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January 7, 2011

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

Re: File No. DF Title IV Exemptions -- Definition of Venture Capital Fund

This letter is submitted by Private Equity Investors, Inc. ("PEI") and Willowridge Partners, Inc. ("Willowridge"), two firms that manage investment funds that invest primarily in venture capital funds and in venture capital companies. We are writing with respect to the request for comments on Release No. IA-3111; File No. S7-37-10. We refer you to the letter dated 11/9/10 that we previously sent to you (copy attached).

Background:

In the SEC's release, the SEC noted that Congress created an exemption to registration under the Investment Advisers Act of 1940 for advisers solely to venture capital funds, without regard to the number of such funds advised by the adviser or the size of the funds[1]. In further defining venture capital funds, the SEC noted that

> ***"as a general matter, venture capital funds are long term investors in early-stage or small companies that are privately held, as distinguished from other types of private equity funds, which may invest in businesses of various stages of development including mature, publicly held companies. Testimony received by Congress characterized venture capital funds as typically contributing substantial capital to early-stage companies and generally not leveraged, and thus not contributing to systemic risk, a factor that appears significant to Congress' determination to exempt these advisers. In drafting the proposed rules, we have sought to incorporate this Congressional understanding of the nature of the investments of a venture capital fund, and these principles guided our consideration of the proposed venture capital fund definition.[2]"***

Venture capital provides the underpinning for innovation, growth and new job creation in the U.S. economy. There are a number of ways of investing in venture capital. One of the ways is directly investing in a venture capital fund. For many institutional investors, however, this is a difficult task because they do not have the appropriate staff to evaluate the funds. Thus, they, along with

[1] SEC Release IA -3111; File No. Su-37-10, p. 6
[2] Ibid p. 10 to 12

many other investors, can either outsource the investment process to a consultant or invest in venture funds through funds of funds or secondary funds.

A. Funds of Funds and Secondary Funds Increase Investments in Venture Capital Funds and in Venture Capital Companies.

There are two types of "Pooled Vehicles" for investing in other funds: funds of funds and secondary funds. [These funds do not borrow, do not offer investors redemption rights and are not registered investment companies.]

Funds of funds have their own investors, or limited partners, and invest capital directly into different types of funds including venture capital. There are over 100 U.S.-based fund of funds managers, which in aggregate have almost $200 billion of invested capital. Funds of funds, through the financial commitments of their investors, increase the overall amount of capital available to their underlying funds, including venture capital funds.

Secondary funds also have their own investors and invest capital indirectly into different types of funds, including venture capital. There are approximately 35 U.S.-based secondary fund managers which in aggregate have about $60 billion of invested capital. While funds of funds increase the amount of capital available to their underlying funds through direct investment, secondary funds increase funding for such underlying funds, including venture capital, by making the asset class more liquid and therefore less risky for investors.

A secondary fund buys interests in its underlying funds from existing investors in those funds, thereby providing liquidity to existing investors. When a secondary fund purchases a limited partnership interest in a fund from an existing investor, it steps into the shoes of that investor. Thus, a secondary fund not only increases capital for venture funds and venture-backed companies, but also creates liquidity for an otherwise illiquid market.

Many institutional investors cannot invest in venture capital funds, unless they have a way of exiting their investments. This includes numerous state pension funds that are prohibited by legislation from investing in funds that do not provide redemption or a liquid market for their interest in the event of a crisis, or in the event that the pension fund needs cash to fulfill obligations to employee retirement plans or for other purposes. Also, since such funds can take 10 to 15 years or more to produce final investment realizations, many institutional investors opt to invest in secondary funds which can shorten the time horizon to 4 to 7 years. Providing liquidity to the venture capital industry that is itself illiquid is a critically important function to create a more open, efficient and lower-risk investment climate.

Because of secondary funds, institutional investors can commit more funding to venture capital funds, contributing to the fulfillment of Congress' objectives in exempting venture capital funds from registering, which drives job creation across the U.S.

B. PEI and Willowridge Are Secondary Funds that Invest Primarily in Venture Capital, Which Increases Liquidity and Therefore Funding to Venture Capital Funds and Venture-Backed Companies.

PEI, founded in 1992, has led or co-led approximately 190 secondary transactions in over 100 different fund groups, many of which are among the leading funds in the U.S. Since inception, approximately 55% of PEI's investments have been made in venture capital. Since 2006, which includes all the investments made to date from its last two funds, PEI has invested over 65% of its deployed funding in venture capital. PEI is currently investing Private Equity Investment Fund V, L.P., with approximately $203 million of committed capital. PEI is located in New York, NY and currently has nine employees.

