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VIA E-MAIL: *rulecomments@sec.gov*

U.S. Securities and Exchange Commission
100 F Street, NE.
Washington, DC 20549–1090

Re: File No. S7-36-10 - Rules Implementing Amendments to the Investment Advisers Act of 1940 ("Implementing Release")

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 Advisers ("Exempting Release")

The American Insurance Association ("AIA") is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than $117 billion in premiums each year. AIA member companies offer all types of property - casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance. AIA would like to thank the Securities and Exchange Commission ("SEC" or "Commission") for this opportunity to comment on the proposed rules for implementing the investment adviser provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). AIA member companies are major institutional investors; therefore, AIA is particularly interested in the new investment adviser provisions because of their potential impact upon the operations of any investment subsidiaries that AIA members may have established to provide investment advisory services to their affiliated groups of companies.

We have referenced both the proposal to provide rules for the new registration of investment advisers that were previously exempt before the passage of the Dodd-Frank Act (the Implementing Release referenced above), and the proposal to provide rules for the advisers that are specifically exempt under the Dodd-Frank Act (the Exempting Release also referenced above). We believe it is necessary to reference both proposals because there is a category of investment advisers that AIA believes falls outside both proposals.

SUMMARY

The implementing and exempting releases fail to address situations in which an investment adviser is a subsidiary within, and only provides services to, a group of related insurance companies when that group also includes non-insurance members. The releases also fail to address situations in which all or some of the related insurance companies are foreign insurance companies which do not fall within the definition of “insurance company,” as that term is used in the Investment Advisers Act.[1] AIA believes that an investment adviser that is only offering services to its related group of companies (none of which is a registered investment company) and not to the public in general, should be excluded from registration and reporting requirements. To do otherwise would impose significant additional compliance costs on such entities with little or no perceived benefit to the investing public, at the expense of the shareholders of the parent companies that control such entities.

There is no public policy rationale for requiring registration of, and reporting by, investment adviser firms that solely serve internal corporate purposes. To the contrary, monitoring investment advisers that exclusively serve the related group of insurers and their affiliates would dilute regulatory resources that could be better utilized to monitor investment advisers that actually manage third party assets. In addition, regulating entities such as the ones we describe would appear to be contrary to the letter and the spirit of the Executive Order signed by President Obama on January 18, 2011, which makes adopting regulations that impose the “least burden on society” a goal of the Administration.

DISCUSSION

Property-casualty insurers enable our economy to function by helping individuals and businesses address the various risks they face. In doing so, insurers take in premiums based on anticipated loss costs, keeping a small portion to cover operating expenses, and investing the rest until needed to pay claims and cover extraordinary losses. For legal and regulatory reasons, insurance products are typically offered through a group of affiliated insurance companies. The affiliated group of insurance companies may also include non-insurance companies that support the insurance operations. It is not unusual for insurance companies to establish subsidiary companies that provide specific support services to the insurance members of the groups. Streamlining support services through subsidiary companies creates operating efficiencies for insurers that offer products throughout the United States and around the world.

For similar efficiency reasons, many affiliated groups of insurance and reinsurance holding company groups have established investment advisers to manage the invested assets of subsidiaries in the holding company family. Congress long ago recognized the validity of this arrangement when it enacted the exemption from registration for “any investment adviser whose only clients are insurance companies” (Section 203(b)(2) of the IAA). However, even in instances where a controlled

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[1]Section 202(a)(12) of the Investment Advisers Act of 1940 (the “IAA”) defines “insurance company” by reference to the definition of that term in the Investment Company Act of 1940 (the “ICA”). Section 2(a)(17) of the ICA defines “insurance company” in a manner which does not include foreign insurance companies.

investment adviser subsidiary solely advises its insurance company affiliates, the Section 203(b)(2) exemption is not available if all or some of those affiliates are foreign insurance companies because foreign insurance companies are not included in the IAA definition of "insurance company," as it only references the definition of "insurance company" set forth in the ICA and thus does not include foreign insurance companies as defined in Rule 3a-6 under the ICA.[2] Because of this limitation, insurance groups have typically relied upon the private adviser exemption of Section 202(b)(3) of the IAA to cover advisory services provided to non-U.S. insurance members of the affiliated group.

