SC ADVISORS GROUP, LLC
SCA GROUP

SC ADVISORS

June 17, 2011

Via Electronic Submission to U.S. SEC

U.S. Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Attention: Elizabeth M. Murphy, Secretary

Re:

File No. S7-37-10; Release No. IA-3111
Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers; and

File No. S7-36-10; Release No. IA-3110
Rules Implementing Amendments to the Investment Advisers Act of 1940

Dear Secretary Murphy:

SC Advisors Group, LLC ("SCA") is pleased to provide the U.S. Securities and Exchange Commission and its Staff (together, the "SEC") with our summary comments on the proposals to adopt rules under the Investment Advisers Act of 1940 ("Advisers Act") to implement exemptions from registration as an investment adviser and for related matters and rules implementing amendments to the Advisers Act (Release Nos. IA-3111 and IA-3110, Nov. 19, 2010).

SCA's multi-disciplinary boutique group is providing our comments based on our collective expertise and experience of over 50 years in consulting to U.S. investment management firms, registered, hedge and private investment funds, and other investment firms, private equity firms, and private investment groups regarding a wide range of business, strategic, regulatory, compliance, operational, and deal due diligence matters and projects. Our principals have served in various key in-house management, operational, and counsel-compliance roles as well as large law firm fund counsel and regulator roles including: in-house chief/managing compliance officers; general/managing counsel, chief investment counsel and chief regulatory officers; asset management, investment funds, and SEC counsel with global-100 large law firms; and SEC and federal banking regulatory managing/staff counsel, branch chiefs, and regulated firm examiners.

I. PRIVATE FUND & HEDGE FUND MANAGERS EXEMPTION - U.S. & NON-U.S. ADVISERS

Proposed Rule 203(m)-1 distinguishes between U.S. investment advisers, who are asset managers with a principal office and place of business in the U.S. ("U.S. Advisers"), and non-U.S. advisers, who are advisers with a principal office or place of business outside the U.S. ("Non-U.S. Advisers").

We concur with the SEC that non-U.S. hedge and private fund managers should be able to rely on the private fund adviser exemption even though they have clients that are not qualifying private funds, as long as such clients are not U.S. persons. Such managers should not lose the benefit of the private fund adviser exemption as a result of their business activities offshore or outside the U.S.

Also under proposed rule 203(m)-1, all private fund assets of a U.S. asset manager are deemed to be assets under management ("AUM") in the U.S., even if such manager has offices outside the U.S. where the day-to-day management of certain assets effectively occurs. Alternately, a non-U.S. asset manager only needs to count private fund AUM that it manages from a place of business in the U.S. toward the $150 million AUM threshold under the exemption. While the SEC seeks to "avoid difficult attribution determinations that [are] required if assets are managed by teams located in multiple jurisdictions, or if portfolio managers located in one jurisdiction rely heavily on research or other advisory services performed by employees located in another jurisdiction," the SEC should provide additional guidance on how it intends to make such determination and provide greater clarity as to when a non-U.S. adviser will not be treated as having a place of business in the U.S. because it has U.S. affiliates who provide it with investment research, operational support or administrative services.

II. FOREIGN PRIVATE ADVISERS & ASSET MANAGERS EXEMPTION

To come within the "foreign private adviser" exemption, a private asset manager or private adviser must: (1) have no place of business in the U.S.; (2) have, in total, fewer than 15 clients (e.g., managed accounts or pooled investment vehicles) and investors in the U.S. in private funds managed by such manager; (3) have less than $25 million in aggregate AUM that is attributable to clients in the U.S. and investors in the U.S. in private funds advised by the investment manager; and (4) neither hold itself out generally to the public in the U.S. as an investment adviser nor act as an investment adviser to any registered investment company.

We appreciate the SEC's openness and flexibility in limiting the burden of the new rules for private asset managers that have no place of business in the U.S., accordingly believe that increasing the AUM threshold for the foreign private adviser exemption from $25 million to

$150 million would be more consistent with congressional objectives and intent since the very low threshold of $25 million makes the exemption virtually unavailable as a practical matter. This should also ensure that only those foreign asset managers with a significant amount of AUM originating from the U.S. will need to bear the cost and regulatory burden of SEC registration.