Willowridge Partners, founded in 1995, has led or co-led 236 secondary transactions in over 380 different funds. Since inception, approximately 59% of Willowridge's investments have been made in venture capital. Willowridge is currently investing Amberbrook V LLC, with approximately $302 million of committed capital. Willowridge is located in New York, NY and currently has six employees.

C. Pooled Vehicles that Invest in and Increase Funding to Venture Capital Funds Should Be Included in the Definition of a Venture Capital Fund

Pooled Vehicles investing in venture capital are identical to venture capital funds except that they are indirect investors in venture capital because they generally invest in venture capital funds. They do not take on leverage and pose no systemic risk. These Pooled Vehicles are in form and substance complying with the intent of the Dodd Frank Bill, and they should be exempt from the registration provisions of the Dodd Frank Act.

Many funds of funds and secondary funds invest predominantly in venture funds. They may, however, also invest in other types of private equity funds such as growth equity or mezzanine funds. As long as 50% or more of the capital commitments to Pooled Vehicles like funds of funds or secondary funds is allocated to venture capital, they should qualify for exemption from registration. To the extent that secondary funds invest in private equity funds other than venture capital funds, they are providing the same liquidity benefits to public and private pension funds and to other institutional investors without incurring debt to finance the positions they are purchasing, and, therefore, do not pose any systemic risk. Additionally, the non-venture funds that secondary funds may invest in are very similar to venture capital because they typically back young growing companies that are a driving force in job creation in the U.S. Funds of funds that qualify for this exemption should not invest in commodity funds or structured investment vehicles.

Proposal Comments:

We propose the following modifications, so as to incorporate the principles described above:

A. Pages 13 and 19. The following language should be added at the end of the definition of a venture capital fund:

> ***or (vii) is a pooled vehicle, such as a fund of funds or secondary fund, provided that (x) at least 50% of its assets or commitments are invested in or reserved for venture capital investments that meet the criteria of (i) through (vi), above, (y) it does not borrow or otherwise incur leverage (other than limited short-term borrowing), and (z) it does not invest in commodity funds.***

B. Page 16. The following language:

> ***, whether invested directly or through funds of funds or secondary funds,***

should replace the inserted ellipsis within: "As a consequence, the aggregate amount invested in venture capital funds … is considerably smaller, and Congressional testimony asserted that these funds may be less connected with the public markets and may involve less potential for systemic risk."

Additional Observations

A. Requirement in 1940 Advisers Act Section 206 to issue Financial Statements by 120 or 180 days of year end.

> **Securities And Exchange Commission**
> **Securities And Exchange Commission**
> **17 CFR Parts 275 and 279**
> **[Release No. IA-2176; File No. S7-28-02]**
> **RIN 3235-AH 26**
> **Custody of Funds or Securities of Clients by Investment Advisers**
>
> Advisers need not comply with the reporting requirements of the rule with respect to pooled investment vehicles, such as limited partnerships or limited liability companies, if the pooled investment vehicle (i) is audited at least annually; and (ii) distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year.[41]
>
> **Source #2:**
> *Updated as of September 9, 2010*
> **Staff Responses to Questions About the Custody Rule**
>
> **Question VI.7**
> **Q:** Does a fund of funds have to meet the 120-day deadline for sending out its audited financial statements?
> **A:** The Division has issued a letter indicating that it would not recommend enforcement action to the Commission if an adviser relying on the "audit provision" for a fund of funds distributes the audited financials to investors within180 days from the end of the fund of funds' fiscal year. A fund of funds is a pooled investment vehicle that invests 10 percent or more of its total assets in other pooled investment vehicles that are not, and are not advised by, a related person of the pool, its general partner, or its adviser. A "related person" of an adviser includes officers, partners, directors, most employees, and anyone controlled by, controlling or under common control with the adviser. *See* Adopting Release at footnote 45 and the ABA Letter. (Modified March 5, 2010.)

It will be difficult for calendar year-end Pooled Vehicles such as PEI and Willowridge to complete their audited financial statements within 180 days from the end of the calendar year, because this gives them only 60 days after the audit deadline for their underlying funds. During the first 120 days of the year, auditors will be focusing their resources on reported financials for underlying funds and will likely not be able to concentrate on their work with Pooled Vehicles until after the

120 day deadline. Therefore, the auditing process for Pooled Vehicles will effectively begin 120 days from the end of the calendar year. Pooled Vehicles require nearly the same amount of time to complete their audits as do their underlying funds. Therefore, we propose a deadline for completion of audited financial statements of September 15th for calendar year-ended Pooled Vehicles.

