BIOTECHNOLOGY INDUSTRY ORGANIZATION

January 24, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
Station Place, 100 F Street, NE.
Washington, DC 20549-1090

RE: *Release No. IA-3111; File No S7-37-10, Exemptions for Advisors to Venture Capital Funds, Private Fund Advisors with Less Than $150 Million in Assets Under Management, and Foreign Private Advisors*

Dear Ms. Murphy:

On behalf of its members, the Biotechnology Industry Organization (BIO) is pleased to provide comments to the Securities and Exchange Commission (SEC) regarding the proposed rules on exemptions for advisors to venture capital funds (VCFs).

BIO represents more than 1,200 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnologies, thereby expanding the boundaries of science to benefit humanity by providing better healthcare, enhanced agriculture, renewable fuels, and a cleaner and safer environment.

The largest obstacle to delivering on the scientific promise of biotechnology is accessing sufficient capital to fund research and development. BIO has over 600 emerging companies in its membership that have fewer than 350 employees and do not yet have a product on the market. In the absence of product revenue, emerging biotechnology companies are substantially reliant on the capital markets to fund research and development. This is particularly challenging for emerging biotechnology companies who are involved in the earliest, highest-risk stages of research and development. Thus, the venture capital's role in financing the biotechnology industry is an invaluable resource.

BIO appreciates the efforts of the SEC in constructing a definition for "venture capital fund" as directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Achieving a proper definition is vital to the overall success of this growing innovative industry moving forward.

1. IPOs, IPO Follow-on Investments and PIPEs should be Considered Qualifying Activity

Follow-on investments in portfolio companies should be permissible after they become public as long as the VCFs hold a majority of the original investment. Promising biotechnology research has a long, arduous road from preclinical research, through phases of clinical trials, and ultimately to FDA approval of a therapy. It is estimated that it takes between 8 and 12 years to bring a biotechnology therapy to market and costs between $800 million and $1.2 billion. For the majority of biotechnology companies that are without any product revenue, the significant capital requirements necessitate ongoing rounds of financing. Allowing for follow-on investments as qualifying investments will help ensure that viable cash-flow continues after an IPO.

Given the tight capital markets, lengthy time and capital intensive resources needed to bring a therapy to market, capital investments –including permitting VCFs to acquire public securities on the IPO or follow-on post-IPO financing in portfolio companies – should not endanger a VCF's exemption status. In recent years, VCFs have heavily invested in the IPO and post-IPO transactions of portfolio companies. Additionally, private investment in private equity (PIPE) transactions are common in which non-brokered, direct purchases are made by a VCF, from a public issuer. While PIPE transactions could raise significant much-needed capital, the proposed rule would not permit VCFs to directly negotiate PIPE transactions with public issuers and hold securities in a public entity.

The importance of VCF financing of innovative emerging companies is jeopardized if common financing mechanisms involving investments in IPOs, post-IPOs and PIPE transactions would force VCFs to forgo significant private investments into biotechnology companies in order to retain their exemption from registration.

2. Allow for Flexibility for Non-Qualifying Investments that do not Exceed 15 Percent

The proposed rules appear in line with the current practices of venture capital fund advisors. However, there are enough changes in the rules that will require advisors and funds to adapt. Allowing flexibility for a low level of non-qualifying investment activity will allow investors to continue to sufficiently invest in innovative industries such as biotech. Without such flexibility, venture capitalists would be subject to high costs associated with inadvertent non-compliance. By allowing a limited amount of non-qualifying activity, the proposed rules would be consistent with other existing SEC rules.

BIO appreciates the efforts of the Commission in creating a venture capital fund definition that will maintain the venture community's success in funding novel therapies for patients. If you have further questions, please contact me, Shelly Mui-Lipnik or Tooshar Swain, at (202) 962-9200.

Sincerely,

Alan F. Eisenberg
Executive Vice President
Emerging Companies and Business Development
Biotechnology Industry Organization (BIO)