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January 31, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Request for Comment on Proposed Rules under the Investment Advisers Act of 1940 Implementing Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act; File No. IA-3110

Request for Comment on Proposed Rules under the Investment Advisers Act of 1940 Defining Venture Capital Funds, Providing an Exemption for Private Fund Advisers and Clarifying Terms under the Foreign Private Adviser Exemption; File No. IA-3111

Dear Ms. Murphy:

We submit this letter in response to the request by the U.S. Securities and Exchange Commission (the "Commission") for comments regarding Release No. IA-3110 and Release No. IA-3111 (the "Releases").[1] The proposed rules (the "Proposals") provide for an exemption for advisers with less than $150 million in private fund assets under management in the United States,[2] clarify the meaning of certain terms included in a new exemption for foreign private advisers,[3] provide a definition of a "venture capital fund",[4] require disclosure by "exempt reporting advisers" on Form ADV Part 1A[5] and provide for amendments to Form ADV Part 1A.[6]

We appreciate the opportunity to comment on the Proposals and the Releases. Seward & Kissel LLP has a substantial number of clients who would be affected by the adoption of the Proposals. We respectfully submit the following comments and request that the

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[1] Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Advisers Act Release No. IA-3111, 75 Fed. Reg. 77190 (proposed December 10, 2010) (to be codified at 17 C.F.R. Part 275) ("Exemptions Release"); Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. IA-3110, 75 Fed. Reg. 77052 (proposed December 10, 2010) (to be codified at 17 C.F.R. Parts 275 and 279) ("Implementing Release").
[2] Proposed Rule 203(m)-1(a).
[3] Proposed Rule 202(a)(30).
[4] Proposed Rule 203(l)-1.
[5] Implementing Release, at 77061.
[6] *See id.* at 77064.

Commission consider them before adopting the Proposals. The views we express in this letter, however, are our own and do not necessarily reflect those of our clients.

I. Private Fund Adviser Exemption

The Commission has proposed rule 203(m)-1, which provides an exemption for an investment adviser that (i) acts solely as an investment adviser to one or more qualifying private funds and (ii) manages private fund assets of less than $150 million.[7]

A. Duplicative Registrations

For tax and other business reasons, many investment advisory groups establish multiple entities, for example, one entity to serve as the general partner or managing member of a private fund and another entity to serve as investment adviser to the private fund. Under the proposed rules, an advisory group that uses this structure may be required to register both the investment adviser and its affiliated entity with the Commission.[8] Consistent with what we believe to be the Commission staff's prior view, we recommend the final rules clarify that an affiliated entity under common control with a registered investment adviser would not be required to separately register with the Commission provided that the affiliated entity is subject to the registered adviser's compliance policies and procedures and the supervision of the registered adviser's chief compliance officer.

Generally, these affiliated entities which act as general partners or managing members are not operated for the purpose of providing investment advice, but instead delegate investment discretion to the investment adviser. The affiliated entities perform operational and administrative functions, while the investment adviser is the entity primarily responsible for making investment decisions on behalf of its clients.

In the ABA Subcommittee on Private Investment Companies No-Action Letter (the "ABA Letter"), the Commission agreed that an affiliated entity would not be required to register provided that all of the advisory activities of the affiliated entity were subject to the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and the affiliated entity was subject to examination by the Commission.[9] The ABA Letter also required that any employees or persons acting on behalf of the affiliated entity be subject to the supervision and control of the registered adviser.[10] Therefore, the affiliated entity, its employees and persons acting on its behalf would be "persons associated with"[11] the investment adviser and subject to all provisions of the Advisers Act. The ABA Letter concluded that if the above conditions were satisfied, then an affiliated entity could rely upon the investment adviser's registration and would not have an independent registration obligation.[12]

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[7] Exemptions Release at 77206.
[8] *See* Proposed Rule 203(m)-1.
[9] ABA Subcommittee on Private Investment Companies, SEC No-Action Letter (Dec. 8, 2005) ("ABA Letter").
[10] *Id.*
[11] 17 C.F.R. § 275.202(a)(17).
[12] *See* ABA Letter.