The Dodd-Frank Act repealed the private adviser exemption" of Section 203(b)(3) of the IAA. With the repeal of that exemption and the requirement under the proposed rule to now mandatorily count proprietary assets as Assets Under Management for determining registration status, and absent another exemption applying, all investment advisers would appear to be subject to the registration, reporting and recordkeeping requirements, even if the investment adviser only provides services to the members of a related group of US and non-US insurance companies and their affiliates. Viewing the related group of companies as one enterprise, however, it seems illogical that the enterprise should be subject to SEC registration in order to manage its own assets. AIA believes that this additional level of regulation is unnecessary, is inconsistent with the statutory objective of the repeal, and would waste resources of both the enterprise and the SEC, while yielding little public benefit.

According to the Exempting Release, "the primary purpose of Congress in repealing section 203(b)(3) was to require advisers to 'private funds' to register under the Advisers Act. Private funds include hedge funds, private equity funds and other types of pooled investment vehicles that are excluded from the definition of 'Investment Company' under the Investment Company Act of 1940." We understand and do not challenge the public policy rationale of the repeal. We merely want to point out that a subsidiary investment adviser company that provides services *only* to the members of *its* affiliated group of companies falls outside that stated purpose. The traditional concerns of committing fraud with the funds from the investing public simply do not exist in this scenario. As long as the investment adviser does not offer its services to the public and remains under the control of the affiliated group, it should not be subject to SEC registration or the proposed reporting requirements in the Implementing Release.

SEC staff has recognized through the no-action letter process that investment advisers that only manage the proprietary assets of their affiliated group of companies would not be required to register. The matter of *Lockheed Martin Investment Management Company*[3] involved a fact pattern that is similar to the situation AIA has presented in this comment letter, although *Lockheed*

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[2] Rule 3a-6 under the ICA was adopted to level the regulatory playing field under the ICA to provide similar treatment for both domestic and foreign insurance companies. A similar approach would be expected to apply for the IAA. Unfortunately, this concept has not been carried over into Section 203(b)(2) of the IAA. However, for the purposes of the position that AIA is asserting in this letter, whether a controlled investment adviser subsidiary advises solely domestic and/or foreign insurance company affiliates should not make a difference, as it would still be the case that such subsidiary is not holding itself out to the public generally as an investment adviser.

[3] SEC No Action Letter, reference no. 20052292, publicly available June 5, 2006 ("Lockheed Martin").

Martin did not involve insurance companies. In that matter, a wholly owned subsidiary of Lockheed Martin Corporation was formed for the sole purpose of providing investment advisory services to various employee benefit plans and trusts of Lockheed and certain of its affiliates. In reaching the decision to not recommend enforcement action, SEC staff focused on certain factors:

- The investment adviser was a wholly owned subsidiary;
- The investment adviser subsidiary did not hold itself out to the public;
- The investment adviser subsidiary only provided services to the plans;
- The plans only consisted of Lockheed assets;
- The only amounts received by Lockheed and the investment adviser subsidiary were reimbursements that were restricted under the ERISA regulations; and
- None of the plans was required to register as an investment company.

Five of the six factors listed above squarely apply in the scenario we describe in this letter. The sixth factor pertaining to ERISA restrictions on reimbursements made to investment adviser subsidiaries applies by analogy.

In the AIA scenario, the investment adviser subsidiary is a wholly owned subsidiary within the affiliated group of U.S. and non-U.S. insurers, and only provides services to the members of the group. It does not hold itself out to the public and only manages the proprietary assets of the group members, thus eliminating concerns for defrauding the public. Although ERISA restrictions do not apply, similar controls are in place because any payments made among the investment adviser subsidiary and the group members must be made in compliance with the transfer-pricing restrictions of their applicable jurisdictions. Insurance regulators provide prudential oversight of the insurance company members, including the investments of those insurers. In the U.S. and many other jurisdictions, insurance regulators have the authority to review transactions between the insurance companies and any non-insurance company members of the affiliated group – and that would include transactions with the investment adviser company.

