

MEMORANDUM

To: File No. S7-37-10

From: Jennifer B. McHugh
Senior Advisor to the Chairman

Date: March 17, 2011

Re: Meeting with Certain Private Fund Representatives

On March 16, 2011, Chairman Schapiro; Jennifer McHugh; and Eileen Rominger, Director, and Robert Plaze, Associate Director, of the Division of Investment Management met with the following:

- Jerrold Newman - Willowridge Partners, President and Founder
- Charles Stetson - PEI Funds, Managing Director and co-founder
- Deena Seelenfreund – VCFA Group, CFO
- Bart Shirley - Cuyahoga Capital Partners, Managing Partner
- Mary Joan Hoene - Carter Ledyard & Milburn, Counsel

The participants discussed, among other things, the Commission's Proposed Rules for Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers contained in SEC release No. IA-3111. The participants also discussed practical implementation issues raised by the Advisers Act custody rule and code of ethics rule.

The participants at the meeting provided the attached materials.

Discussion Outline for Meeting with SEC Chairman and Fund Sponsors March 16, 2011
(Supercedes Outline of March 1, 2011)

I. Introduction

VCFA Group, Willowridge Partners, Inc., Cuyahoga Capital Partners, and PEI Funds sponsor and manage “secondary” investment funds that invest primarily in venture capital (VC) funds, leveraged buyout funds, Funds of Funds and private companies on a secondary basis. We typically hold interests in limited partnerships (“LPs”), which we purchase from existing limited partners in the private market. LP interests are sold due to liquidity needs, financial reversal, reallocating investments and other reasons. Transfers of an LP interest by a limited partner must be approved by the General Partner. Secondary Funds are closed-end, generally do not borrow or incur financial leverage, do not offer investors redemption rights, and are offered privately to “qualified purchasers”. Following the growth of venture capital and private equity funds, Secondary Funds developed during the 1980’s. There are about 50 Secondary Fund Sponsors, aggregating approximately \$73.5 billion in assets.

The Secondary Fund asset class appeals to pension fund and other institutional investors, along with ultra high net worth individuals, with a long term investment horizon who want the higher returns of private equity, but with earlier cash flows. Secondary Funds have 10 to 15 year terms, management fees that are generally based on commitments (not on asset values; there is no incentive to write-up the values of assets), fees which steadily decline in later years after the LP acquisition period ends, and stipulations that management fees are recovered prior to any performance-based return to the manager. Secondary Funds have rigorous investment, valuation and reporting processes. Sponsors are required to act only in the interests of their fund investors and they have established policies to address conflicts of interest.

II. Impact of Dodd-Frank

The SEC has recently proposed implementing rules under the Dodd-Frank Act of 2010. Most Sponsors of Secondary Funds will have to register as investment advisers with the SEC under the Investment Advisers Act by July 21, 2011. The costs of registering and initial compliance with the Advisers Act are estimated to exceed \$100,000 - \$450,000 for most Sponsors. Firms will have to hire a chief compliance officer, or reallocate existing staff to that function, and adapt to the rules under the Advisers Act, with attendant disruption to regular business. Ongoing compliance costs will vary but reasonable estimates for small firms range from \$100,000 - \$200,000 (exclusive of salary costs for a CCO).

Many Advisers Act requirements don’t make sense for Secondary Funds and Funds of Funds. The Advisers Act was tailored to investment professionals investing in the public securities markets on behalf of clients (including investment trusts and closed-end funds), based on detailed analysis of the investment adviser universe as it existed in the 1920’s and 1930’s. The rules adopted by the SEC over the years under the Advisers Act are also focused on adviser activities in the public securities markets. The Secondary Funds

industry segment buys interests in LPs that invest in start up companies and various businesses which try to help these companies grow and create jobs. We fully acknowledge our fiduciary status to our investors as fund managers, but question why the SEC would presume to apply rules to us that were designed for classic investment advisers engaged in the active management of securities portfolios, without detailed study and analysis of the implications. We have never had an opportunity to consider or comment upon the rules that will apply as of July 21, 2011.

