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January 24, 2011

Via e-mail to: rule-comments@sec.gov

US Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less than $150 Million in Assets under Management, and Foreign Private Advisers
(*Reference: File Number S7-37-10*)

Rules Implementing Amendments to the Advisers Act of 1940
(*Reference: File Number S7-36-10*)

Ladies and Gentlemen:

We are responding to the invitation of the Commission for comments to (i) the proposed exemptions from registration under the Investment Advisers Act of 1940 (the "Advisers Act") for advisers to venture capital funds, private fund advisers with less than $150 million in assets under management, and foreign private advisers[1], and (ii) the proposed rules implementing amendments to the Advisers Act[2]. As the various proposals are so closely interrelated, we prepared a single comment letter to be filed under the File Numbers of both proposed rulemakings.

As background to our interest in these matters, Shearman & Sterling LLP is a global law firm with offices in twenty financial centers worldwide. The firm's clients include a wide variety of US and non-US financial institutions and financial market participants, including investment advisers, sponsors of hedge, private equity and venture capital funds, family offices and institutional investors. Our investor clients access the markets through self-directed

1 Release No. IA-3111 (November 19, 2010).

2 Release No. IA-3110 (November 19, 2010).

investment portfolios, professional investment advisers and/or private funds and other pooled vehicles. We are counseling clients daily on the legislative initiatives and rulemakings arising out of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Overview

We commend the Commission for a thoughtful response to the new requirements applicable to investment advisers under the Dodd-Frank Act. The Commission's proposals, taken as a whole, clearly seek to balance the broader circumstances of these rulemakings, which reflect direct legislative mandates, unusual time pressures and the fact that these rulemakings will represent a wholesale change in landscape for many market participants.

We nonetheless offer a number of comments, both technical and substantive, for the Commission's consideration. Our comments are generally listed in the order that the related rules appear in the proposing releases, but our more significant concerns are with: (i) the proposed reports to be required of exempt reporting advisers (and notably that these reports are to be public, which we find contrary to the legislative record and to natural commercial expectation), (ii) the proposed fund-by-fund reporting framework generally (which we see as both overly burdensome and far-reaching and a matter that should be held to the side and treated comprehensively with what we see as closely related pending rulemaking), (iii) the narrow scope of the proposed venture capital fund adviser exemption (which we believe may unintentionally and unnecessarily exclude many advisers that generally have been considered to be venture capital in nature, with potential unintended harm to start-ups seeking venture capital financing), (iv) the $25 million threshold for reliance on the foreign private adviser exemption (which we believe to be too low and a matter that is properly and timely within the Commission's discretion to adjust), and (v) the treatment of creditors of a fund as investors for some purposes (which we find anomalous).

We also are generally concerned that much of the rulemaking will not be completed until well into 2011, leaving affected firms to scramble to make critical business decisions in a highly compressed timeframe before the planned July 21, 2011 implementation dates. We note, in this regard, our experience identified below that the business decisions that attach to an investment adviser's registration with the Commission, including the compliance program build-out and review of service provider arrangements, often extend the registration process to six months or more. An approach that would modestly increase timing flexibility would simply be to confirm that all registration forms received in the IARD system by July 21 will be treated as resulting in timely registration even if not acted on by the Commission Staff until after July 21. A broader solution that we recommend be considered would be to adopt a temporary interim rule effectively extending the current status quo further into 2011 or 2012.

Rule 202(a)(30)-1: Foreign Private Advisers

Rule 202(a)(30)-1(b)(4), no double-counting. We agree with the Commission's proposal not to count a fund as a client when the adviser is also counting investors in the same fund, as set out in this subparagraph (b)(4) of the foreign private adviser rule. Including this provision within the rule usefully avoids needless interpretive questions.

Rule 202(a)(30)-1(c)(1), definition of "investor". Subsection (c)(1) of the foreign private adviser rule provides for a definition of a fund investor that tracks the meaning of "beneficial owner" as such term is used in Section 3(c)(1) or 3(c)(7) of the Investment Company Act, with two exceptions discussed below. We respectfully recommend that these two exceptions be removed from the final rule, for the following reasons.