As in *Lockheed Martin*, none of the related companies receiving investment advisory services are registered investment companies. The subsidiary investment adviser companies described in the AIA scenario provide an efficient mechanism for managing investments on behalf of the insurance enterprise of which they are a part. Those subsidiary companies are simply doing what each individual group member would otherwise do in the ordinary course of its business: investing premiums received.

Requiring registration of the investment adviser described in the AIA scenario would impose unnecessary expense and burden upon a corporate structure that presents little or no risk to the investing public. We find no rationale to justify imposing the expense and burden of registration, reporting and recordkeeping upon a captive investment adviser subsidiary that is only managing the proprietary assets of its own affiliated group. From the SEC's perspective, requiring registration for a structure that is intended to create internal efficiencies would not appear to be a worthwhile allocation of regulatory resources.

Section 206A of the IAA, among other things, authorizes the Commission to exempt classes of persons or transactions from any provisions of the IAA or the underlying rules and regulations. In light of the previous no-action letter posture of SEC staff and against the backdrop of the statutory purpose underlying the relevant Dodd-Frank Act provisions, AIA respectfully urges the SEC to include language in the rules of the Implementing Release to indicate that certain investment advisers, such as an investment adviser subsidiary that provides services only to the members of its affiliated group, would be outside the scope of the IAA and Title IV of the Dodd-Frank Act. Specifically, the definition of “investment adviser” under Section 202(a)(11)(H) of the IAA should be modified to exclude subsidiary investment advisers that solely provide services to their respective affiliated groups. In the alternative, the Exempting Release should provide for an exemption for investment adviser subsidiaries that solely provide services to their affiliated groups.

CONCLUSION

The Implementing Release does not take into account the fact that some investment advisers, such as investment adviser subsidiaries that only provide services to their affiliated groups of insurance companies, fall outside the statutory purpose behind the Dodd-Frank Act. The Exempting Release also fails to provide language to exempt such subsidiary investment advisers. AIA believes that an investment adviser that only offers services to its related group of companies (none of which is a registered investment company) and not to the public in general, should be excluded from registration and reporting requirements. To do otherwise would impose significant additional compliance costs on such entities with little or no perceived benefit to the investing public, at the expense of the shareholders of the parent companies which control such entities.

These subsidiary investment adviser companies are subject to the control of the group’s controlling entity, which can compel the release of whatever information is necessary in order to oversee the activities of the investment adviser; thus, fraud risk is confined within the group and is not likely to occur because of the control relationship.

Other provisions of the Federal securities laws commonly exempt from their provisions persons and entities where other robust regulatory schemes exist that adequately protect the investing public. An example of this approach is evident in the ICA through the exemption from registration as an investment company afforded insurance companies by Section 3(c)(3) of the ICA, and the extension of a similar exemption to foreign insurance companies by underlying Rule 3a-6. The principles supporting these sorts of exemptions should, we believe, be applied in this instance as well.

On January 18, 2011, President Obama signed an executive order (the “President’s Executive Order”) setting forth principles for improving regulation. Among the general principles enumerated in the Order was that “each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the cost of cumulative regulations....” We submit that the request we are making in this letter is wholly consistent with the letter and the spirit of the President’s Executive Order, as we do not believe that any benefit that might be derived by requiring an investment advisory subsidiary that solely services its affiliated companies to register and report to the SEC would be justified by the cost of imposing that regulatory burden on such entities.

Because the risks that led to the repeal of Section 203(b)(3) do not exist in the scenario where an investment adviser subsidiary provides services only to the members of a related group of insurance companies and their affiliates, AIA accordingly requests that the SEC include language to separately provide – either through exclusion or exemption – for situations in which a subsidiary investment adviser provides services only to the members of its related group of insurance companies and their affiliates. As always, please do not hesitate to contact us with any questions.

Respectfully submitted,

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