Under the current rule 203(b)(3)-1 safe harbor for counting clients, asset managers are not required to count clients from which they receive no compensation, however, for purposes of counting clients toward the proposed rule's 15 clients-investors limit would include those clients which do not compensate the adviser. We view this proposed change is unnecessary, and also believe that asset managers should continue to be allowed to exclude "knowledgeable employees" from being counted as investors consistent with current practices.

Finally, proposed rule 203(m)-1 requires each private fund asset manager relying on this exemption to calculate but not report the amount of private fund AUM it has for purposes of determining whether it satisfies the private fund adviser exemption. We believe that an annual valuation rather than a quarterly valuation for verifying AUM for continued exemption eligibility would be more appropriate in this circumstance. As a practical matter, many advisers do not value their AUM on a quarterly basis, and an annual valuation would also avoid SEC registration requirements and burdens based on intra-year fluctuations in AUM which could be due to a number of extraneous factors some of which are beyond an asset manager's control. This approach would also be consistent with longstanding AUM valuation rules and practices under the SEC's Form ADV-Part 1 and its annual updating or amendment process. Additionally, we also note that the proposed 3-month grace period for asset managers or advisers who meet the threshold of $150 million in AUM threshold should be extended to 6 months, in order to allow such firms sufficient time to prepare for SEC registration and compliance program requirements.

III. NON-U.S. ADVISORY AFFILIATES OF REGISTERED U.S. ADVISERS AND SUB-ADVISERS

The SEC believes registered asset managers with non-U.S. advisory affiliates will likely have interpretative questions as to whether they are allowed to disregard the activities of those affiliates for purposes of determining if they can rely on any of the new exemptions. Although the SEC notes its longstanding position that the determination of whether the advisory businesses of an adviser and its affiliate may be required to be integrated depends on the degree of separateness between them (a facts-and-circumstances test), the SEC did not confirm that this approach would control in all scenarios. It also appears that there are some open questions as to the continued viability of certain SEC no-action positions set forth in the *Unibanco No-Action Letter* and the line of similar no-action letters that have led to the creation of certain operating structures for registered asset managers with foreign or offshore advisory affiliates. Regarding such prior no-action letter guidance and relief, the SEC should re-confirm such guidance and/or integrate it into the new exemptions while clarifying its contours as appropriate so as to remove any open questions as to its continued viability. Lastly, as to sub-advisers or sub-managers un-affiliated with SEC-registered asset managers, the SEC should re-affirm that such sub-manager's asset management activities and advisory services and operations—whether taking place within or outside the U.S.—are only relevant in the normal course to that sub-manager's firm and its registered or exempt status and not to the un-affiliated asset manager's registered or exempt status.

IV. Venture Capital Fund Managers Exemption – Private Equity Fund Managers

A new exemption enacted by Congress covers asset managers or investment advisers solely to venture capital funds, without regard to the number of such funds managed by the adviser or the size of such funds. In directing the SEC to implement the "venture capital fund" exemption, Congress expressly noted that "venture capital funds do not present the same risks as the large private funds whose advisers are required to register with the SEC" under Title IV of the Dodd-Frank Act and that "their activities are not interconnected with the global financial system . . . did not contribute to the implosion that occurred in the financial system . . . , nor [do they] pose . . . future systemic risk." As stated by the SEC, the proposed definition of "venture capital fund" is intended to be consistent with Congress's understanding of what venture capital funds are and how they generally function and operate.