Our Goal: We believe the SEC should delay implementing registration until it has had time to examine which rules under the Advisers Act should reasonably apply to us. For example, Code of Ethics Rule 204A-1 requiring reporting by personnel of personal securities transactions is overly broad. The risks of insider trading that are addressed under the Rule are low; Secondary Funds are limited partners in LPs. We are passive investors in the LPs with limited information about the underlying companies, most of which are private. The LP general partners do not share with us any inside information. It is not possible for us to front run clients as our personnel invest with our clients in our pooled vehicles and we do not apportion trades to different clients. Requiring our personnel to report their personal securities transactions (aside from special approvals for private fund investments) and our firms to review trading does not achieve a rational regulatory purpose. We do not object to the requirement of a code of ethics (most firms have codes and standards of conduct), but we should make our own judgment as to the necessary policies and procedures to ensure compliance with our fiduciary duty to our investors.

If the SEC decides not to delay registration, we suggest that Part I of the Form ADV be required initially, to enable a “census” approach, with delayed implementation of Part II and the Advisers Act rules pending further study and proposals by the staff to frame appropriate treatment. Alternatively, we offer below proposals for exemption from registration for Secondary Fund Sponsors.

III. Practical Problems in Complying with Custody Rule

Recently amended Rule 206(4)-2 under the Investment Advisers Act will result in onerous changes to current custodial practices by Secondary Funds, and significant costs, without attendant benefits to investors. The custody rule amendments were developed by the SEC staff in 2009 as a quick response to the Madoff scandal.* Effective in 2010, client assets must be held by a qualified custodian subject to an annual surprise audit. Fund managers may rely on an important exception to the surprise audit requirements so long as private funds are audited annually, with the critical caveats that audits must be completed within 120 days of fiscal year end, or 180 days for a Secondary Fund or Fund of Funds, in accordance with generally accepted accounting principles (“GAAP”). We note that certain Secondary Funds do not use GAAP accounting, especially in a fund’s

* Despite hundreds of critical comments, the staff’s proposals were adopted essentially as proposed. Since then, there have been numerous interpretative questions about the custody rule, as demonstrated by the many clarifying FAQs published on the SEC’s website by the Division of Investment Management. The rule is confusing, and its application has been onerous and expensive for advisers and private funds.

latter years, when the fund is primarily engaged in distributions. In this instance, the GAAP requirement imposes an unnecessary financial burden on the fund.

Another important exception involves certain “private securities,” which are not required to be held by a qualified custodian. However, for private fund sponsors, this exception is restricted to private funds that are audited within the 120/180 day periods. The exception, which seeks to recognize a market reality that Private Securities pose no real custodial risks, ends up being unavailable for Secondary Funds. Also some Private Securities are considered “certificated” and don’t technically fall within the exception, even though they require issuer permission to transfer ownership to a third party.

Most Secondary Fund underlying LP’s do not distribute audited financials to their investors until 120 days from their fiscal year-end. Some do not distribute audited financial statements until well after the 120-day mark. In addition, underlying LPs that are Funds of Funds often do not provide audited financials until 180 days subsequent to year-end. Secondary Funds thus do not receive financial statements for all their underlying LP interests until the end of, or after, the 180-day period.

Even with best efforts, we are unable to comply with the 180 day deadline for Funds of Funds in the custody rule. We simply do not control the timing. We have contacted our underlying LPs and requested that they complete their audits earlier than in prior years. Some will and some simply cannot, especially the Funds of Funds which will also be awaiting underlying audited reports from the LPs they hold.

When we do not receive audited financials in time for review, our independent auditors require us to perform extensive alternate procedures to develop estimates. Taking audited statements based upon actual information and replacing them with projections does not serve the interests of our investors. At the end of the day, projections are simply estimates and could be significantly incorrect. If the 180-day requirement persists, the custody rule will cause us to rely on many more projections than in the past in order to complete audits by June 30. This will come at high cost to our investors, just to comply with an arbitrary time deadline, with the consequence that our financials will be less robust due to the lack of audited information for many underlying funds.

Once a Secondary Fund is established, the annual audit is a core element of its compliance program. The audit, which begins early in the year, validates the existence and value of all assets in the fund, along with the internal control environment of the manager. Investors rely on the integrity of the audit, comparing the results with regular quarterly reporting. We have queried some of our investors informally; none believe that moving the audit schedule up would be advantageous to them or provide additional comfort.

See the accompanying presentation for additional details.

