EUROPEAN PRIVATE EQUITY & VENTURE CAPITAL ASSOCIATION

On behalf of the Public Affairs Executive (PAE) of the
EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION

24 January 2011

Comments on Proposed Rule re Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with less than US$150m in Assets Under Management, and Foreign Private Advisers

On behalf of our more than 1,300 members in the European private equity and venture capital industry, we welcome the opportunity to comment on the proposed rules regarding the Dodd Frank Act, Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets Under Management, and Foreign Private Advisers.

Our members cover the whole private equity and venture capital investment spectrum in Europe, from venture capital firms investing into high growth technology start-ups to the largest global buyout funds turning around and growing mature companies.

Exemptions for Advisers to Venture Capital Funds

We broadly agree with the approach taken in the proposed rule with respect to advisers to venture capital funds.

Our primary comment is to urge that the final rule, as is the case in the proposed rule, should apply equally to both U.S. and non-U.S. firms, and should not be limited to funds or advisers formed under the laws of the United States and/or funds investing exclusively or primarily in U.S. portfolio companies.

As European venture capital funds are structured and invest in a manner similar to U.S. venture capital funds, we also consider that the modifications proposed by the NVCA in its comment letter to the Commission dated 13 January 2011 are necessary to allow European venture capital funds to avail themselves of the exemption for investment advisers to venture capital funds and we support those recommendations.

Exemption for Private Fund Advisers with less than US$150m in Assets Under Management

We generally agree with the approach taken in the proposed rules with respect to the exemption for advisers to private funds.

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We would, however, highlight that a number of our members are advisers to publicly listed investment vehicles in Europe, such as private equity investment trusts or venture capital trusts. These funds are highly regulated vehicles subject to applicable listing and stock exchange rules in Europe. In many cases, securities in these funds have been publicly offered outside the United States, but may also have been offered to sophisticated U.S. investors in a private placement exempt from the registration requirements under the Securities Act and pursuant to the exemptions in sections 3(c)(1) or 3(c)(7) of the Investment Company Act. It would be useful if the Commission could clarify that advisers to such funds will be eligible to rely on the mid-sized private fund advisers exemption, as we believe is the intent of the proposed rule.

Exemption for Foreign Private Advisers

Under Section 402 of the Private Fund Investment Advisers Registration Act of 2010, the third limb of the definition of "Foreign Private Adviser" refers to an investment adviser who "has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title."

If the assets under management threshold for registration is maintained at US$25 million as currently proposed, then we anticipate that many small investment advisers located outside the United States will not qualify for this exemption, including many advisers whose aggregate assets under management would be below the threshold for federal registration applicable to U.S.-based firms. We believe that this risks diverting Commission resources towards firms that are systemically insignificant. We therefore respectfully suggest that the Commission consider exercising its discretion to increase the registration threshold either to US$150 million, to correspond to the mid-sized private fund advisers exemption, or to US$100 million, to correspond to the federal registration threshold for mid-sized investment advisers prescribed by Section 410.

We also ask that the Commission clarify the basis on which funds whose currency of account is not US Dollars should measure their assets under management for SEC registration purposes, and in particular consider providing for a buffer so that non-US firms are not required repeatedly to register and deregister as a result of currency fluctuations. For closed-ended funds, in particular, it would also be useful if committed capital could be converted to US Dollars in a 'one time only' currency conversion at the final closing of the fund.

Where non-U.S. firms are not eligible for the Foreign Private Advisers exemption or other exemptions, and so are required to register with the Commission, we would ask that the Commission consider modifying or disapplying certain of the more detailed compliance rules that would otherwise apply to such firms. You will appreciate that the Commission's rules are new to the majority of our members, and we are still working to identify specific rules that may be inconsistent either with the requirements of our members' primary regulators (such as the United Kingdom Financial Services Authority) or with local market practice. We would highlight, in

particular, certain elements of the Commission's rules on custody and, in particular, the requirements that financial statements be audited in accordance with US generally accepted accounting principles rather than international accounting standards, and the Commission's rules regarding auditor independence, as areas that we anticipate may cause significant practical difficulties for our members, and where exceptions could be granted without adversely affecting the rights and protections provided to investors. We would be grateful for the opportunity to work with the Commission further on this issue.

In this regard, we note that many EU-based private equity firms are already regulated, and that the recently enacted EU Alternative Investment Fund Managers Directive will shortly require many more EU-based investment advisers to be registered with a financial services regulator in the European Union. We would ask that the Commission take into account the regulated status of such firms when considering whether it is necessary to impose additional compliance obligations under US rules in addition to the firm's primary domestic compliance obligations.

The European private equity and venture capital industry remains, as ever, committed to an ongoing dialogue with policy officials and interested stakeholders, and welcomes any feedback on the comments made above.

About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About EVCA

The European Private Equity and Venture Capital Association is the voice of European private equity and venture capital, representing more than 1,300 members. In addition to promoting the industry among key stakeholders, such as institutional investors, entrepreneurs and employee representatives, EVCA develops professional standards, research reports and holds professional training and networking events.

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