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Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: *Release No. IA-3111; File No. S7-37-10, Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with less than $150 Million in Assets Under Management, and Foreign Private Advisers (the "Proposed Rules"); definition of "Venture Capital Fund" and Evergreen Funds*

Dear Ms. Murphy:

On behalf of certain venture capital funds represented by our law firm that are structured as evergreen finds (defined below), this comment letter is submitted in response to the question posed in Release No. IA-3111 regarding the duration of a venture capital fund and the role of redemption rights per Section 275.203(l)-1(a)(5) of the Proposed Rules.

In particular, Release No. IA-3111 asks if "the proposed rule should be modified to specify that venture capital funds have a minimum term..."?

We respectfully suggest that, instead of imposing a set term, or limiting redemption rights to a few narrow circumstances, a venture capital fund that is structured as an evergreen fund should continue to qualify as a venture capital fund if any redemption rights are only available after an extended period of time (*e.g.*, no more frequently than once every 4 years).

"Evergreen" fund defined. The importance of this issue for evergreen funds was not addressed in the SEC Release, which gave the impression that most if not all venture capital funds are structured to expire after a set number of years. Instead, some venture funds have been structured as "evergreen" funds. An evergreen fund is a type of venture capital fund whose investors have the ability to re-invest their successes in further venture activity as a part of the fund's ongoing existence. In an evergreen fund the investors have the ability either to roll over their gains in further investments by their fund, or to withdraw their investment after an extended interval (usually in the range of four years). This re-investment structure allows an evergreen fund to focus on nurturing portfolio companies, with less time and effort spent on periodic fund-raising for the fund and its successor entities.

Redemption Rights not a Dispositive Factor. Section 275.203(l)-1(a)(5) of the Proposed Rules states that investors may not "withdraw, redeem or require the repurchase" of their investment in the venture capital fund except in extraordinary circumstances. This approach may have arisen because so many other venture capital funds have had to rely on a pattern of multi-year fund-raising efforts that naturally sets a limited life to each of their new funds, or perhaps in an inapposite comparison with hedge funds, many of which allow quarterly or annual redemptions. However, the evergreen structural feature does not diminish the essential identity of a venture capital fund that operates and acts in every respect like a traditional venture capital fund. We strongly urge you to consider that this one factor should not disqualify a fund from the Venture Capital Fund exemption.

In submitting this comment letter, we have conferred with the National Venture Capital Association, and that organization notes the growing significance of evergreen funds in the venture capital community and does not object to this letter.

Sincerely,

COOLEY LLP

By: Craig E. Dauchy
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We also conferred with the University Endowments listed below which are major limited partners in Sutter Hill Ventures, an evergreen venture capital firm, and they support this letter.

University Endowments which are Limited Partners of Sutter Hill Ventures:

Massachusetts Institute of Technology:
MIT Investment Management Company
Contact: Seth Alexander, President
Princeton University:
Princeton University Investment Company
Contact: Andrew Golden, President
Stanford University:
Stanford Management Company
Contact: John Powers, President and CEO
Yale University:
Yale University Investments Office
Contact: Dave Swensen, Chief Investment Officer

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