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Via E-Mail

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

Re: *Release No. IA-3111; File NoS7-37-10, 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:

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which, among other things, (i) amended the Investment Advisers Act of 1940 (the "Advisers Act") to eliminate the "private adviser" exemption from registration for investment advisers that (a) have had fewer than 15 clients in the preceding 12 months, (b) do not hold themselves out to the public as an investment adviser and (c) do not act as an investment adviser to a registered investment company or a business development company and (ii) provided for a new exemption from registration for investment advisers solely to venture capital funds (the "VCF Exemption"). The Dodd-Frank Act further required or authorized the Securities and Exchange Commission (the "Commission") to adopt or revise certain rules applicable to investment advisers, including a rule defining the term "venture capital fund" (a "VCF"). The Proposed Rules set forth this new definition as presently proposed by the Commission and request comment on various aspects of this definition.

Oak Investment Partners is a multi-stage venture capital firm. The primary investment focus is on high growth opportunities across various segments of the information technology, financial services technology, healthcare information and services, clean energy and retail industries. Over a 32-year history, Oak has achieved a strong track record as a stage-independent venture investor funding hundreds of companies at key points in their lifecycle. Oak focuses on value creation for its investors through the growth of its portfolio companies. Oak's investment strategy does not rely on the use of leverage to create value or enhance returns.

We have reviewed the comments to the Proposed Rules submitted by the National Venture Capital Association (the "NVCA") on January 13, 2011, and agree with and strongly support the recommendations made by the NVCA. Set forth in our letter below are our specific comments relating to several issues of critical importance to Oak as well as some amplification of thoughts and comments raised by the NVCA.

Basket for Non-Qualifying Activity

In particular, we agree with the NVCA's comment that the VCF Exemption should provide for a permissible level of non-qualifying activity. We believe that this permissible level should be stated as a range of 15-20% of a VCF's capital commitments. By their nature, VCFs need to have flexibility in determining how best to achieve their investment objectives and the objectives of financing their portfolio companies, particularly as venture capital financing practices continue to evolve. Providing for some allowance for non-qualifying activity will allow VCFs to take actions that are in the best interests of their investors and their portfolio companies without rigid concern for whether the specific activity will have the unintended consequence of disqualifying them from the VCF Exemption. The existence of a basket for permissible non-qualifying activity will not change a VCF's approach to investing or give rise to any systemic risk. Rather, it will simply provide for the flexibility to execute on their strategies of growing their underlying portfolio companies in the most efficient and responsive ways possible.

QPC Borrowing Limits

We agree with the general proposition that VCFs do not leverage acquisitions of their portfolio companies. The modest leverage that VCFs typically do permit in their portfolio companies is quite limited in dollar amount, as well as in purpose. For example, it would not be unusual for a portfolio company to arrange for a working capital, venture debt or capital expenditure facility to be put in place roughly contemporaneously with an equity financing by a VCF. In fact, a VCF might well want to know that its portfolio company will have access to one of these credit facilities in addition to the equity financing provided by the VCF in order to ensure that the portfolio company will have a high likelihood of meeting its cash needs. In such a case, it should not disqualify the portfolio company from being a QPC simply because such a debt facility might be "in connection with" the VCFs investment since such a QPC with modest leverage poses no systemic risk concerns. We would suggest that the Proposed Rules be amended to clarify that such a credit facility, when put in place contemporaneously with an equity financing by a VCF, even if required as a condition to such financing, would not disqualify the portfolio company from being a QPC.

We believe that the prohibitions on debt, and other forms of financing, set forth in the Proposed Rules result in insufficient discretion for VCF fund managers to meet their obligations to their investors and their portfolio companies. If a VCF fund manager determines that a later stage portfolio company can comfortably incur some form of debt to finance a portion of its operations, the portfolio company should be able to arrange such debt financing without the risk that the manager will lose its exemption from SEC registration.

Secondary Transactions.

While VCFs normally acquire portfolio company securities directly from the applicable portfolio company, it is not unusual for a VCF to acquire some portion of its holdings directly from founders or management of the portfolio company or, in some instances, from investors who are no longer supportive of the portfolio company or who need immediate liquidity. Often times, founders or management have provided an enormous amount of "sweat equity" to a growth company while receiving very modest current compensation. Secondary purchases provide them with a limited opportunity to gain some current compensation for those efforts while remaining actively involved in growing the business with the support of their VCF investors.

As capital markets have proven to be more difficult for VCF portfolio companies to access in recent years, it is evident to us that there is a clear, market-driven trend toward more secondary purchases of securities as a means for VCFs to access investment in high-growth companies. These secondary purchases enable a VCF to gain access to attractive growth companies, with an opportunity to provide additional growth capital as the need arises with the applicable portfolio company, while not diluting management's focus on growing the underlying business. As a result, we support the NVCAs proposal that a 20% secondary acquisition limitation should apply to the VCF as a whole (rather than on a company-by-company basis). We are also supportive of a higher limit on secondary transactions being applied on an individual company basis (e.g. a 50% limit on acquisitions of existing shareholder stock on a company-by-company basis).

Likewise, we believe that there should not be an absolute prohibition on financings from VCFs being used by a QPC to redeem investors in connection with the VCF investment. As with acquisitions of portfolio company securities by VCFs directly from existing investors, we believe that the Proposed Rules should be sufficiently flexible to allow indirect acquisitions by the portfolio companies themselves.

