Georg Merkl
Binz, Switzerland

Via e-mail to: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Reference: S7-36-10 January 25, 2011

Dear Ms. Murphy,

Thank you for the opportunity to provide comments on the SEC's proposed rules relating to changes to Form ADV and to reports by exempted advisers. I have worked as the controller of several foreign and domestic funds of private equity funds with foreign and U.S. corporate and public pension plans and other qualified investors that were advised by a foreign investment adviser.

I recommend to that the SEC and the states allow an investment advisers that is registered with the SEC to stay registered with the SEC and to avoid registration with a state securities commission as long as its assets under management do not fall below a certain threshold. The SEC should use the same relationship between the official threshold for registration with the SEC and the grace threshold that it used under its old regime (the grace threshold being five sixths or 83.33% of the official threshold). The size of increases and decreases of market prices for securities during individual years in the last decade has demonstrated that large changes in the assets under management of an investment adviser can be driven purely by changes in market prices with no immediate corresponding change in the number of persons employed by the investment advisers or to its complexity. The SEC and the state securities commissions should perform a rigorous analysis of the burden in time and cost of a deregistration from the SEC and a registration with a state securities commission.

Please refer to my answer to questions that relate to assets under management in my comment letter for the subject S7-37-10 (private adviser exemptions).

Advisers are currently only required to update their assets under management reported on Form ADV annually. Should we require more frequent updating? For instance, should we require an adviser to update its regulatory assets under management quarterly or any time the adviser files an other-than-annual amendment?

No. Some private equity funds do not prepare quarterly reports. In addition, in some cases the investment adviser does not have control over the fund manager and thus could not obtain the amount of assets under management this frequently.

We request comment on proposed rule 204-4 and its requirement that exempt reporting advisers file reports by responding to a subset of items on Form ADV and filing the report through IARD. Should we instead create a new form and/or a new filing system for exempt reporting advisers?

Many retail investors may want to search information about investment advisers on the weekend. However, the IARD system is not available to investors on weekends and during the night. EDGAR has no such restrictions. In addition, investors may already be used to EDGAR and would have to learn how to use IARD.

Rather than use IARD or a new system, should we instead require exempt reporting advisers to use EDGAR?

A truly user-friendly system in which investors can research information about issuers, investment advisers and broker-dealers as well as private placement memorandums would be preferable. It should include the ability to search for the name of persons that are affiliated with or employed by an investment adviser or broker-dealers and a link to any sanctions against this person or entity (regardless whether they are part of settlements or litigated in court).

Should we not make this information available to the public on our website?

This information is relevant for investors who want to do some due diligence on a potential investment adviser or broker-dealer.

Are there alternative approaches to reporting by exempt reporting advisers that we should consider?

No. Other compliance requirements and examinations seem to be the largest burden.

Are there additional ways the Commission could distinguish between registered advisers and exempt reporting advisers?

No. I think Congress was primarily concerned with the burden of examinations, custody rules or requirements to have a compliance officer and an extensive compliance program.

Do commenters agree with our judgments regarding the items applicable to exempt reporting advisers?

Yes.

We have not proposed to require exempt reporting advisers to complete Items 4, 5, 8, 9, or 12 of Part 1 of Form ADV. We request comment on whether we should require exempt reporting advisers to complete any of these items to provide us and investors with the information required by those items.

No. The SEC should not require exempt reporting advisers to complete these items.

Should we require exempt reporting advisers to complete Part 2 of Form ADV, file it with us on IARD, and make it available to the public on our website? Would some or all of this information be helpful to clients and potential clients of these advisers?

No.

Should we not require exempt reporting advisers to complete certain items of Part 2? For example, should we exclude those items that would require information similar to those items of Part 1 that we are not proposing to require exempt reporting advisers to complete? Are there

other items we should include or not include?

Yes. The SEC should not require exempt reporting advisers to complete Part 2.

Should we require these advisers to complete brochure supplements? Would the information in the brochure supplements be helpful to the clients of these advisers? Do investors currently receive this type of information as a result of their investment in a private fund?

No. Investors in private funds currently receive a private placement memorandum before they invest in a private fund. The private placement memorandum typically includes extensive information about the investment adviser and its employees.