Notwithstanding that the ABA Letter was in response to letters that relied on Section 203(b)(3) of the Advisers Act, which will be eliminated as of July 21, 2011, we believe that the broad principle of avoiding duplicative registration underlying the no-action relief, remains applicable.[13] Registration by an affiliate under common control with a registered adviser would be duplicative and burdensome for an advisory group. It would also increase the administrative burden on the Commission in reviewing additional applications without providing an increased regulatory benefit. Those burdens would not be outweighed by any benefit to the Commission or investors because Form ADV would not provide any additional information not already provided by the registered adviser and the affiliated entity. Furthermore, the employees and persons acting on behalf of the affiliated entity would already be subject to the supervision and control of the registered adviser and subject to examination by the Commission.[14] Multiple registrations could also create confusion among investors as to which entity was responsible for providing investment advisory services.

B. Calculation of Regulatory Assets under Management and Valuation

Under the Proposals, it appears that regulatory assets under management, as described below, will be the method of calculation to determine whether an investment adviser qualifies to register with the Commission rather than with the relevant state securities regulatory authority, as well as to determine eligibility for the private fund adviser exemption and the foreign private adviser exemption.[15]

1. Inclusion of Proprietary/Non-Fee Paying Assets in the Calculation of Regulatory Assets under Management

Regulatory assets under management would be determined under the new proposed Item 5.F of Form ADV.[16] Currently an adviser may, but is not required to, include proprietary assets or assets managed without receipt of compensation for purposes of completing Item 5.F for Form ADV and for determining whether the adviser is eligible to register with the Commission. Under the proposed ADV instructions, regulatory assets under management would include proprietary assets and all assets managed without compensation.[17] It is common for investment advisers, their principals and other key employees to invest their assets in private fund clients in order to further align their interests with those of the other investors in the private funds. Since many investment advisers managing smaller private investment funds may seek to avail themselves of the private fund adviser exemption, we believe that including proprietary assets in the calculation of regulatory assets under management may create a disincentive for such investment advisers to invest alongside their clients. In such smaller advisory firms, it would be quite easy for the principals to manage their own assets separate and apart from the adviser and its funds and many may choose to do so if such an investment would allow the

[13] *Id.*
[14] *See* Proposed Rule 203(m)-1.
[15] Exemptions Release, at 77207.
[16] Implementing Release, at 77052.
[17] Proposed Form ADV: Instructions for Part 1A, instr. 5.b(1).

adviser to avail itself of the private fund adviser exemption. We believe that an alternative policy that encourages the principals of an investment adviser to invest alongside its clients in a private fund is a sound policy.

Furthermore, the definition of an investment adviser in the Advisers Act is "any person who, for compensation, engages in the business of advising others".[18] Since a person that engaged in the business of advising others without receipt of compensation would not be considered an investment adviser, it would be inconsistent to include assets managed without compensation in the calculation of regulatory assets under management.[19] Similarly, an adviser that manages its own proprietary assets is not "advising others", which is another important element of the definition of investment adviser.[20] Accordingly, we recommend that an adviser should not be required to include proprietary assets or assets managed without compensation when measuring its regulatory assets under management.

2. Calculation of Regulatory Assets under Management on a Gross/Net Basis

The proposed method of calculating regulatory assets under management appears to include gross assets without netting the amount of any borrowing, from the calculation of regulatory assets under management.[21] Counting borrowed assets toward regulatory assets under management is a departure from the investment management industry's view of the basis on which assets under management are calculated (i.e., on a net basis), is subject to manipulation and may create a conflict of interest for some investment advisers who would qualify for an exemption from registration if assets are measured on a net basis, but who would not qualify for the exemption if assets are measured on a gross basis. The inclusion of borrowed assets may create an incentive for an adviser to reduce client borrowings to qualify for an exemption from registration even though reducing leverage may not be in the best interest of its clients. Further, it could encourage advisers to use methods other than borrowing to obtain financial leverage for their clients (e.g., through swaps or other derivative products, which could be disadvantageous to clients due to the counterparty risks and increased costs that they entail). Accordingly, we recommend that advisers be permitted to calculate regulatory assets under management on a net basis rather than a gross basis. If the Commission's goal is to obtain information regarding the levered assets of the clients of a smaller adviser to determine whether an adviser poses a systemic risk, the Commission can obtain this information through reports that an exempt reporting adviser may be required to file with the Commission on a confidential basis.[22] Revising the commonly understood definition of assets under management is not the appropriate method for achieving that goal.