Our Goal: To work with the SEC to achieve a solution through rule making, or interpretation of the custody rule by the staff to extend deadlines for Secondary Funds to 258 days from fiscal year-end for their financial statements. Because the Secondary Funds are all on a calendar year basis, this will result in a September 15 deadline. Such provision will help the Secondary Funds enormously, with no harm to investors, as there is virtually no risk that fund assets are at risk. In addition, there is no reason why Sponsors should not hold certain “certificated” Private Securities directly; we suggest that the definition of Private Securities be extended to cover all securities that are subject to issuer approval for transfer. Finally, we ask the staff to consider relief from the GAAP requirement for Secondary Funds once they are primarily engaged in distributions to investors.

IV. Venture Capital Exemption; Alternative Exemption for Funds holding LP Interests.

The VC exemption from registration in Dodd-Frank has been narrowly framed; many managers of funds that have heretofore considered themselves as venture in nature will have to register unless the rule proposal is expanded as noted in many of the public comments on the rule proposal. We believe the exemption should be expanded in response to industry comments. Also, we believe that the exemption should apply to Sponsors of Secondary Funds and Funds of Funds investing in VC funds, as long as we stay unleveraged and are over 50% invested in VC funds and Funds of Funds.

There are efforts in Congress by Private Equity Sponsors to obtain an exemption from the Investment Advisers Act for Private Equity Funds. Private Equity and other private fund sponsors have been in touch with SEC Commissioners and staff to discuss relief from the Advisers Act for funds holding LP interests. We believe there are solid policy reasons for the SEC to adopt an alternative exemption from registration for managers to private funds that hold LP interests, so long as the funds are not hedge funds. Exempt manager reporting could still be required under Form PF.

Our Goal: Broaden the VC exemption or adopt an alternative for private fund managers whose funds invest in LP interests,

V. Preliminary Observations on Form PF

Proposed Rule 204(b)(1) and Form PF outline a broad range of reporting by managers of private funds so the SEC can provide information to the Financial Stability Oversight Council, and identify issues and firms for inspection and enforcement purposes. Private fund advisors, managing assets of less than \$1 billion, must complete Sections 1a and 1b of Form PF, within 90 days of year-end. There are more comprehensive requirements for those managing in excess of \$1 billion. Item C asks for information by month and by quarter. As a common industry practice, we report only on a quarterly basis because we only receive quarterly information from underlying investments. We cannot provide performance information that has any real market meaning by March 31.

Our Goal: Establish September 15th as the date to file Form PF. Eliminate reporting by month under Item C, because we don't have and can't get the information from the underlying fund investments. Overall, Form PF seems like overkill for Secondary Fund and Funds of Funds, as there is no "systemic risk" in our operations. We are equity investors in underlying funds. We do not use leverage and do not contribute systematic risk. Form PF as proposed amounts to a dual registration system for managers who are exempt, and to a heavy additional burden for registered funds and managers of Secondary Fund and Funds of Funds. Please consider taking us out entirely, and applying Form PF only to hedge fund managers and leveraged managers, or Funds over \$1 billion. We also note that much of the "systemic risk" information sought by Form PF can be obtained from industry trade associations, banks and other lenders, prime brokers, and research services. We suggest that the SEC should step back and re-evaluate Form PF.

VI. Conclusion

The SEC has ample authority under the Dodd-Frank Act and the Investment Advisers Act to tailor regulatory requirements to particular industry segments. We realize the Dodd-Frank deadlines have imposed great pressure on the SEC, and wish to comply with the law, but submit that it is important to "get it right". Smaller firms have neither the budget nor the staff to function and stay in compliance with inapposite rules. Smaller firms have not been the problem in terms of systematic risk. Applying burdensome rules without considering the need is irresponsible, and could deliver a serious if not fatal blow to smaller firms. Delay in implementing certain of the registration and reporting requirements, appropriate exemptions and interpretations of the rules so they make practical sense should all be options. We will be glad to assist the staff in this process.

Thank you for considering our views, and the specific goals referenced above.

