BIOVENTURES
I N V E S T O R S

January 24, 2011

Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

VIA E-MAIL

E-mail: rule-comments@sec.gov

RE: Release Number IA-3111; File No S7-37-10, Exemptions for Advisors to Venture Capital Funds, Private Fund Advisors with Less Than $150 Million in Assets Under Management, and Foreign Private Advisors (the Proposed Rules)

Dear Ms. Murphy:

This letter is in response to the Proposed Rules set forth by the Securities & Exchange Commission (the Commission) per the Dodd-Frank Wall Street Reform and Consumer Protection Act which required the Commission to adopt or revise certain rules applicable to investment advisors, including a rule defining "a venture capital fund".

Before offering comments from BioVentures Investors, we would like to state for the record that we are very much in favor of the comments submitted by the National Venture Capital Association (NVCA) on January 13, 2011 and endorse all the comments contained in that submission. At the same time, we would like to point out a number of specific conditions in the Proposed Rules that are especially problematic for small venture capital funds such as ours.

First, it is appropriate for you to understand who we are and the kind of funds that we manage. My partners and I each have been involved in building the life science/biotechnology/medical device industry for over 30 years. One of my partners, Wally Gilbert, is a Nobel Laureate (having received his Nobel Prize for the discovery of how to rapidly sequence DNA) and is also the founder of Biogen IDEC, one of the largest independent biotechnology firms that this country has produced. Another partner, Peter Feinstein, was one of the early employees at Biogen and then later built Feinstein Kean Healthcare, one of the largest companies of its kind in the country. A third partner, Jeffrey Barnes, has been one of the most successful medical device investors in the venture capital sector over the last decade and has recently joined BioVentures Investors. I was one of the original employees at Genetics Institute, an early biotechnology company that later had the largest IPO at the time in NASDAQ history and later became the backbone of Wyeth Pharmaceuticals, now merged into Pfizer. Along the way, Peter and I were the co-founders of the Massachusetts Biotechnology Council and we were also instrumental in building what is now the international biotechnology trade group, the Biotechnology Industry Organization. For the past 12 years, we have been venture capitalists, and have raised a series of funds that typically have been in the $50 to $70 million range. We work with early stage companies, have helped to build many of them into successful entities, and are considered by the financial and entrepreneurial communities as a classic, traditional, venture capital firm. As our funds last for at least ten years, with multiple funds under management, we would be subject to the Proposed Rules.

Let me state, prior to going into specific concerns and recommendations, the threat of a requirement to register as an investment advisor is already having a chilling affect on those of us who regard ourselves as small, traditional venture capitalists. Our fund has as its staffing four partners, one young associate who helps us perform technical reviews, and one administrator. The management fees that we receive do not allow us the luxury of staffing up from this level. Therefore, requiring significant additional reporting, let alone trying to figure out how to comply with the regulations of an investment advisor, means that firms such as ours will not be able to absorb that burden and by definition will not go forward and raise additional funds. Moreover, any time that we spend complying with rules and regulations is time that is taken away from our primary responsibility, which is seeking out appropriate investments and turning them into successful companies and thereby generating a positive return for our investors.

At the same time, there can be no doubt that, whatever the final rules are that are promulgated by the Securities & Exchange Commission, they will have unintended consequences. You can be assured of that. The biggest threat is that hard and fast rules will eliminate the ability of venture capitalists to find the most suitable financial structure at critical times in a company's evolution from start-up to mature company. There is no "one size fits all" in venture capital, and how we help our companies is constantly evolving. Therefore, it is vitally important for the health of this industry, and by extension, the ability of this country to continue to generate new start-up companies, that sufficient flexibility is built in to whatever rules are promulgated. Without sufficient flexibility, the Commission will effectively kill venture capital in this country. Now, let me turn to some specific comments.

1. Flexibility

We are precisely the kind of firm that starts early stage companies. As I mentioned above, the ways in which we start them, and finance them in the beginning is a continually evolving exercise. As one specific example: in difficult financial markets, such as the one we are in, setting early valuations can be counter-productive to early investors and the entrepreneur as setting it too high will kill a company when it tries to do additional financing later on and setting it too low dis-incentivizes the entrepreneur. As a result, many of our small initial investments are not done as pure equity, but are often done as potentially convertible debt. Let me explain what I mean by that. In exchange for taking an early risk, we will make an investment in a deal instrument that, in the event of a subsequent larger round of financing, gets converted into that round of financing, often at a discount. In certain rare situations, though, the company may be sold prior to another round of investment. Protection for this possibility is built into our funding instruments by way of a preferred return on the debt, and in those cases where the company is sold early, is never converted into equity. This suggests one initial important modification to the Proposed Rules. There should be a bucket of permissible non-qualifying investments that are allowable at any given time. Under the NVCA suggested proposal, 15 percent of a venture capital fund's capital commitments would be allowed for non-qualifying activity. We would endorse this suggestion, but also suggest that it should be specifically set at 15 percent of a venture capital funds capital commitments at any point in time, rather than in the aggregate over the life of the fund, to allow for conversion into equity and the ability to do new non-qualifying investments as we start other new companies. To do so otherwise would greatly limit the ability to have appropriate flexibility in starting new companies and limit our ability to actually do precisely the kind of start-up activity that venture capital is supposed to do.