3. Valuation

The proposed rules would require that an adviser's regulatory assets under

[18] 17 C.F.R. § 275.202(a)(11).
[19] *See id.*
[20] *Id.*
[21] *See* Exemptions Release, at 77207 n.190.
[22] *See* Implementing Release, at 77056.

management be measured using a specific fair value standard, which may not accord with the current valuation methodology used for client accounts.[23] Requiring an investment adviser to change the valuation methodology used with respect to client accounts or to use multiple valuation methodologies would create an unnecessary burden and expense. Many investment advisers, particularly those that invest in non-traditional securities, use valuation methods tailored to the specific investments made on behalf of client accounts. Since valuation methodologies are often determined by the client, advisers would be required to use multiple methods of valuation, which will increase costs for the adviser and the clients. Certain private investments made on behalf of client accounts may be valued at cost for all purposes other than the account's annual audited financial statements. It would be costly and burdensome for these advisers to have to value private investments using fair value on a quarterly or more frequent basis. Accordingly, we recommend that advisers be allowed to measure their regulatory assets under management using the agreed upon valuation methodologies described in a client's governing documents. If the Commission does not allow advisers to measure regulatory assets under management based on the valuation methodologies set forth in a client's governing documents, then an adviser that only uses fair value for purposes of a client's annual audited financial statements should be able to rely on the client's most recent annual audited financial statements. Furthermore, if advisers are required to use fair value to measure regulatory assets under management, we would recommend that the Commission refrain from adopting a requirement that fair value be determined in accordance with U.S. Generally Accepted Accounting Principles, since many investment advisers value client assets in accordance with International Financial Reporting Standards.

C. Transition Rules

1. Transition to State Registration

The Commission has proposed Rule 203A-5, which would require each investment adviser registered with the Commission on July 21, 2011 to file an amendment to its Form ADV Part 1 no later than August 20, 2011 to report the market value of its assets under management as determined within 30 days of the filing.[24] An adviser who indicated in its amendment filing that it was no longer eligible to remain registered with the Commission would be required to de-register by October 19, 2011.[25]

Under the proposed rules, the amendment filed by an adviser on August 20, 2011 would have to report the market value of its assets under management within 30 days of the date of the amendment filing.[26] We recommend that advisers be permitted to use the market value of its assets under management as of June 30, 2011 so that advisers do not need to conduct a separate valuation in the middle of a quarter. Since many advisers calculate their fees on a quarterly basis, it would be burdensome and costly for an adviser to have to determine its assets under management other than on a quarterly basis.

[23] *See* Exemptions Release, at 77207.
[24] Proposed Rule 203A-5.
[25] *Id.*
[26] *Id.*

Based on the proposed rules, an adviser would have 90 days to de-register with the Commission and register with the appropriate state regulatory authority or multiple state regulatory authorities, if required.[27] We recommend that this time period be extended to at least 180 days to provide an adviser with sufficient time to comply with its obligations under state law, which may differ from the requirements it is subject to as an adviser registered with the Commission.

Our experience is that registration with a state regulatory authority can be a time consuming process, particularly if an adviser is required to register with multiple states. An adviser may need to modify its advisory agreements to comply with state law, ensure that investment adviser representatives employed by the adviser satisfy any applicable exam requirements and modify its compliance procedures if its current procedures do not comply with the requirements under the relevant state laws. Additionally, since many advisers will be registering with the states during the same time period, state regulatory authorities may be overwhelmed with applications and any review process could take longer than would usually be expected.

2. Time Period to Determine Eligibility to rely on the Private Fund Adviser Exemption

The Commission has proposed Rule 203(m)-1, which provides that an adviser relying on the private fund adviser exemption has one calendar quarter to register with the Commission after becoming ineligible to rely on the exemption due to an increase in the value of its private fund assets.[28] An adviser would be required to register by the end of the calendar quarter following the quarter-end on which the adviser's private fund assets equal or exceed $150 million.[29]

Due to potential asset fluctuation (made more likely as a result of the calculation of regulatory assets under management on a gross basis), it would be burdensome and costly for an adviser to be required to measure its private fund assets for purposes of complying with the private fund adviser exemption on a quarterly basis.[30] The Commission has proposed that regulatory assets under management be calculated on a gross basis rather than a net basis, which can lead to an increased potential for asset fluctuation based on an adviser's use of leverage on any particular measurement date.[31] Many advisers' assets under management fluctuate throughout the year and an adviser could be required to register with the Commission as of the end of one quarter and de-register with the Commission and register with a state as of the end of a subsequent quarter.[32] Since the passage of the National Securities Markets Improvement Act of 1996 ("NSMIA"), the assets under management of an adviser have been measured on an