B. Costs (In reference to the estimated registration costs on page 114).

At small investment firms, the costs of regulation are very meaningful and a distraction and diversion from investing in venture capital where companies with venture capital investment starting in 1971 currently provide 9 percent of all employment in the U.S.[3] Instead of making venture capital investments, investment professionals will be forced to spend their time on compliance matters.

C. No Systemic Risk.

Pooled Vehicles investing in venture capital – funds of funds and secondary funds – do not possess inside information on publicly traded companies. They are solely conduits for investing in venture capital. They do not pose any systemic risk. They do not use leverage. They provide a means of investing on a diversified basis in an asset class that Congress determined was critically important to the health of the American economy.

[3] So far in our investigations of outside services to help us register, and comply with registration, we have been quoted fees ranging from $50,000 to $150,000 annually or more plus an initial fee of $75,000 or more. In addition, we estimate that internal staff will cost us us an additional $50,000 to $100,000 to comply. We know of other secondary funds that are paying $500,000 for the cost of compliance. For small Pooled Vehicles such as ours, with four to ten people on staff, these costs are prohibitive. We believe the cost estimates in this report are far too low for the amount of work that compliance requires. In order to pay for these costs, firms will have to (i) devote investment professionals’ time to serving these additional compliance procedures, (ii) reduce the size of their investment professional staff in order to hire compliance staff, or (iii) pay to outsource the compliance function, reducing the means and staff available for investment due diligence and research. All of these alternatives will compromise the firms’ investment process to the detriment of the firms’ investors, which include pension funds, endowments and charitable organizations. These costs do not serve the intent of Congress, which is to ensure a healthy venture capital industry that has been at the heart of employment growth over the last 40 years in America.

Conclusion:

We firmly believe that Pooled Vehicles should be included in the definition of venture capital as long as 50% or more of a pooled vehicle is invested in or reserved for venture capital investments and that the deadline for audited financial statements should be 255 days after year end which is consistent with current IRS reporting requirements.

Sincerely yours,

Private Equity Investors, Inc.

By: Chuck Stetson

Chuck Stetson, Managing Director

Willowridge Partners, Inc.

By: Jerrold Newman

Jerrold Newman, Founder

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November 9, 2010

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

Re: File No. DF Title IV Exemptions -- Definition of Venture Capital Fund

This letter is submitted by Private Equity Investors, Inc. and Willowridge Partners, Inc., two firms that manage investment funds that indirectly invest in venture capital funds and in venture capital companies. Both firms are substantially venture capital investors via purchases of interests in venture limited partnership funds and securities in venture-backed companies on a secondary basis from existing investors. We are writing in anticipation of rulemaking under Section 407 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which was signed into law on July 21, 2010. We appreciate the decision by the U.S. Securities and Exchange Commission ("SEC") to seek input on the implications of the Dodd-Frank Act and the formulation of rules mandated by the legislation.

Discussion

Definition of "Venture Capital Fund"

Section 407 of the Dodd-Frank Act requires the SEC to issue rules defining "venture capital fund." We wish to urge the SEC in exercising this mandate to take a considered approach that measures carefully the current state of the venture capital industry, as well as the importance of venture capital to the US economy and competitiveness. We believe that the Congressional intent behind Section 407 is based on complementary rationales: (1) advisers to venture funds did not require the same kind of regulation as the SEC is required to adopt for other private fund managers; and (2) venture capital investing is a critical stimulant to the U.S. economy and should not be burdened by unnecessary regulation.[1]

To this end, we suggest an approach to defining "venture capital fund" that fully comprehends indirect methods of venture investing through secondary purchases. Institutional

[1] We believe that the number of firms in the venture capital industry is approximately 1,100. Thus, the exemption that Congress intended is for a limited class, i.e. those firms that are investing, directly or indirectly, in venture capital companies.

investors, such as pension funds, endowments and foundations, benefit from the ability to access liquidity in various forms of alternative investing, including venture capital investing. Direct investments for such investors, however, are rarely feasible and often too expensive. The primary means of investing in venture capital for an institutional investor is through a venture fund. The opportunity for institutional investors to make venture capital investments through funds has encouraged their increased commitment to that asset class and in turn served as a powerful entrepreneurial and job creation force in our economy.

One requirement in venture investing by institutional investors, particularly state pension funds, however, is the ability to exit their investment, often as a matter of state legislation or fiduciary standards. Venture capital is a long-term asset class. Unlike hedge funds which have quarterly or annual liquidity for their investors, venture capital funds and their investors must be prepared to wait as long as 10 to 15 years for investments to mature. Institutional investors often cannot wait that long. This is where secondary funds come into play. The secondary industry provides institutional investors with a means to get liquidity via selling their investment interests. This has been particularly true during the recent economic crisis, when liquidity has been of increased importance. Some of the most sophisticated investors, such as Harvard University, CalPERS and others, have had to use the secondary industry to generate cash in times of economic crisis. Thus, it is important to have indirect investors in venture capital which provide liquidity to an otherwise illiquid market.