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Secondary & Fund of Funds Audit Process

Presentation for the Securities and Exchange Commission

(Supercedes presentation dated March 1, 2011)



March 16, 2011

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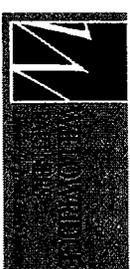
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Secondary Fund Overview

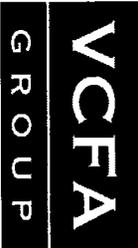


- VCFA Group, Willowridge Partners, Inc, PEI Funds and Cuyahoga Capital Partners buy limited partnership (LP) interests in venture capital partnerships, buyout partnerships, and funds of funds in on a secondary basis. If one is invested in an LP, there is no public market. Secondary funds buy LP interests privately. Reasons to divest: Need liquidity, financial reversal, re-allocating investments, change of strategy, compliance with Volcker rule.
- Dodd-Frank requires secondary fund sponsors to register as investment advisers under current SEC proposals by July 21, 2011. Compliance with SEC rules challenging and expensive.
- Impossible for secondary funds to comply with Custody Rule 206(4)-2 because audited financials are not available to investors within 180 days of year-end.
- Practical Issues for Timing of Financials:
 - Unlike most portfolio securities of mutual funds and hedge funds, secondary fund LP portfolio valuations not available on the public market.
 - Secondary funds rely on underlying LP audited financials which are received very late.



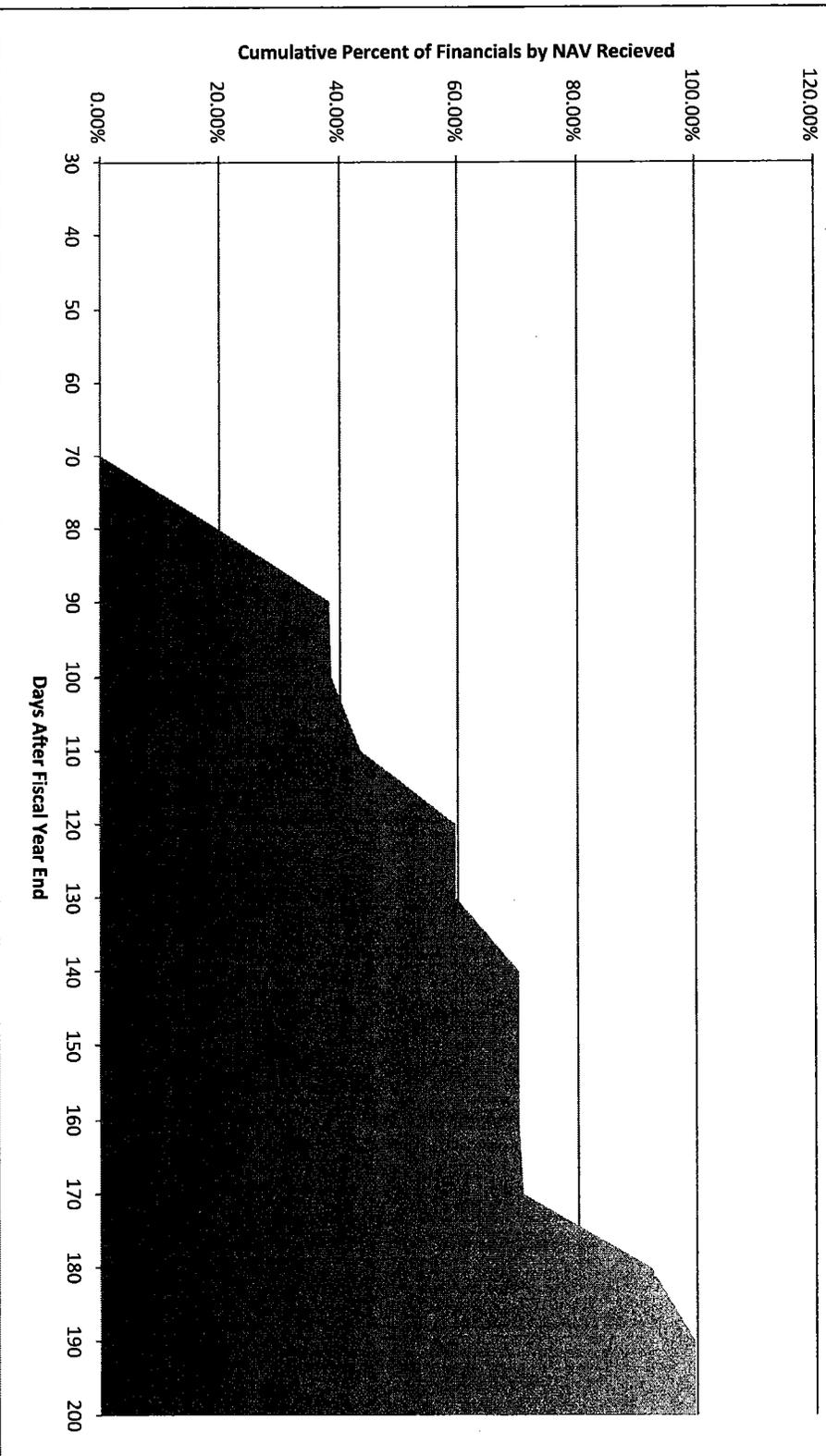
VCFA Most Recent Fund Timeliness of Underlying Portfolio Investment Financial Statements Received