[27] *Id.*
[28] Proposed Rule 203(m)-1.
[29] *Id.*
[30] *See* Exemptions Release, at 77207.
[31] *See id.* at 77207-08.
[32] *See id.* at 77210.

annual basis for purposes of determining whether an adviser is required to de-register with the Commission because the adviser no longer has at least $25 million in assets under management. Annual valuation under NSMIA has created few, if any, notable problems. We believe that annual measurement of assets for purposes of determining an adviser's ability to rely on the private fund adviser exemption would be consistent with the approach established under NSMIA. If the Commission decides to measure an adviser's assets under management on a quarterly basis, as proposed, the Commission should consider adopting an approach that calculates regulatory assets under management based on the average amount managed during the prior 12 month period rather than as of the quarter-end. This approach would provide more certainty to advisers regarding when they would be required to register and provide additional time to prepare for registration.

Additionally, due to the increased compliance obligations required of registered investment advisers, advisers will need more than one calendar quarter to prepare for registration with the Commission. An adviser that has not previously been required to register with the Commission will have a substantial amount of preparation to engage in prior to registration, including implementing compliance procedures, revising client offering documents and completing Form ADV Part 1 and Part 2.

We recommend that for purposes of determining when an adviser's private fund assets equal or exceed $150 million, the adviser's private fund assets should be measured as of the end of the adviser's fiscal year. We also recommend that an adviser that can no longer rely on the private fund adviser exemption as of the end of a particular fiscal year be provided with at least 180 days to register with the Commission.

D. Multi State Advisers

The Commission has proposed to amend Rule 203A-2(e) to permit an investment adviser required to register with 15 or more states to register with the Commission.[33] We support the Commission's proposal to decrease the number of states from 30 to 15 and would support a proposal to further decrease the number of states to five. To ensure that smaller advisers will still be subject to regulation by the states, the Commission could require that an adviser be required to register with five or more states and have at least $25 million in assets under management. Multiple state registrations are burdensome and costly for advisers since state requirements can vary markedly in each jurisdiction.

E. Multiple Exemptions/Other Activities

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), an adviser would only qualify for the private fund adviser exemption if, among other requirements, it acts solely as an investment adviser to one or more qualifying private funds.[34] If an adviser is engaged in activities other than managing private funds that

[33] Proposed Rule 203A-2(d).
[34] Proposed Rule 203(m)-1. *See* Exemptions Release, at 77206.

would independently qualify for an exemption from registration (e.g., adviser to a venture capital fund), then that adviser should not be prohibited from relying on the private fund adviser exemption. We believe that allowing an adviser to qualify for multiple exemptions would be in accordance with the intentions behind each exemption and the Commission's authority under Section 206A of the Advisers Act.[35] Additionally, an adviser may engage in some activities that do not involve advising clients and have no effect on assets under management (e.g., providing research to institutional investors). We do not believe that engaging in these types of activities should prevent an adviser from relying on the private fund adviser exemption.

II. Foreign Private Adviser Exemption

Pursuant to section 402 of the Dodd-Frank Act, a new exemption from registration under the Advisers Act has been enacted for "foreign private advisers" as defined in new section 202(a)(30).[36] In order for an adviser to avail itself of this exemption, the adviser's aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by it must be less than $25 million.[37]

A. Increase of the Threshold of $25 million to $100 million

While the Dodd-Frank Act established the threshold of $25 million, the Commission was granted the authority to increase that threshold.[38] Given the introduction by the Dodd-Frank Act of the new category of "mid-sized advisers", we believe that the Commission should use its power to raise the asset threshold for foreign private advisers.[39] Mid-sized advisers are U.S. investment advisers whose regulatory assets under management are between $25 million and $100 million and who are prohibited from registering with the Commission provided that they are required to be registered with and subject to examination by the state in which the adviser has its principal place of business.[40] Although a foreign private adviser would not be subject to oversight by a state regulatory authority like a mid-sized adviser, most advisers relying upon the foreign private adviser exemption are regulated in their home jurisdictions and are, therefore, subject to oversight and supervision by a regulatory authority. In addition, due to the look-through provision included in the foreign private adviser exemption, a non-U.S. adviser that merely has one U.S. investor, with assets of $30 million attributable to such investor, would be required to register with the Commission whereas a mid-sized adviser with assets under management of $50 million would not be registered with the Commission.[41] We would submit that this leads to the anomalous result that the non-U.S. adviser is subject to full regulation by the Commission even though a U.S. mid-sized adviser has a greater impact on U.S. clients and investors.

