to register with the SEC, or permitted or required to register with the state.

**6. Clarification of Registration Requirements for Investment Advisers with Less Than $25 million of Assets Under Management.**

The Release is silent as to whether investment advisers with less than $25 million of assets under management ("small advisers") are subject to the same registration requirements as mid-sized advisers. Before the implementation of the Dodd-Frank Act, it was clear that the Commission preempted the states' authority to regulate and license investment advisers who had $25 million or more in assets under management and that states retained licensing authority over small advisers, with certain exceptions. We respectfully request that the Commission clarify if, pursuant to the Dodd-Frank Act, small advisers must register with either their home state or, if their home state does not require registration due to an exemption or would not subject them to an examination, the Commission.

We appreciate the Commission's consideration of the matters set forth above.

Very truly yours,



Daniel Viola
Partner
Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, New York 10176
(212) 573-8038, phone
(212) 573-6663, fax
dviola@sglawyers.com