

USVP
U.S. VENTURE PARTNERS

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VIA E-Mail to rule-comments@sec.gov

January 24, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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 Advisors (the “Proposed Rules”)

Dear Ms. Murphy:

Thank you for this opportunity to submit comments regarding the Proposed Rules. Our comments are focused primarily on the Commission’s proposed definition of a “venture capital fund” (“VCF”).

By way of background, U.S. Venture Partners (“USVP”) is a Menlo Park, CA based venture capital firm now completing its 30th year of investment activity. During this nearly 30 year period, USVP has raised 10 venture capital funds with capital commitments in excess of \$3.5 billion and has invested in excess of \$3.2 billion to date in more than 450 companies that have created more than 60,000 existing jobs in the current economy.

In preparing these comments, we have read the Proposed Rules and have taken part in a number of discussions over the past several months with and among other venture capital firms, limited partner investors in our funds, and various legal and industry advisors, including the National Venture Capital Association (“NVCA”). We have also taken advantage of the Commission’s website which has allowed us to briefly review more than 32 separate submitted comments.

Provision for Administrative Appeal and Relief from Registration

There seems to be a general agreement that Congress sought and the Commission’s Proposed Rules are intended to provide venture capital funds (because they do not contribute to systemic risk) and their advisors an exemption from registration.

While the Proposed Rules and the comments to the Proposed Rules seek to define and improve the definition of a VCF, it is our experience that no matter of definition will adequately cover all situations, and no matter of effort on the part of a VCF to avoid potentially troublesome transactions will eliminate an inadvertent definitional failure.

In section II. Discussion of the Proposed Rules, the Commission points out that “... New section 203(l) of the Advisers Act provides that an investment adviser that solely advises venture capital funds is exempt from registration under the Advisers Act and directs the Commission to define “venture capital fund”...”

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We believe with this language, Congress gave the Commission fairly broad powers to determine whether an entity was a VCF. Not just by definition, but also by direct review by the Commission.

As such, we strongly encourage the Commission to establish a process for appeal and relief from registration.

More specifically, if an entity that has otherwise met the definition of a VCF finds itself suddenly failing to achieve a particular definitional threshold, both the entity and the Commission should have an ability to more specifically review the circumstances to better understand whether (i) there was a definitional failure, or (ii) there was an inadvertent transaction that caused the failure. The Commission, exercising its Congressionally awarded authority to define a VCF, could find the entity a VCF, and thus still eligible for exemption.

Endorsement of the NVCA Comment Letter

As a general statement, we endorse the comments made by the NVCA in its letter dated January 13, 2011.

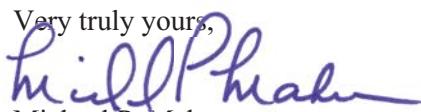
And, we join with Venrock in its letter to the Commission dated January 23, 2011 (as well as others) that “the NVCA’s suggestion for a limited amount of non-qualifying investments or activity not to exceed 15% of a VCF’s capital commitments is a vital modification to the proposed definition without which the definition as proposed will fail to capture a significant number – perhaps even a majority – of existing venture capital funds.”

Conclusion

We believe that under the Proposed Rules, there is a near likelihood that most, if not all, existing venture capital funds will ultimately fail the definitional test, and ultimately become forced to register as investment advisers, even though such funds have not added system risk.

As such, we urge the Commission to carefully consider the comments provided by the NVCA and to provide for an administrative appeal and relief from registration process.

Thank you for the opportunity to submit these comments. Should you wish to discuss these comments further, please contact me at 650-854-9080.

Very truly yours,

Michael P. Maher
Chief Financial Officer