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[35] 17 C.F.R. § 275.206A.
[36] Section 402 of the Dodd-Frank Act (providing a definition of "foreign private adviser", to be codified at 17 C.F.R. § 275.202(a)(30)).
[37] *Id.* *See* Exemptions Release, at 77210.
[38] Proposed Rule 202(a)(30).
[39] *Id.*
[40] Proposed Rule 203A(a)(2). *See* Implementing Release, at 77060.
[41] *See id.*

We therefore believe that the Commission should align the foreign private adviser exemption with the definition of a mid-sized adviser and increase the $25 million threshold to $100 million.

B. Knowledgeable Employees should not be counted as Investors

The Commission has also proposed rule 202(a)(30)-1 which seeks to clarify the meaning of certain terms which are to be used in section 202(a)(30).[42]

Under this rule, the Commission has proposed that investors in private funds who qualify as "knowledgeable employees" (as defined in Rule 3c-5 under the Investment Company Act of 1940 (the "Investment Company Act")) be counted as investors for the purposes of the foreign private adviser exemption.[43] We believe that, consistent with current treatment of knowledgeable employees for other purposes under the securities laws, knowledgeable employees should not be counted as investors for the purposes of this exemption and we encourage the Commission to exclude knowledgeable employees from the definition of "investor".

When determining whether a private fund can rely on the exclusion from the definition of investment company provided for under section 3(c)(1) of the Investment Company Act, a knowledgeable employee is not counted as a beneficial owner for purposes of determining the limit of beneficial owners, and we believe it would be unnecessarily confusing and inconsistent for such investors to be counted for the purposes of one test but not the other.[44] Further, as stated above, we oppose any proposals that could discourage investment advisers from aligning their interests with their clients, and advisers may discourage their employees from investing in the funds that they manage if those employees will be counted as investors.

C. Calculation of Regulatory Assets under Management

We agree with the Commission's proposal to create a uniform method of calculation with respect to regulatory assets under management and believe that such method should be applied to the foreign private adviser exemption.[45] However, we encourage the Commission to revise the proposed definition of regulatory assets under management, as set forth above.

III. <u>Exempt Reporting Advisers : Sections 407 and 408</u>

To implement the private fund adviser and venture capital fund adviser exemptions, the Commission has proposed a new rule requiring advisers who avail themselves of these exemptions ("exempt reporting advisers") to report certain information to the Commission

[42] Proposed Rule 202(a)(30).
[43] Exemptions Release, at 77212.
[44] *See* Section 3(c)(1) of the Investment Company Act; Rule 3c-5(b) under the Investment Company Act.
[45] *See* Exemptions Release, at 77214.

using Form ADV Part 1A.[46] The Commission is also proposing certain amendments to the provisions of Form ADV Part 1A.[47] We believe that using the same form for both registered advisers and exempt reporting advisers will create confusion among investors. We recommend that exempt reporting advisers should not have to complete Form ADV Part 1A. If exempt reporting advisers are required to submit reports to the Commission, those reports should not be publicly available.

Congress distinguished between an adviser that is required to register with the Commission and an adviser that is able to rely on an exemption from registration. The requirement that exempt reporting advisers provide the level of information required by the relevant sections of Form ADV Part 1A would blur this distinction.[48] As Commissioner Casey stated in her speech at the Commission's Open Meeting held on November 19, 2010, to require exempt reporting advisers to adhere to the proposed reporting regime is to erode "the significance of being exempted from registration so far as to make it a distinction without a difference".[49]

IV. Performance Records

The Commission proposed amendments to Rule 204-2 under the Advisers Act to revise the grandfathering provision for those advisers that currently rely on the "private adviser" exemption, but will be required to register with the Commission as of July 21, 2011.[50] Many advisers that are currently relying on the "private adviser" exemption have not maintained the records required under Rule 204-2 and without the grandfathering provision would be unable to advertise the performance for their client accounts. We support the Commission's proposal that those advisers would not be required to retain certain performance-related records provided that they did not register with the Commission when they were able to rely on the "private adviser" exemption.[51]