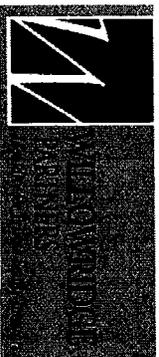
Size of fund	\$250 million
Fund focus	venture capital, private equity funds and funds of funds
Year fund raised	2006
Invested or committed capital (12/31/2010)	\$178.3 million
Number of underlying portfolio investments (12/31/2010)	29
Days after fiscal year end for receipt of 99% of audited financials received from underlying portfolio investments (for 2009 audit)	189 days



For the 2009 audit, VCFA's most recent fund reached a threshold of 99% of underlying portfolio investment audited financials received (based on value), 189 days after year-end

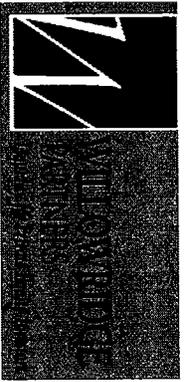
**VCFA Venture Partners V, L.P. - Cumulative Percent of Audited F/S
Received Based on Total Portfolio NAV**





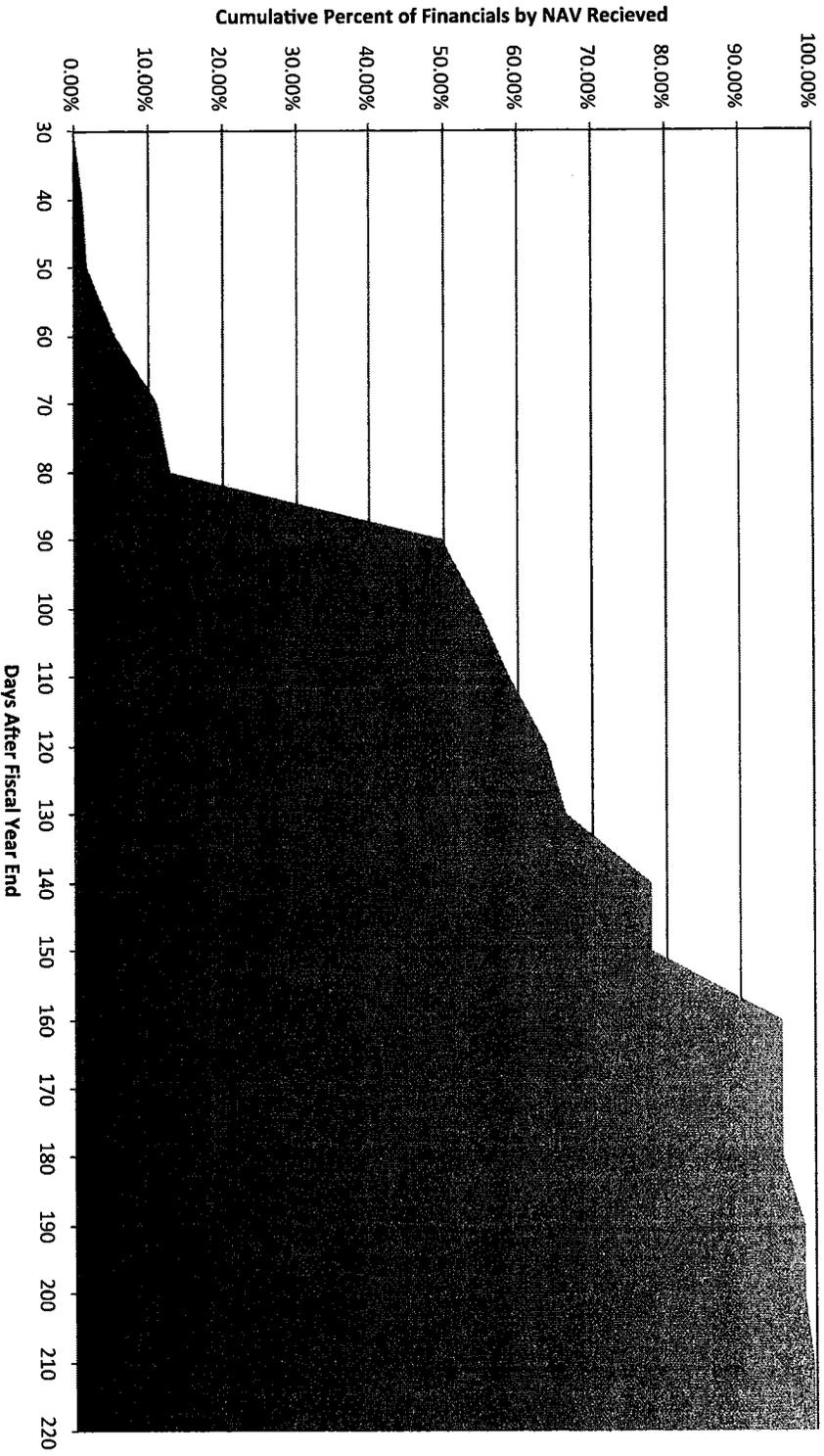
Willowridge Most Recent Fund Timeliness of Underlying Portfolio Investment Financial Statements Received