In coming up with a proposed definition of venture capital fund for the purposes of Section 407, we believe that the membership criteria of the National Venture Capital Association ("NVCA") has direct relevance. Based on that, we propose that in developing a definition of "venture capital fund" for purposes of Section 407 of the Dodd-Frank Act, the SEC consider the following concepts:

- A venture capital fund ("VCF") should be actively engaged in investing on a cash-for-equity or cash-for-limited partnership interest basis from a dedicated pool of capital that has been allocated for the purpose of substantially investing in venture capital investments.
- A VCF should have at least $50 million under management for the sole purpose of venture capital investing. Such investing should be in companies which are, on average, growing companies, with low debt and with syndicates of one or more firms that are similar in type to VCFs.
- A VCF should certify initially and later on a periodic cycle (such as, every three years) that it
    - has over 50 percent of its investments in direct investments in venture capital portfolio companies and/or limited partnership interests in funds investing in venture capital portfolio companies;
    - employs a professional staff to do direct venture capital investing; and
    - uses a professional approach before and after it makes an investment, including the maintenance of a continued interest in the companies it sponsors.

We strongly recommend that the SEC work closely with venture capital organizations and trade groups, such as the NVCA. These organizations, both through their membership criteria and in connection with the support they provide their members, have current data on the size and characteristics of the venture capital asset class. These organizations also have relevant information on the importance of venture capital to the overall economy.

The Importance of Venture Capital

In passing the Dodd-Frank Act, Congress specifically exempted advisors to venture capital funds from registering with the SEC. In doing so, Congress implicitly recognized that private companies funded by venture capital since 1971 are a key driving engine of job creation. These companies currently provide close to 11 percent of the private sector employment, or 12.1 million jobs out of 115 million jobs. Additionally, revenue from venture-backed companies is now $2.9 trillion annually, representing 21 percent of U.S. Gross Domestic Product.[2] The venture capital industry has been responsible for such companies as Federal Express, Apple, Google, Facebook, Microsoft, to name a few.

Advisors to Venture Capital Funds Do Not Require SEC Regulation

Congress has determined that advisors to venture capital funds are exempt from registration. By their nature, advisors to venture capital funds do not require the same kind of regulation as may pertain to advisors to hedge and private equity funds. Venture capital firms, by strategy, maintain relatively little exposure to public markets. In addition, venture companies are not substantially debt leveraged and thus do not impact the banking and credit markets. Further, since venture capital firms are invested primarily in private securities, they have very limited instances of trading and pose little, if any, potential systemic risk to the economic system because of the general absence of leverage. The same is even more true for those funds that invest indirectly in venture capital funds and venture capital companies, via secondary purchases or primary commitments to venture capital funds. Such advisors and their venture capital funds generally have no issues involving personal trading, insider trading procedures or trade aggregation protocols. Similarly, having a chief compliance officer to enforce procedures that are not applicable to venture capital firms is unnecessary, provides little utility and would result in a financial burden and an impediment to the main task of providing growth financing to entrepreneurial businesses which will result in substantial job creation for the economy.

Should the SEC choose to require audited financial reports, indirect investors with investments in venture funds typically require until September 15th to complete a GAAP-based external audit. Audited financial information from many underlying funds is not received until late in the second calendar quarter, and often late into the third quarter. The Internal Revenue Service has recognized this fact and does not require partnerships to file Form 1065 and the Schedules K-1 until September 15th each year.

[2]The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy. 2009. National Venture Capital Association.

Conclusion

In closing, since it has already been determined that advisors to "venture capital funds" are exempt from registration under the Dodd-Frank Act, we would like to suggest that the working definition of "venture capital fund" acknowledge and reflect the fact that funding of venture companies is accomplished indirectly, as well as, directly. As such, when you consider funds which provide capital to venture companies, there should be no distinction made based on the manner of that investment, whether direct or indirect, in the final definition of "venture capital funds."

We appreciate the opportunity to share our preliminary views on the direction the SEC should take in crafting a definition for "venture capital fund" under the Dodd-Frank Act and look forward to providing further views once the SEC has developed proposed rules. In the meantime, please do not hesitate to contact either of us if you have questions.

Sincerely,

Private Equity Investors, Inc.

By: ______________________

Chuck Stetson, Managing Director

Willowridge Partners, Inc.

By: Jerrold Newman ______________________

Jerrold Newman, Founder