VIA

VENTURE INVESTMENT ASSOCIATES

January 24, 2011

Via email to: rule-comments@sec.gov

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

Re: File No. DF Title IV Exemptions – Definition of Venture Capital Fund

This letter is submitted by Venture Investment Associates ("VIA"), a firm that manages investment funds that invest primarily in venture capital funds. We are writing with respect to the request for comments on Release No. IA-3111; File No. S7-37-10.

Background:

In the SEC's release, the SEC noted that Congress created an exemption for registration under the Investment Advisers Act of 1940 for advisers solely to venture capital funds, without regard to the number of such funds advised by the adviser or the size of the funds[1]. In further defining venture capital funds, the SEC noted that

"as a general matter, venture capital funds are long term investors in early-stage or small companies that are privately held, as distinguished from other types of private equity funds, which may invest in business of various stages of development including mature, publicly held companies. Testimony received by Congress characterized venture capital funds as typically contributing substantial capital to early-stage companies and generally not leveraged, and thus not contributing to systemic risk, a factor that appears significant to Congress' determination to exempt these advisers. In drafting the proposed rules, we have sought to incorporate this Congressional understanding of the nature of the investments of a venture capital fund, and these principles guided our consideration of the proposed venture capital fund definition.[2]"

The Importance of Venture Capital

In passing the Dodd-Frank Act, Congress specifically exempted advisors to venture capital funds from registering with the SEC. In doing so, Congress implicitly recognized that private companies which have been started with venture capital since 1971 are a key driving engine of job creation. These companies currently provide close to 11 percent of the private sector employment, or 12.1 million jobs out of 115 million jobs. Additionally, revenue from venture-backed companies is now $2.9 trillion annually, representing 21 percent of U.S. Gross Domestic Product[2]. The venture capital industry has been responsible for such companies as Amgen, Apple, Cisco, eBay, Facebook, Federal Express, Genentech, Google, Microsoft, Oracle, Yahoo!, and YouTube, to name a few.

[1] SEC Release IA -3111; File No. Su-37-10, p. 6
[2] Ibid p. 10 to 12

88 MAIN STREET | P.O. BOX 131 | PEAPACK, NEW JERSEY 07977
TEL (908) 532-0020 | FAX (908) 532-0040 | WWW.VIAFUNDS.COM

Advisors to Venture Capital Funds Do Not Require SEC Regulation

Congress has determined that advisors to venture capital funds are exempt from registration. By their nature, advisors to venture capital funds do not require the same kind of regulation as may pertain to advisors to hedge and private equity funds. Venture capital firms, by strategy, maintain relatively little exposure to public markets. In addition, venture-backed companies do not rely substantially on debt and thus do not impact the banking and credit markets. Further, since venture capital firms are invested primarily in private securities, they have very limited instances of trading and pose little, if any, potential systemic risk to the economic system. Such advisors and their underlying venture capital funds generally have no issues involving personal trading, insider trading procedures, or trade aggregation protocols. Similarly, having a chief compliance officer to enforce procedures that are not applicable to venture capital firms is unnecessary, provides little utility, and would result in a financial burden and an impediment to the main task of providing growth financing to entrepreneurial businesses which will result in substantial job creation for the economy.

A. Funds of Funds Increase Investments in Venture Capital Funds and in Venture Capital Companies.

Venture capital provides the underpinning for innovation, growth, and new job creation in the U.S. economy. There are a number of ways of investing in venture capital. One of the ways is directly investing in a venture capital fund. For many institutional investors, however, this is a difficult task because they do not have the appropriate staff to evaluate and access the funds. Thus, they, along with many other investors, can either outsource the investment process to a consultant or invest in venture funds through funds of funds. Such funds that invest directly in venture capital funds – and thus indirectly to start-ups and venture capital-backed companies – pose even less of a systemic risk to the economic system, and do not face issues associated with the trading of public equities because they don't hold such securities as a matter of strategy. Thus, the imposition of a compliance officer to manage unrelated activities is unnecessary.