Subpart (A), knowledgeable employees. In accord with principles previously articulated by Congress and the Commission, including under Section 2(a)(51) of the Investment Company Act, Rule 3c-5 under the Investment Company Act and Rule 205-3 under the Advisers Act, we recommend that knowledgeable employees not be counted for purposes of determining whether an adviser has US investors requiring Advisers Act protections. To do otherwise is contrary to a long history of recognizing that knowledgeable employees should be treated differently than other investors and that their privileged status with their organizations in terms of influence and access to information reasonably limits the public's interest in their protection. The current proposal also adds obvious complexity in which knowledgeable employees would be disregarded for some regulatory purposes and not for others, without an obvious public policy basis for the distinction. Moreover, the current proposal would have the effect of discouraging knowledgeable employee investment, even though encouraging, and in many business contexts (including under some mandated executive compensation schemes) requiring, knowledgeable employees to invest along side third-party investors in the enterprise generally is viewed as a beneficial alignment of interests.

Subpart (B): holders of short term paper as "investors". We recommend that holders of a fund's short-term paper not be counted as among the fund's investors. Doing so is contrary to reasonable market expectations, given that a lender to a fund, while it makes a "credit analysis," does not deploy capital based on the perceived skill of the fund manager and so is not an investor by any traditional measure (it is also contrary to the investor count provisions of Section 3(c)(1) of the Investment Company Act, which explicitly exclude holders of short term paper). At a minimum, we encourage the Commission to clarify that a lender to a fund (whether under a bank credit facility or brokerage margin account or as a holder of notes) only be considered an investor if the lender's relationship is plainly based on the expectation of realizing an investment return based on the skill of the fund manager in deploying the loaned monies. Otherwise, the definition of "short term paper," which is proposed be made with reference to the definition in Section 2(a)(38) of the Investment Company Act, would lead to situations that we believe to be outside the intent of Congress and, presumably, the Commission. Consider, for example, that without some modification of the type we suggest, this provision could require the registration of a non-US adviser of a non-US fund having only non-US equity holders, simply because of the presence of a US commercial creditor. This would, we believe, be a classic "trap for the unwary." It also would, once understood, operate simply to push firms to use non-US sources of credit with corresponding market disadvantage to US lenders and reduced operational flexibility for the funds involved.

Subpart (B): AUM "attributable to" holders of short term paper. The proposing release discusses how to count these lenders but does not discuss how to count the level of assets under management "attributable to" a US lender. Should the Commission decide not to change the definition of "investor" with respect to short term paper in the manner just suggested, we encourage the Commission nevertheless to clarify that borrowings from US lenders do not count as assets under management attributable to such lenders. Treating the borrowings as assets for this purpose both magnifies our "trap for the unwary" concern and results in what we perceive as the potential for double-counting of assets and unduly complex interpretive analysis.

As a related matter (although we acknowledge that the issue is then less pointed as a policy matter), we disagree with the general proposal to increase a firm's "regulatory assets under management" by measuring gross assets. This would be a 180 degree reversal from current practice; it is also telling, in our view, that the widespread industry "default number" for describing a firm's business is net, not gross, assets.

"Look-through". A non-US fund manager may not historically have had need for the kind of transparency into the beneficial ownership of its fund investors envisioned in the foreign private adviser exemption. The requirements attendant to such a look-through, at least as proposed (by reference to certain private fund attribution rules), would result in significant compliance obligations for precisely those advisers that Congress intended to exempt from US regulatory burdens. For that reason, we suggest that, for purposes of this exemption, an adviser not be required to look through an investor that is a non-US fund, so long as that non-US fund is not managed by an affiliate of that adviser. Should the SEC decline this suggestion, we suggest that such a provision apply at least with respect to investments made prior to July 21, 2011 (or any other implementation date selected for registration generally).