2. Bridge Loans

While many bridge loans are ultimately converted into equity, bridge loans today are used by firms such as ours for two principle reasons. The first is as a mechanism for financing the company while it is out raising capital. These are typically converted into the next round of financing – though it should be noted that in today's financial environment, the period of financing can go on for well over a year and any final rules should recognize this fact of life. The second, and now much more prevalent use of bridge loans by a fund such as ours, is as a financing vehicle that will allow the company sufficient funding to complete a sale to a larger entity. In these "bridge to an exit", the loans will never convert into equity. It is vitally important that such bridge loans be allowed or the ability to produce successful exists would be severely compromised. Indeed, it is increasingly common in the life science sector that bridge loans have both features: a conversion feature in the event that a new round is raised and a non-conversion premium return feature in the event of a sale, as companies find themselves more and more looking at both options simultaneously. Accordingly, limiting a maturity to 180 days, or even 180 days plus a 180-day rollover is contrary to the best interests of our companies and our investors. In difficult financial markets, particularly in the market today, negotiating transactions can take well over a year. However, because these bridge loans are specifically aimed at allowing for the completion of a sale, and will be repaid from the proceeds of such a sale, they are not creating any systematic risk to the financial system, nor are they putting our investors at risk. It is extremely important that these kinds of bridge loans be allowed without a time restriction, period. Indeed, bridge loans should also not have time restriction so long as it is clear they are intended to be a bride to the next financing or an exit.

3. Borrowing at the Fund Level

We, similar to every venture capital fund of our size, rely on lines of credit from a commercial bank to smooth out our capital calls from our investors. As a result, we are able to call for capital on a more limited and predictable basis than if we called for cash for every little investment. We, in turn, pay off the amount due on the capital call line, and then borrow once again when capital is required for new investments for starting the cycle all over again. It is appropriate that the amount of borrowing at the fund level be limited, and we endorse the NVCA's proposal of 15 percent of a venture capital funds capital contributions plus undrawn commitments. However, in the case of a line of credit for capital calls that will be repaid from future capital calls by investors, it is absolutely not appropriate to impose a 120 day limit. To do so, will require venture capital funds to make capital calls more frequently, which does nothing in terms of helping our investors, but rather adds an administrative burden for both ourselves and our investors. For example in our fund, it has been typical in the 12 years of our history to make capital calls every six months in the beginning of a fund's life and as little as once a year towards the end of a fund. As a result, there have been repeated instances of our fund having capital call lines out for close to a year, all of which has been approved, endorsed, and appreciated by our investors. Line of credit loans that are paid by future capital calls should be exempt from the definition of venture capital fund borrowing.

4. Short-Term Investments

When we have excess cash from a capital call that has not been used (because it is not needed) to pay down our capital call line of credit, we invest it in an appropriate money market fund. Expanding the list of permissible short-term investments to include the types of investments listed by the National Venture Capital Association letter is appropriate for funds of our size.

5. Investments in Public Companies

There are two situations in which it is likely that a fund of our size will have an investment in a public company. The first is when one of our portfolio companies manages to actually complete an initial public offering, a rarity in today's market. In these situations, it is often a requirement of the investment banking manager that existing investors in the company purchase shares at the IPO. Without such purchases, most IPO's in the life science space could not be accomplished. Accordingly, these investments in public companies must be allowed or you will effectively kill the ability of life science companies to go public.

In addition, as a venture capital fund, we consistently see small, under-capitalized companies that went public, then suffered a set-back, and now have little institutional following. In virtually every respect, they resemble the kinds of private companies we invest in except that they have a public listing. Funds such as ours are permitted by our investors to make limited investments in these kinds of companies, and the fact that we do so should not trigger a violation of the final rules.

6. Recapitalization

In markets such as these, companies are often unable to raise money without some sort of recapitalization of the company. In some cases, this results in taking prior classes of stock and collapsing them into a new class of stock, or a variation on this theme. For small companies today, this is a standard practice and is the only way that they are able to raise money. A recapitalization of the small, privately-held companies should be an allowable activity for venture capital funds as part of their investment process or you will effectively kill off many companies that otherwise would turn into successful enterprises.

Summation: My partners and I believe that the items listed above are the most important items to address for small, traditional venture capital funds such as ours, especially those who invest in this country's life science sector. As we mentioned in the opening to this letter, other comments contained in the NVCA letter are ones that we endorse as well and believe important to the overall health of the venture capital sector. We applaud the Commission in terms of defining venture capital based upon what we do and not based on an assigned dollar limit. To the extent, though, that you continue to set a dollar limit as an alternative definition, a limit of $150 million is exceedingly small. Funds such as ours that are raised every three-to-five years in amounts of under $100 million, but due to the lifespan of these funds can be aggregated to exceed over $150 million, do not pose any systematic financial risk to this country. Accordingly, we urge you to increase the limit to at least $250 million/$300 million as a much more sensible limit given the nature and timing of venture capital funds and the lack of systemic risk posed by these funds.

We cannot stress enough the importance of getting these regulations right. We are at a stage in the venture capital industry in which to many of our colleagues are deciding that spending 80 hours per week working as a venture capitalist is just not worth it. What we do is hard and you have to love it. You especially have to love it if you are a small, traditional venture capitalist. We have to be open with our limited partners and we have to be successful, otherwise we cannot raise another fund. We do not pose systemic risk to this country's financial health. However, promulgating regulations that eliminate our ability to do what we do will be the final death knell for many of us, including the kind of individuals my partnership contains. That result, should it come to pass, would be directly contrary to the intent of the task that you have been given.

Sincerely,

Marc E. Goldberg
Managing Director

MEG: hmn

cc: National Venture Capital Association