The primary "Pooled Vehicle" for investing in other funds is a fund of funds. Such funds do not borrow, do not offer investors redemption rights and are not registered investment companies.

Funds of funds have their own investors, or limited partners, and invest capital directly into different types of funds including venture capital. There are over 100 U.S.-based fund of funds managers, which in aggregate have almost $200 billion of invested capital. Funds of funds, through the financial commitments of their investors, increase the overall amount of capital available to their underlying funds, including venture capital funds. Because of funds of funds, institutional investors can commit more funding to venture capital funds, and do so more effectively through a specialist, contributing to the fulfillment of Congress' objectives in exempting venture capital funds from registering, of driving job creation across the U.S.

---

[2]The Economic Importance of Venture Capital-Backed Companies to the U.S. Economy. 2009. National Venture Capital Association.

B. VIA is a Fund of Funds that Invests Primarily in Venture Capital, Which Increases Funding to Venture Capital Funds and Venture-Backed Companies.

VIA, founded in 1993, has committed to approximately 170 funds, raised by over 65 different fund management groups, many of which are among the leading funds in the U.S. Since inception, approximately 66% of VIA's investments have been made in venture capital. Since 1993, VIA has raised seven funds. VIA is currently investing VIA VI with approximately $231 million of committed capital raised in 2007. VIA, which possesses deep, specialized technical expertise in evaluating venture capital funds, is located in Peapack, New Jersey and currently has eight employees.

VIA, as an investor, believes that the venture capital industry incorporates those firms that manage funds making minority investments primarily in the equity securities of early- and mid-stage, pre-IPO companies developing new and innovative products and services. Venture investment rarely involves significant or material amounts of leverage. Venture-backed companies are generally unprofitable at the time of investment and have little, if any, access to the capital markets for funding. VIA believes that firms that predominantly invest in such early- and mid-stage companies and provide them the necessary capital to grow should fall under the exemption created for venture capital firms under the Dodd-Frank Bill.

C. Pooled Vehicles that Invest in and Increase Funding to Venture Capital Funds Should Be Included in the Definition of a Venture Capital Fund

Pooled Vehicles investing in venture capital are identical to venture capital funds except that they are indirect investors in venture capital because they generally invest in venture capital funds. They do not take on leverage and pose no systemic risk. These Pooled Vehicles are in form and substance complying with the intent of the Dodd-Frank Bill, and they should be exempt from the registration provisions of the Dodd-Frank Act.

Many funds of funds invest predominantly in venture funds. They may, however, also invest in other types of private equity funds such as growth equity or buyout funds. As long as 50% or more of the capital commitments to Pooled Vehicles like funds of funds is allocated to venture capital, they should qualify for exemption from registration. Additionally, the non-venture funds that funds of funds may invest in are very similar to venture capital funds because they typically back private, young growing companies that are a driving force in job creation in the U.S.

Proposal Comments:

We propose the following modifications, so as to incorporate the principles described above:

A. Pages 13 and 19. The following language should be added at the end of the definition of a venture capital fund:

or (vii) is a pooled vehicle, such as a fund of funds or secondary fund, provided that (x) at least 50% of its assets or commitments are invested in or reserved for venture capital investments that meet the criteria of (i) through (vi), above, (y) it does not borrow or otherwise incur leverage.

B. Page 16. The following language:

, whether invested directly or through funds of funds or secondary funds,

Should replace the inserted ellipsis within: "As a consequence, the aggregate amount invested in venture capital funds… is considerably smaller, and Congressional testimony asserted that these funds may be less connected with the public markets and may involve less potential for systemic risk."

Additional Observations

A. Costs (In reference to the estimated registration costs on page 114).

At small investment firms, the costs of regulation are very meaningful and a distraction and diversion from investing in venture capital.[3] Instead of making venture capital investments, investment professionals will be forced to spend their time on compliance matters.

Furthermore, Funds of funds, as pooled vehicles charge far lower fees than private equity funds themselves thus regulatory burdens would be more impactful and costly on their cost structure.