$25 million threshold. Congress often provides a regulator with express authority when it intends the regulator to use its expertise, developed from long experience with an industry, to develop appropriate rules. Although Congress specified the contours of each other condition of the foreign private adviser exemption, Congress provided the Commission express authority to identify a threshold other than $25 million, in assets attributable to US clients or US investors in private funds, for purposes of eligibility under the foreign private adviser exemption. We previously provided the Commission with comments in this regard and refer again to that letter (which can be found at http://www.sec.gov/comments/df-title-iv/exemptions/exemptions-29.pdf). In our earlier comment letter, we noted that the structure of the foreign private adviser exemption appeared intended to encapsulate a facts and circumstances analysis in which each identified factor (e.g., place of business, number of clients/investors, value of assets, etc.) has independent weight, but that – frustrating that goal – setting the assets threshold at $25 million could "write out of the exemption" everything except its asset test. To remedy that, we suggested a $150 million threshold for consistency with the private fund adviser exemption. We continue to believe this would be appropriate.

Rule 203(l)-1: Venture capital exemption

As an overarching comment, our sense is that this exemption as proposed is too narrow and does not adequately reflect the intent of Congress to exempt venture capital fund managers from Advisers Act registration in light of the critical support that venture capital investors lend to job creation and entrepreneurial innovation. As proposed, Rule 203(l)-1 consists of a multi-part test under which, should any fund managed by the adviser fail any part of the test at any point in its lifecycle, the adviser would no longer be eligible for the exemption – with no exceptions or temporary carveouts. We also note that, from a policy standpoint, there should be little reason to construe Congress's exemptive mandate this narrowly. Funds that hold themselves out to be venture capital funds have not been identified as a cause of the recent financial crisis or as a systemic risk more generally. Indeed, a greater policy risk would seem to be that an overly narrow exemption inadvertently impinges on the funding available to start-up and small businesses that Congress intended to protect. With that in mind, we propose the following specific suggestions.

The definition of "venture capital fund". We suggest that, before defining "venture capital fund", the SEC first engage in more fact-finding with the goal of more clearly understanding how many currently existing venture capital funds would meet the test in its proposed form. The Commission offers as a concern that it sees "little consensus" surrounding certain aspects what it means to be a venture capital fund. That may or may not be so. But if the choice is between further fact-finding and rulemaking that turns out to be so restrictive as to require large numbers of venture capital funds to change their operations in order to be eligible for the exemption (an outcome that we see as a real possibility at present), we respectfully suggest that it would be wise to proceed cautiously. An exemption that is detailed and restrictive at the outset also risks becoming increasingly outmoded over time. One possible fix would be to directly build in one or more flexible provisions that allow funds to respond to shifting markets and investor preference. For example, just as the Investment Company Act provides for an exemption for "transient" investment companies (see Rule 3a-2), the Commission could consider allowing firms to operate outside some of the more restrictive proposed provisions under adverse market conditions or other non-ordinary circumstances for a specified period of time (perhaps twelve months as in Rule 3a-2). That would be subject to appropriate recordkeeping by the firm as to the relevant circumstances and with a stated intent to return to conformity with the requirements as soon as practicable.

Delayed implementation to allow for a new proposal. Given our view, based on our market experience, that the proposal risks establishing an exemption unsuited to many firms that reasonably view themselves as venture capital in nature, we believe the Commission should consider whether a new proposal and a new round of public comments would be useful. This is especially so in light of the fact that the Commission's discussion of the current proposal asked commenters to speak to such a range of questions and expressed interest in divergent approaches to the exemption. We suggest that the grandfathering provision in proposed Rule 203(l)-1(b) could be continued through another round of rulemaking. We expect that the opportunity for fund managers to manipulate their operations in the meantime should not be a material concern, as the logistics required to cause a fund to change directions midstream in order to somehow "take advantage" of the grandfathering would be too significant to make it worth the adviser's while.