In its proposed definition, the SEC seeks to distinguish managers of "venture capital funds" from the larger category of managers of "private equity funds" for which Congress chose not to provide an exemption as part of the Dodd-Frank Act. Of the six elements of the proposed definition of "venture capital fund manager" in order to rely on the new proposed exemption, we concur generally with the SEC as to its approach as to the latter four elements which cover the following: 1) workable limitations or restrictions on using leverage in the venture capital context; 2) full lock-ups with no investor redemption rights during the multi-year life of the venture fund, except in limited "extraordinary circumstances"; 3) such venture fund qualifying as a "private fund" under Section 202(a)(29) of the Advisers Act; and 4) requiring such venture fund and its manager to represent itself as a venture capital fund and venture capital fund manager to its existing and potential investors. However, our comments below briefly note a few key areas of the proposed exemption which pose some issues relating to the remaining two requirements, "qualifying investment in a qualifying portfolio company" and "substantial managerial assistance to or control of the portfolio company." Such issues posed would be difficult to satisfy under the new definition and could result in undercutting Congressional intent to provide an exemption for such venture fund advisers.

As to the "qualifying investment" element, we recognize the SEC's goal in its proposal for uniform rules pursuant to which a manager of a venture capital fund would assess each of its "qualifying investments" in order to determine whether it may avail itself of the exemption. However, such fund manager would likely incur significant costs and time in evaluating each potential investment to determine whether it would be a qualifying investment, and the proposed exemption does not permit any level of non-qualifying investment by venture fund managers. Because of the likely prospect of triggering SEC registration due to having even one inadvertent, non-qualifying investment, we concur in the view and recommendations of other commenters that some limited flexibility is warranted and that the exemption be revised to allow for a 15-20% level of non-qualifying investments by a venture fund.

We also concur in the prior comment that the ability of the venture fund to purchase up to 20% of a portfolio company's equity directly from existing investors in the portfolio company should be extended to permit the venture fund to invest directly in the portfolio company. We believe such extension would be consistent with the SEC's proposal definition as it is merely a different way to accomplish the same outcome. We also agree with prior comments that suggest an increase from 20% to 30% for this exception which would allow venture funds additional flexibility without creating any systemic risk or undermining Congressional intent. We agree with the SEC's "offer-only" approach concerning the venture fund's "managerial assistance" element involving its portfolio companies in addition to the option to control the portfolio company.

V. UPDATES TO SEC-REGISTRATION CATEGORY: PENSION CONSULTANTS & ADVISORS

In light of recent developments since the adoption of certain SEC-registration categories, the SEC proposes to update and revise the registration category regarding pension consultants and advisors by increasing the minimum value of relevant pension plan or fund assets from $50 million to $200 million. This would correspond to the increase from $25 million to $100 million as the threshold for registration with the SEC under Dodd-Frank.

While we concur in such updating revision, we would also urge the SEC to further update this registration sub-category to include pension asset managers and advisers given the SEC's most recent adoption of its pay-to-play rules governing SEC advisers that manage public pension plan or fund assets. Additionally, several institutional pension consulting firms have added pension investment management divisions, departments or groups. While the SEC will have regulatory oversight over pension managers that are also pension consulting firm, it currently lacks full oversight of stand-alone pension investment management firms unless such firms have $100 million or more in AUM as a general matter, or $150 million-plus in the case of solely private fund pension managers.

This creates a "regulatory oversight gap" where similarly situated pension managers and advisers serving the same pension fund client universe would not be subjected to the same level of regulatory oversight. Given this circumstance, we also suggest that the SEC seek additional public comment on its revisions to the pension consultants and advisers registration category so as to be able to fully understand and close any regulatory oversight gaps in the area of pension management including public pension fund management and oversight.

VI. Regulatory Assets Under Management

The SEC's proposed rule amendments under the Advisers Act also sets out the SEC's proposal for a uniform methodology for calculating "regulatory assets under management" or "RAUM" for the following purposes: (1) determining eligibility for SEC registration; (2) reporting assets under management on Form ADV; and (3) applying the new exemptions from registration under the Advisers Act for (a) advisers to private funds with less than $150 million in assets under management in the U.S. and (b) foreign private advisers. The SEC also proposes related amendments to the Form ADV instructions to guide investment advisers in their calculation of assets under management for these purposes. These proposed amendments represent a reversal of the policy currently reflected in Item 5.F. of Form ADV Part 1A, which permits asset managers certain discretion in choosing which assets to include in this calculation.