V. Performance Fees

Rule 205-3 under the Advisers Act allows an adviser to charge a performance fee to "qualified clients". Many investment advisers that currently rely on the "private adviser" exemption have not required that clients or investors in the private funds they advise meet the definition of a "qualified client". Advisers that manage private funds that rely on the exclusion from the definition of investment company provided for in Section 3(c)(1) of the Investment Company Act may have a substantial number of investors that are unable to meet the definition of a qualified client. When the Commission adopted the hedge fund adviser registration rule in

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[46] Implementing Release, at 77061.
[47] *Id.*
[48] *Cf.* Implementing Release, at 77075-76.
[49] Comm'r Kathleen L. Casey, Statement at SEC Open Meeting – Rules Implementing Amendments to the Investment Advisers Act of 1940; Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less than $150 Million in Assets Under Management, and Foreign Private Advisers (November 19, 2010).
[50] Implementing Release, at 77072.
[51] *Id.*

2004, the Commission provided for a grandfathering provision that allowed advisers to continue to charge performance fees to existing clients and investors in any 3(c)(1) fund even though the clients and investors did not meet the definition of a "qualified client".[52] The Commission explained that this relief was provided to avoid "disrupting existing arrangements between newly-registered hedge fund advisers and their current pool investors or separate account clients".[53] We recommend that the Commission provide for a similar grandfathering provision for advisers that are required to register as of July 21, 2011 due to the elimination of the "private adviser" exemption.

VI. Form ADV

A. Duplicative Reporting on Part 1 and Part 2

The Commission has proposed enhanced disclosure requirements on Form ADV Part 1.[54] Any items that are already covered in Part 2 of Form ADV should not be required to also be disclosed in Part 1, including soft dollar and brokerage practices, which are described in detail in Part 2.[55]

B. Private Fund Reporting Item 7.B

The proposed Item 7.B and Schedule D of Form ADV Part 1 significantly expand the information concerning private funds that both registered advisers and exempt reporting advisers are required to disclose.[56] While an adviser has access to the information required to be included in Item 7.B, there would still be significant costs associated with collecting, analyzing and synthesizing the volume of information mandated by the proposed provisions across many private funds.

In addition, the proposed disclosure requirements are unnecessarily intrusive into the business of private funds. The Commission explains that one benefit of the proposed private fund reporting on Form ADV is that it would assist investors in evaluating potential managers.[57] We believe an investor's most comprehensive source of information is the private fund's offering documents and to require such information to be publicly disclosed is unnecessarily duplicative without any discernible benefit to investors.

Further, the Commission explains that the proposed private fund reporting on Form ADV would help protect against fraud and assist the Commission in its systemic risk evaluation.[58] Although we agree that these disclosures would assist the Commission in seeking

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[52] Registration under the Advisers Act of Certain Hedge Fund Advisers, Advisers Act Release No. IA-2333, 69 Fed. Reg. 72054, 72076 (proposed December 10, 2004) (codified at 17 C.F.R. Parts 275 and 279).
[53] *Id.*
[54] Implementing Release, at 77064.
[55] Proposed Form ADV: Item 12 to Part 2A.
[56] *See* Proposed Form ADV: Item 7.B to Part 1A.
[57] Implementing Release,. at 77076.
[58] *Id.*

to achieve these goals, we do not see how making such information publicly available would result in any additional benefit. The Commission could, instead, obtain such information via confidential filings. Further, we submit that the enhanced information requirements being proposed by the rules go farther than what is necessary for the Commission to pursue its objective of protecting investors or evaluating systemic risk and instead is an attempt by the Commission to compile a census of information which would not, we believe, assist the Commission with achieving either of these goals.

We believe the proposed private fund disclosure requirements on Form ADV may work to the detriment of investors by making proprietary information of private funds (such as specific investment programs and entity structures) publicly available to industry competitors. Such consequences would be counterintuitive and are contrary to recent public policy espousals, such as President Barack Obama's statement, *Toward a 21st-Century Regulatory System*, which was published in the Wall Street Journal on January 18, 2011.[59] President Obama stated that "we are seeking more affordable, less intrusive means to achieve the same ends-giving careful consideration to benefits and costs".[60] We believe the Commission should follow that approach with respect to these Proposals.

We appreciate the opportunity to comment on the Releases. If you have any questions regarding this letter, please contact Patricia A. Poglinco at (212) 574-1247 or Robert Van Grover at (212) 574-1205.

Very truly yours,

Seward & Kissel LLP

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[59] Barack Obama, Opinion, *Toward a 21st-Century Regulatory System*, WALL ST. J., Jan. 18, 2011, at A17.
[60] *Id.*