Should the reporting requirements be identical for exempt reporting advisers as they are for registered advisers?

Not necessarily.

Are there items that we have proposed to apply to exempt reporting advisers that we should not apply or are unnecessary, and why?

Yes. Foreign private advisers may not be familiar with the information levels for the determination of fair values under US GAAP that are required by item 12 of section 7.B.1 of schedule D. The private funds that are advised by foreign private advisers usually do not use US GAAP as their accounting standard. In addition, it is not clear for which purposes the SEC needs this information. What is the use of this information for purposes of systemic risk and is it absolutely necessary for this purpose.

Is any of the information we propose to require not readily available to an exempt reporting adviser?

No. The SEC should define the term independent public accountant that directly in item 25(d) of section 7.B.1 of schedule D in order to make it more user friendly to avoid filers to have to search the glossary.

Would any of the items require disclosure of proprietary or competitively sensitive information?

No.

Would any of these disclosure requirements, either individually or cumulatively, impose a significant burden?

No.

Would they require disclosure of proprietary or competitively sensitive information such that they could impact or influence business or other decisions by these advisers?

No.

Would they materially affect a decision by an adviser whether to form a private fund? If so, why?

No.

Should exempt reporting advisers be permitted to update Form ADV, or certain items, less frequently? If so, what should be the updating requirements, and should we be concerned that, as a result, an exempt reporting adviser that is also registered with a state securities regulator would have to update its Form ADV on a different schedule than an exempt reporting adviser that is not also registered with a state?

No.

Would less frequent reporting result in information that is less useful or materially inaccurate?

Yes.

Should exempt reporting advisers be required to update other items more frequently than annually?

No.

We propose to include a provision in rule 204-4 to require an exempt reporting adviser to file an amendment to its Form ADV when it ceases to be an exempt reporting adviser. We request comment on this proposed final report requirement. Is there an alternative approach we could take?

No.

We propose requiring each exempt reporting adviser to file its initial report with us on Form ADV no later than August 20, 2011, 30 days after the July 21, 2011 effective date of the Dodd-Frank Act. We request comment on our proposed transition, including the amount of time we propose for exempt reporting advisers to submit their initial reports.

Private funds advisers should only be required to file their initial report within a certain number of months after the end of the first fiscal year on or after August 20, 2011. Any information that would require a change to the accounting standards, valuation methods, require an audit of the financial statements or a change to the deadline within which financial statements need to be prepared and audited should only be required after sufficient time to prepare this information during the financial year.

We understand that advisers would have ready access to all of the new information as part of their normal operations or compliance programs, and thus these new requirements should impose few additional regulatory burdens. We request comment on whether our understanding is correct. In addition to (or instead of) these three areas of operations, are there other areas about which we should require advisers to report additional information?

In general yes. However, audited or unaudited financial statements may not be available within 90 days after the end of the investment adviser's fiscal year. A lot of European private equity funds only send their financial statements to their investors within four months after the end of their fiscal year. In addition, funds of private equity funds need additional time after the receipt of the financial statements of the underlying funds in order to draw up the financial statements of the fund of funds.

We request comment on the scope of the Schedule D filing requirements about private funds. Should we, as proposed, require exempt reporting advisers to file Section 7.B of Schedule D? Would the disclosure of private fund information by exempt reporting advisers impact or influence business or other decisions by these advisers, such as whether to form additional private funds or discourage entry into management of private funds all together?

Yes. The information is fine. However, information on the fair value hierarchy levels seems to be unnecessary.

Should we require advisers to report information also about other pooled investment vehicles they may advise, such as foreign funds not offered to U.S. persons? Specifically, are there sufficient investor protection or other concerns that the Commission should seek to require this information? Is information about these funds important to understand conduct that directly involves U.S. investors? Are the instructions eliminating multiple filing of Section 7.B. by advisers helpful? Are there different approaches we might take to achieve our intended goals? We request that commenters review our proposed instructions and identify any ambiguities that we should address.

The SEC should not require advisers to report information about private funds that are not offered to U.S. investors.

I appreciate the opportunity to comment on these matters and hope that my comments are useful in the rulemaking process. Please do not hesitate to contact me by e-mail if you have any follow-up questions.

Respectfully submitted,

Georg Merkl