The proposed rules specify that advisers must include in their RAUM assets in a securities portfolio for which an investment adviser provides continuous and regular supervisory or management services, as well as proprietary assets, assets managed without receiving compensation and assets of non-United States clients (all of which may be, but are not required to be, included on the current Form ADV). While we do not disagree with the SEC's policy and approach shift and the proposed RAUM formula, our view is that the SEC's proposed instructions prohibiting an adviser from subtracting outstanding indebtedness and other accrued fees and expenses or the amount of any borrowing from RAUM could artificially inflate an adviser's RAUM. Accordingly we request that indebtedness and accrued fees and expenses be excluded from the calculation as the result will more accurately reflect RAUM.

We also note the SEC's proposed rules regarding how an investment adviser to private funds must calculate RAUM. The SEC would now require an investment adviser to include the value of any private fund over which it exercises continuous and regular supervisory or management services, regardless of the nature of the assets held by the private fund. In other words, there is no requirement that the private fund assets consist of securities. Sub-advisers to a private fund would only include the portion of the portfolio over which they provide advisory services. Uncalled capital commitments to private funds would be required to be included in assets under management under the proposed rule. We generally concur with these proposals, which we understand are intended to result in a more consistent application of regulatory requirements and reporting in the investment management industry.

Also, the SEC requested comment regarding whether it should require an adviser to update its RAUM quarterly or any time the adviser files an other-than-annual amendment. We believe that the SEC's current rules in this regard reflect appropriate policy involving the balancing of the regulatory costs and burdens with the need for continuing regulatory oversight. Consequently, we support the SEC's status quo with respect to annual reporting of RAUM.

As to the proposed elimination of the safe harbor in rule 203A-4 and given the potential challenges in accurately calculating RAUM, we believe maintaining the safe harbor provided by Rule 203A-4 and extending its application to the increased new registration threshold would be preferable.

VII. Reporting by Exempt Reporting Asset Managers & Private Fund Managers

Although new rules excuse exempt reporting advisers from having to register with the SEC, Dodd-Frank and proposed rules specifically direct the SEC to require exempt reporting advisers to (i) maintain certain records as determined by the SEC, which it shall have the authority to examine, and (ii) submit such reports as the SEC determines necessary or appropriate in the public interest. In exercising this authority, the SEC proposes new rule 204-4, which would require exempt reporting advisers to e-file reports responding to a limited subset of items on the revised Form ADV, which is proposed to become both a registration form and an exempt reporting adviser form. As proposed, these items include: (1) identifying details, such as the exempt reporting adviser's name, address, contact information, form of organization and ownership; (2) the exemption it is relying on to report, rather than register, with the SEC; (3) its, and certain of its affiliates', disciplinary histories, other business activities and financial industry affiliations; and (4) information about any private funds that it advises.

The proposed rule release indicates that the SEC considers that the information so reported would permit it to determine whether these investment advisers or their activities present sufficient concerns as to warrant further attention from the SEC to protect their clients, investors or other market participants. While we agree generally with the SEC's approach in increasing private fund manager transparency as well as that of other exempt asset managers, certain items of disclosure we view as not being particularly useful for purposes of client-investor protection. In particular, we question the usefulness of disclosure of the name of asset manager's legal counsel on Form ADV.

Regarding annual updating amendments, the SEC also requested comment with respect to a possible reduction from 90 to 60 days for an adviser to file its annual amendment following its fiscal-year-end. We believe the 90-days timeframe should be maintained with no reduction. We note that many registered advisers have difficulty complying with the existing 90-day timeframe since they must await reports with respect to their portfolio companies or other illiquid assets, as well as their portfolio fund investments in the case of a fund-of-funds, manager-of-managers structure, and any assets managed by a third-party.

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Thank you for the opportunity to comment on these important proposed rules under Dodd-Frank. If there are any questions, please feel free to contact me at 312-253-7346 or alternately 630-857-0005.

Very truly yours,

SC ADVISORS GROUP, LLC

BY: /s/ Sidney G. Wigfall

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