Compliance manuals, employee trading records, legal documents, hiring of Compliance Managers or outsourcing that function, and extra audits incur costs that are estimated to total 15% of our revenue in the first year and 10% of our revenue thereafter. Instead of making investments which create jobs, we will be spending our money on compliance.

The cost/benefit analysis applicable to SEC registration for venture capital firms or venture funds of funds does not support the need for registration as VIA, and other investors in this area, are sophisticated (Accredited Investors and Qualified Purchasers) investors, have well defined criteria for venture investing, and already engage in deep due diligence efforts to determine which firms have the capability to appropriately and successfully invest in this kind of space. We appreciate the commitment of time and resources required by a firm that is registered, and we are concerned that these regulatory obligations could potentially distract from our core mission of communicating with and responding to investors and funding the innovative venture capital firms we want to support.

[3] So far in our investigations of outside services to help us register, and comply with registration, we have been quoted fees ranging from \$50,000 to \$150,000 annually or more plus an initial fee of \$75,000 or more. In addition, we estimate that internal staff will cost us an additional \$50,000 to \$100,000 to comply. For small Pooled Vehicles such as ours, with four to ten people on staff, these costs are prohibitive. We believe the cost estimates in this report are far too low for the amount of work that compliance requires. In order to pay for these costs, firms will have to (i) devote investment professional' time to serving these additional compliance procedures, (ii) reduce the size of their investment professional staff in order to hire compliance staff, or (iii) pay to outsource the compliance function, reducing the means and staff available for investment due diligence and research. All of these alternatives will compromise the firms' investment process to the detriment of the firms' investors, which include pension funds, endowments and charitable organizations. These costs do not serve the intent of Congress, which is to ensure a healthy venture capital industry that has been at the heart of employment growth over the last 40 years in America.

B. No Systemic Risk.

Dodd Frank was written with an eye towards public securities; much of it does not apply to private securities. We believe that the examination of private equity funds (including venture capital and growth equity) by the SEC will focus on trading activity. Pooled Vehicles investing in venture capital – funds of funds and secondary funds – do not possess inside information on publicly traded companies. They do not trade in marketable securities, other than to sell them, usually immediately, when they are distributed to them by the venture capital limited partnerships into which they invest. They are solely conduits for investing in venture capital. They do not pose any systemic risk. They do not use leverage. They provide a means of investing on a diversified basis in an asset class that Congress determined was critically important to the health of the American economy.

The "portfolio companies" financed by venture capital firms represent little systemic risk to the United States economy. These companies are generally small but their existence creates thousands of jobs in often high-value industries, such as healthcare and technology. As a matter of public policy, the United States should continue to recognize the desperate need filled by these companies to maintain a competitive and innovative edge compared with the rest of the world. By way of example, leading-edge U.S. companies once backed by venture capital firms include Amgen, Apple, Cisco, eBay, Facebook, Federal Express, Genentech, Google, Microsoft, Oracle, Yahoo!, and YouTube.

The vast majority of venture capital funds are funded by long-term sophisticated investors that require routine disclosure and accountability. Venture capital firms and their investors are partners in seeking a similar outcome and they are in frequent communications regarding the progress of their investments. Investing in venture capital does not incorporate the characteristics evident in hedge funds such as leverage, short-term investment horizons, active trading in public securities, and almost no substantive disclosure of investment strategy.

Conclusion:

We firmly believe that Pooled Vehicles should be included in the definition of venture capital as long as 50% or more of a Pooled Vehicle is invested in or reserved for venture capital investments. This is so because they are investors in venture capital and are thus materially the same as venture capital funds; they are critical to a stable venture capital industry; the financial and time burdens imposed on them by the requirements of registration would hamper their ability to maintain or increase investment in venture capital; and they do not pose a systemic risk to the financial system because they do not use leverage or invest in public securities.

Sincerely yours,

Venture Investment Associates

By: Jason P. Andris

Jason P. Andris, Managing Director