Size of fund	\$301.65 million
Fund focus	venture capital, private equity funds and funds of funds
Year fund raised	2008
Invested or committed capital (12/31/2010)	\$187.0 million
Number of underlying portfolio investments (12/31/2010)	170
Days after fiscal year end for receipt of 99% of audited financials received from underlying portfolio investments (for 2009 audit)	202 days



For the 2009 audit, Willowridge's most recent fund reached a threshold of 99% of underlying portfolio investment audited financials received (based on value), 202 days after year-end

**Amberbrook V, L.L.C. - Cumulative Percent of Audited F/S Received
Based on Total Portfolio NAV**





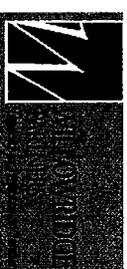
SEC Custody Rule 206(4)-2 reporting deadlines key issues for secondary funds



- Exception from qualified custodian requirement for LPs depends upon receipt of financials within 180 days of year-end under Rule 206(4)-2(b). Secondary funds need to rely on the LP exception, but cannot due to arbitrary 180 day deadline.
- Cannot control timing of underlying portfolio investment financials. Some managers of underlying LPs report within 120 -180 days of year-end and some do not. (Some managers are registered, others are not.)
- A secondary fund's period to produce and distribute its own audited financial statements is dictated primarily by the timely receipt of audited financials from underlying LPs.
- Secondary purchases may include purchases of LP interests in funds of funds. Audited financial statements often don't arrive until 180 days after year-end or later.
- Maintaining LP interests with a qualified custodian is difficult, expensive, and does not serve to protect investors. No real risk that the LP interests can be transferred from the secondary fund. Custodians do not add protection for investors, nor can they provide valuations or statements on their own.



SEC Custody Rule – Audit process Receipt of underlying audited financial statements



- There is a lengthy process (30 to 60 days) which takes place after the last underlying audited investment report is received (beginning on day 202 or day 189 from fiscal year-end).
- Auditors review all underlying audited reports to ensure correct accounting methodologies have been used and opinions are not qualified. GAAP standards applied.
- Auditors ensure all underlying public securities (less than 10% of portfolio) are valued at market value as of fiscal year-end without discounts to that value (public securities within LPs occur for various reasons although they are not purchased for investment purposes); public securities always held in brokerage or custodian account.
- 5% fund of fund disclosure footnote is prepared. Underlying direct and indirect investments are reviewed, any investments representing 5% or more of the fund's NAV are tested extensively and disclosed in the notes to the financials statements and then reviewed by auditors.
- Financial highlights shown in the footnotes to the financial statements are prepared using the underlying data received from underlying audited reports. Financial highlights are then reviewed by the auditors for accuracy.
- Once financial statements, footnotes and supporting schedules are completed, the GP and managing directors review in depth. All comments are flowed through the financials and are sent for independent auditor partner review.
- Management rep letter and lawyers confirmation response re contingencies to auditors are obtained (must be dated as close to the issuance date as possible).
- Once approved, the printing process can begin and then financial statements can be issued and mailed to investors on or about September 15.



