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January 24, 2011

VIA E-Mail

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

Re: *Release No. IA-3111; File Number: 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 Advisers (the "Proposed Rules")*

Dear Ms. Murphy:

As active participants in the venture capital industry, we are writing you today to express our concern with the proposed definition of "Venture Capital Fund" ("VCF") that will be used in exempting certain funds from the restrictions imposed under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). While we appreciate the effort the Securities and Exchange Commission (the "Commission" or the "S.E.C.") dedicated to exempting Venture Capital Funds and understand the intent of the Dodd-Frank Act, we believe a number of clarifying revisions will allow the Proposed Rules to achieve their intended goals. As context for the comments we have made below, we would first like to provide some background on our business and our role in the venture capital industry. Mesirow Financial Private Equity Advisors, Inc., an S.E.C. Registered Investment Adviser, currently manages over $3.0 billion of assets that is invested across the global venture capital and private equity industries. The majority of our assets under management are invested through a fund-of-funds structure into other venture capital and private equity funds that invest directly in operating companies. However, we also manage a direct/co-investment fund that invests directly in venture capital and private equity-backed companies on a highly selective basis. The comments we make below reflect the changes to the Proposed Rules that we believe are critical to achieving an accurate definition of the venture capital industry that will not only eliminate the burden associated with registering as Investment Advisers for venture capital managers that pose no systemic risk to the U.S. financial markets, but also allow these managers to remain focused on their core objective of building successful operating companies. While we wholeheartedly agree with the comments submitted to your office two weeks ago by the National Venture Capital Association ("NVCA"), we want to call your attention to a number of key issues with the Proposed Rules that we believe should be revisited by the Commission.

First, we believe that the definition of Venture Capital Fund should allow for a limited level of non-qualifying activity, not to exceed 15 percent of a fund's committed capital. Since the main purpose of Venture Capital Funds is to invest in and help build operating companies, we believe their participation in non-qualifying activity will be rare. However, because the burden associated with inadvertent non-compliance would be significant for most venture capital funds, we believe the 15 percent limit is appropriate and will not compromise investor protection nor impose systemic risk on the financial markets.

Next, we believe the borrowing limits of portfolio companies included in the Proposed Rules should be modified. While we agree with the Commission's assessment that lack of leverage is a key criterion that differentiates venture capital investing from other asset classes, we believe the Proposed Rules place restrictions on portfolio company borrowing that are outside of the venture capital fund's control. To resolve this issue, we agree with the two acceptable restrictions on the borrowing activities of portfolio companies proposed by the NVCA:

> *"…1) the fund may not invest in portfolio companies that borrow, where the proceeds of such borrowing are required by the fund to be used to buy out shareholder stock or return capital to the fund or 2) in connection with a financing, the fund either extends a loan to the portfolio company or requires the company to borrow as a condition of its contractual obligations regarding the financing."*

Another provision in the Proposed Rules that we believe should be revisited is the restriction on stock acquired through secondary transactions. While we agree that VCFs do not typically acquire portfolio company securities from existing shareholders through secondary transactions, there are instances where this practice is necessary to provide liquidity for founders and early employees of start-up companies. In general, Venture Capital Firms do not actively trade shares in the secondary market and attempt to limit their acquisition of secondary shares, except when necessitated by the dynamics of individual investments. Due to the long-term and private nature of these investments, we believe that they fall outside of the open market secondary transactions that the Commission is attempting to regulate. In addition, since the bulk of any secondary activity that takes place in the venture capital industry is between institutional investors or sophisticated individuals that are employed by the operating companies, we believe the allowance of secondary transactions in the venture capital industry will not compromise investor protection. To allow flexibility for this type of investment, we believe the 20 percent limit on secondary transactions should be applied at the fund-level rather than on a company-by-company basis. Additionally, if the Commission chooses to maintain a restriction on a company-by-company basis, we would suggest that the limit be increased to 50% to the extent that such excess is attributable to the purchase of common stock issued by the company to current or former employees and service providers to the company.

The Proposed Rules' restriction on investments in public companies could also pose some issues for VCFs, as many companies continue to need significant financial resources to support their continued growth even after an IPO. While we understand the Commission's need to regulate activity in the public equity markets, we believe the follow-on investments of Venture Capital Funds in publicly-traded companies should continue to be viewed as venture capital investments. Since the Venture Capital Firms are long-term investors in these companies and are not regularly trading the companies' securities, these investments pose no systemic risk to the U.S. financial markets. We recommend revising the Proposed Rules to allow follow-on investments in publicly-traded portfolio companies as long as the VCF continues to hold at least a majority of its original investment in the company.

Lastly, we would like to voice our support for a number of other provisions endorsed by the NVCA. These provisions include:

- allowance of stock-for-stock acquisitions if the acquiring company stock serves to provide liquidity to the VCF;
- inclusion of bridge loans as permissible fund investments;
- expanded definition of permissible short-term investments;
- clarification of language defining portfolio company redemptions, exchanges, repurchases, and distributions that are deemed “in connection with” a VCF’s investment;
- absence of increased restrictions on non-U.S. activity; and
- absence of further restrictions on fund-level redemptions.

Thank you for reviewing the key issues we have discussed in this letter. We hope the comments we have provided are constructive as the Proposed Rules are finalized. If we can be of any further assistance, please do not hesitate to contact either one of us directly.

Sincerely yours,

Marc E. Sacks
Senior Managing Director

Thomas E. Galuhn
Senior Managing Director