McGuireWoods LLP
2001 K Street N.W.
Suite 400
Washington, DC 20006-1040
Phone: 202.857.1700
Fax: 202.857.1737
www.mcguirewoods.com

David H. Pankey
Direct: 202.857.1716

McGUIREWOODS

dhpankey@mcguirewoods.com
Direct Fax: 202.828.2984

January 24, 2011

Via email to: rule-comments@sec.gov

File No. S7-37-10

U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Dear Ms. Murphy:

This letter relates to the request for comments contained in Release No. IA-3111 (the "Release"), File No. S7-37-10.

Proposed Rule 203(l)-1

The proposed rule requires that venture capital fund investments be in private companies. The Release makes clear that an investment in a private company may still be held by a venture capital fund after that private company goes public. An investment made relatively close to, or immediately before, an initial public offering could raise issues under the proposed definition. We recommend that the Securities and Exchange Commission (the "Commission") consider providing guidance concerning the circumstances under which this type of investment could, and could not, be made.

We also recommend that the Commission give further consideration to the exit strategies commonly used by venture capital funds. The suggestions contained in the letter of the National Venture Capital Association of January 13, 2011 (the "NVCA Letter") in this regard have merit and should be seriously considered.

Under the proposed rule, a venture capital fund can only hold equity securities of qualifying portfolio companies ("QPCs"). Accordingly, the proposed rule limits the possible investments to equity securities and debt which is convertible to equity securities. This aspect of the proposal is particularly restrictive in terms of bridge financings. We recommend that the Commission consider expanding the permissible terms of bridge financings. The suggestions contained in the NVCA Letter have merit and should be seriously considered in this regard.

In addition, the proposed rule is very restrictive in terms of investments of cash. We recommend that the Commission consider expanding the permissible investments of cash. The suggestions contained in the NVCA Letter in this regard have merit and should be seriously considered.

The proposed rule requires that funds invested in a QPC be used for operations or expansion, rather than to buy out investors in the QPC. This requirement could cause ambiguity concerning the ability of a QPC to buy out investors in a QPC after an infusion of capital from a venture capital fund. Establishing that funds for redemptions did not come from a cash infusion from a venture capital fund might be difficult as a practical matter. This difficulty can be expected to continue for a considerable period of time after an investment by a venture capital fund. We recommend that the Commission provide guidance as to the circumstances in which a QPC can buy out existing investors after an investment by a venture capital fund.

In addition, a venture capital fund may invest in a QPC which already has outstanding preferred stock which is redeemable at the option of the holder. We recommend that the Commission consider providing guidance concerning whether the terms of these securities need to be re-negotiated before the investment by the venture capital fund.

The proposing release is very clear that a fund of funds structure will not qualify under proposed Rule 203(l)-1. However, the proposing release does not explicitly indicate whether a fund structure where individual investors can opt out of specific investments will qualify. These types of funds might be viewed as a type of "withdrawal" in that investors can choose whether to participate in individual investments. We recommend that the Commission provide guidance concerning whether this type of fund structure may be used under the proposed rule.

In addition, we recommend that the Commission provide guidance as to when a QPC can be organized in a holding company structure. Venture capital funds frequently make investments in portfolio companies through special purpose vehicles. It would be helpful if the adopting release confirmed circumstances where this structure may be used, consistent with the proposed rule.

As to leverage, the "in connection with" language as explained in the Release can, in some situations, present ambiguity. For example, a QPC may be required to refrain from exceeding a specified debt to equity ratio under the terms of the documents governing the investment by the venture capital fund. Compliance with this clause may be a condition to further capital infusions. However, compliance with this type of clause should not be considered to violate the leverage provisions of the rule in that no particular debt or lender is required. Please consider providing further guidance concerning this concept.

The proposed rule requires that all clients of non US advisers be operated in accordance with the requirements of the proposed rule, even if the funds do not have US investors. Offshore venture capital practice may or may not be consistent with the business model which formed the basis for the proposed rule. We recommend that the proposed rule be revised so that non US advisers can rely on the proposed rule if all of its US clients are venture funds within the meaning of the proposed rule.

In addition, there is some ambiguity concerning exactly what will be considered to be "management assistance" as required by the rule. We recommend that the Commission provide

further guidance as to what will be considered to be "management assistance" within the meaning of the proposed rule. For example, please consider the situation where several venture capital firms make investments in the same QPC, a rather common venture fund strategy, and the use of observer rights rather than a board seat.

Proposed Rule 203(m)-1

While the new definition of assets under management ("AUM") is intended to be uniform, it does not provide any guidance in the area of valuation of illiquid investment positions. A portion of, and in many cases a substantial portion of, private fund investments can be expected to be in illiquid securities. Significant variation in the approach to the valuation of these securities may take place after implementation begins. We recommend that the Commission consider providing further guidance concerning the valuation of illiquid positions.

We also note that the approaches taken in the rule concerning the determination of permissible clients and the calculation of the AUM appear to be inconsistent in terms of non US advisers. AUM is calculated based on assets managed from a place of business in the US. However, all US clients need to be private funds regardless of the location from which they are advised.

Proposed Rule 202(a)(30)-1

We recommend revising the proposed rule by increasing the $25 million figure in the statute to $150 million of AUM attributable to clients in the US. The Commission has this authority under the statute. The proposed rule is likely to be of very limited applicability in its current form.

We recommend that the Commission provide further guidance on the method of calculating investors for the look through test. The Release does not specifically state whether and how the C1 attribution rules apply in this context. (Section 3(C)(1)(A) of the Investment Company Act of 1940, as amended)

We recommend that the Commission provide guidance in the adopting release as to the extent to which the Unibanco no action letter approach will be continued under the new regulatory structure.

We also recommend that the Commission provide guidance in the adopting release as to the extent to which the procedure, currently available to registered non US advisers, in which compliance with the statutes and regulations is only required for US clients, will be continued under the new regulatory structure.

General Partners

It is a common structure for private funds organized as limited partnerships to have an advisor which is a separate entity from the general partner. We recommend that the Commission provide guidance as to the extent to which the new regulatory provisions apply to the general partner when this type of organizational structure is used.

Affiliates

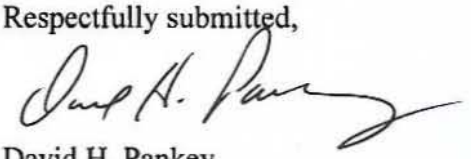
The Release does not provide guidance as to the impact of the activities of affiliates in terms of compliance with the rules discussed above.

We recommend that the Commission confirm in the adopting release that activities of affiliates will not impact the ability of an advisor to rely on the new rules or provide guidance as to the circumstances under which the activities of an affiliate of an advisor will be considered together with the activities of the advisor in terms of compliance with these proposed rules.

The views contained in this letter are mine and do not represent the views of McGuireWoods LLP.

Please contact me at 202-857-1716 or dpankey@mcguirewoods.com if you have any questions or I can provide any further information.

Respectfully submitted,



David H. Pankey