SEC Custody Rule 206(4)-2 Impact on secondary funds - suggested change



- With the receipt of many audited financials for underlying portfolio investments well subsequent to 120 days after year-end (closer to 180 days for some investments), secondary funds will not be able to complete and distribute audited financial statements within 180 days of year-end.
- Actual audited and complete information would need to be replaced with imprecise projections in order to comply with the 180-day reporting deadline – not a solution from sponsor and investor standpoint.
- The practicable deadline is September 15, 258 days from fiscal year-end. This allows adequate time from the receipt of the underlying audited financial statements for a secondary fund's auditors to complete their work in a responsible manner.



2010 Audit Process VCFFA Timeline



- November 28, 2010 – *PwC* to provide confirmation letter templates (including cash, custodian, underlying portfolio investments, and legal).
- December 15, 2010 – Prepare cash and investment confirmation letters.
- January 1, 2011 – *PwC* to provide new pronouncements and disclosures for fund managers to consider.
- February 16, 2011 – deliver cash and investment confirmations to *PwC*.
- March 20, 2011 – complete Preliminary Financial Statements using interim valuations.
- March 25, 2011 - *PwC* to begin interim audit procedures.
- April 15, 2011 – *PwC* to begin year-end audit.
- April 15, 2011 – VCFFA to provide *PwC* with the draft Audited Financial Statements at “cost” (without valuations).
- April 15, 2011 – June 15, 2011 – *PwC* to provide VCFFA with materiality threshold percentage for each fund (“Threshold %”).
- April 20, 2011 – Follow up with confirmation requests, prepare second requests.
- May 15, 2011 – Comments from *PwC* on VCFFA cost financial statements and audited accounts.
- Evaluate the % of underlying fund manager valuations received to date compared to each Threshold %. If necessary, underlying fund managers will be called to request updated valuations.
- May 20, 2011 – Follow up with outstanding confirmation requests.
- June 15, 2011 – Valuation review to be completed by *PwC* (subject to receipt of the underlying valuations and % coverage achieved).
- June 16, 2011 – Contact underlying fund managers for outstanding audited valuations.
- June 16-August 15 – await outstanding underlying unaudited valuations.

2010 Audit Process VCF A Timeline



- Perform alternate procedures for *PwC* to support missing underlying or unaudited valuations or non-GAAP valuations.
- August 15 – August 31 Receive the last outstanding underlying valuation.
- August 31 - Update valuations of the Funds and send the charts to *PwC*.
- August 31 - *PwC* Partner to review valuations of the Funds.
- September 1 – Conference call between VCF A & *PwC* Partner regarding underlying valuations.
- September 4 - VCF A to update and provide to *PwC* the Audited Financial Statements with final valuations, cash flows, financial highlights, IRR & internal % and 5% fund of fund footnote.
- September 4 - Legal confirms to be sent by *PwC* (subject to change).
- September 4 - VCF A to email the Financial Statements and attachments to *PwC* Partner and GPs for final review.
- September 5 - *PwC* Partner and GPs to perform final reviews on Audited Financial Statements.
- September 5 - Management Representation Letter for review and signature. VCF A to provide signed management representation letter to *PwC*.
- September 8 - Final comments received from *PwC* and GP. Audited Financial Statements updated.
- September 10 - Clearance received from *PwC*.
- September 10 - VCF A to e-mail final audited financials with dated opinions to *PwC*.
- September 12, 2011 - Prepare all attachments that will accompany the audited reports.
- September 12, 2011 – *PwC* processes audited financial statements for printing.
- September 15, 2011 – *PwC* to deliver to VCF A the printed Audited Financial Statements.
- September 15, 2011 – Audited Financial Statements mailed out to investors.