VCF Borrowing

We generally agree that it is appropriate to limit a VCF's borrowing to 15% of the VCF's capital contributions plus undrawn capital commitments. However, we do not believe that a 120-day non-renewable term should apply in all circumstances. For example, if a VCF were to provide a guarantee to support certain obligations of a portfolio company, which guarantee if called upon would in all likelihood become an equity investment (or convertible debt) in the portfolio company, a 120-day term would unnecessarily limit flexibility for both the portfolio company and the VCF. The portfolio company (and its other investors and management team) may well prefer to have the guarantee in place rather than to suffer the dilution of a further equity investment at a particular point in time, but need the guarantee support for longer than 120 days to enable the portfolio company to achieve certain business objectives. We would encourage the SEC to consider applying a 15% cap as proposed, but not limit the term of any guarantees so long as they are limited to guarantees of the obligations of portfolio companies of the VCF.

Operating Companies

We believe that it would be worthwhile to clarify that VCFs may invest in QPCs through alternative investment vehicles in certain circumstances, such as when it is advisable to do so in order to avoid "unrelated business taxable income" and income "effectively connected with a U.S. trade or business" for their tax-exempt institutional investors or non-U.S. investors, respectively. Likewise, when making investments in certain non-U.S. portfolio companies, there may be tax or other reasons to make such investments through an alternative investment vehicle rather than directly into the portfolio company. When such alternative investment vehicles are used, they do not change the nature of the VCF's interest or involvement with the underlying portfolio company or introduce any level of systemic risk.

Managerial Assistance and Control

We believe that if a VCF has a contractual right to a seat on the Board of Directors of an applicable portfolio company or otherwise has contractual "management rights" with the portfolio company for purposes of the "venture capital operating company" (VCOC) rules under ERISA, it should qualify as having offered management assistance. Adopting this already established industry standard of "management rights" would provide consistency and certainty among investors and portfolio companies.

Exit Opportunities

As mentioned in the NVCA's comments, the Proposed Regulations should be clarified to ensure that a VCF's exit from an existing portfolio company is not treated as a non-qualifying investment. In many cases, the VCF will receive equity interests (and possibly deferred purchase price that could be considered a debt instrument) of the acquirer in an exit transaction. These forms of consideration most likely would not qualify as a permissible fund investment under the Proposed Rules. Also, as the NVCA points out, it is unlikely that the VCF would continue to have control or management rights with respect to the acquirer post-transaction. Finally, in connection with an exit transaction, the sellers of the portfolio company may be required to stand behind certain obligations of the portfolio company with respect to breaches of certain representations and warranties and the like. These types of arrangements should not be viewed as disqualifying leverage of the VCF since it relates to the realization of its investment in an otherwise qualifying portfolio company.

Bridge Loans/Providing Debt Financing

It is a normal practice within the venture capital industry for VCFs to provide bridge loans to their portfolio companies to bridge their short-term working capital needs until to future financing rounds or an exit transaction. In our experience, this may include non-convertible bridge loans. We believe permitting the extension of short term non-convertible bridge loans (and the extension of such loans if the anticipated financing or exit transaction is delayed) would be consistent with the intent of the Proposed Rules in that these types of loans are not of the type used to execute leveraged acquisitions and do not give rise to systemic risk to the financial system.

In addition, as indicated above, we believe that the limitations on debt financing generally unduly limit the discretion of VCF managers in most efficiently financing their portfolio companies. As pointed out by the California Commissioner of Corporations in his comment letter submitted on January 21, 2011, if a VCF manager decides to extend a loan to one of its portfolio companies, that decision does not conflict with the interests of equity holders in that portfolio company. This is because, among other reasons, the equity will have, for the most part, been provided by the same group of (or many of the same) investors as those who provide the debt financing. By providing the debt financing, the VCFs do not seek to undermine the equity value in the portfolio company, but rather to enhance it. The extent and nature of debt provided by VCFs to their portfolio companies differs markedly from the types and nature of third-party debt used by private equity firms with respect to their portfolio companies and does not impose any of the same systemic risk to the economy or to investors.

Conclusion

We believe that the VCF definition contained in the Proposed Rules as developed thus far reflects a careful study and thoughtful understanding of the venture capital industry. The definition reflects an understanding that the venture capital industry operates in a manner that provides protection to its investors and imposes no systemic risk on the financial markets. As such, registration would impose an unnecessary and expensive burden on an industry that spurs job creation, supports innovation and promotes economic growth.

That said, we believe that the Proposed Rules impose a strict definition of a venture capital fund that would place a substantial portion of the industry in a position where they will feel obliged to register for fear of inadvertent non-compliance with the Proposed Rules, notwithstanding the fact that they clearly would be viewed as a venture capital fund in any normal sense of the phrase. We believe that the flexibility that we suggest and that the NVCA has proposed in more detail will provide the certainty for the industry that we hope is intended in the Proposed Rules.

As indicated above, except as specifically noted in this letter, we endorse the NVCA's suggestions and proposals. We urge the Commission to consider both our and the NVCA's comments and we would be pleased to provide further input if you would like.

Sincerely,

Grace A. Ames
General Partner
Chief Operating Officer

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