Section 203(l): "solely to venture capital funds". While not addressed by the proposed rules, we believe a significant limiter to reliance on the Congressional exemption is embedded in the requirement that the adviser act as an adviser "solely to venture capital funds." We encourage the Commission to consider a rule or interpretive position that would confirm that certain co-investment relationships that are normal course in the venture capital industry do not spoil reliance on the "solely to venture capital funds" statutory requirement. In particular, advisers to venture capital funds routinely invite investors (generally those who are also investors in the firm's advised funds) to co-invest in certain opportunities alongside a fund. The adviser may receive compensation from a co-investor or may not, but we do not believe that should be dispositive as to whether this results in the firm acting as an adviser to a party other than a venture capital fund. Instead, we recommend that a co-investor be viewed – as they are commercially – as ancillary to and effectively "packaged with" the fund operations. Venture capital fund documentation would support this view as it often explicitly contemplates and even sets terms for co-investors as part of the fund offering. Finally, the reality is that co-investors are typically among the most sophisticated participants in the fund venture. Their co-investment decision is qualitatively different and dependent on their own skill and assessment of the investment opportunity, with any compensation to the fund sponsor being more in the nature of an "entrance fee", which we believe offers a further, practical ground for the interpretive position we are suggesting.

Rule 203(l)-1(a)(2): "owns solely". This part of the proposed exemption specifies the universe of investments for a venture capital fund, but does so in a manner that leaves little flexibility in the event of changing markets, practices and other challenges. We therefore would propose that "owns solely" be replaced by a 70/30 framework of eligible versus ineligible assets similar to that used in the definition of "business development company" in Section 2(a)(48)(B) of the Investment Company Act (noting that the proposing release favorably cites other business development company provisions). Such a framework would give venture capital funds flexibility to respond as exigencies require in a way that the current all-or-nothing proposal would not. We also believe that an all-or-nothing framework is inconsistent with the principle, implicit in the Dodd-Frank Act's treatment of advisers to venture capital funds, that they should be broadly exempt from SEC regulation.

Rule 203(l)-1(a)(2), holdings: US Treasuries. We see no reason for the Commission to require that a venture capital fund's holding of US Treasury securities have remaining maturities of 60 days or less. US Treasuries as a class typically are extremely liquid, so that holding them (with any maturity) seems indicative of holding cash-like assets.

Rule 203(l)-1(a)(2), holdings: " holdcos". We presume that it is the Commission's intent to treat as eligible any assets that a venture capital fund might hold through one or more wholly-owned "holdcos" formed for tax, regulatory or other legitimate business reasons. Adding this clarification now may avoid the need for interpretive guidance later.

Rule 203(l)-1(a)(3)(ii), portfolio companies. We likewise presume that it is the Commission's intent that any references to "control" exercised by the venture capital fund extend to direct or indirect control (for example, control through a holdco may be indirect but is substantively the same level of control). Again, adding this clarification now may avoid the need for interpretive guidance later.

Rule 203(l)-1(a)(5), issued securities. With regard to the proposed limitation on the nature of securities to be issued by a venture capital fund, we suggest that the Commission tailor this limitation to apply only to "equity securities." A principal reason for suggesting this change is that certain loans or similar instruments may be "callable" by the lender. To the extent such instruments are securities, calling them could be seen as the lender's redeeming or withdrawing them in contravention of the proposed requirement that a venture capital fund not issue redeemable securities. Our suggested change therefore will operate to avoid undue restrictions on the borrowing and financing terms that venture capital funds might wish to agree with their lenders.

Rule 203(l)-1(b)(3), grandfathering. Some venture capital funds have closings over the course of years. It seems unnecessary to require that, for a venture capital fund to be eligible for grandfathering, it must call no capital after July 21, 2011. We would suggest that the remaining proposed grandfathering provisions are adequate, and for this subpart (b)(3) to be deleted.

Non-US firms. We suggest that non-US firms wishing to rely on this exemption be treated in a manner consistent with that applied to non-US firms relying on the private fund adviser exemption. Specifically, for the same policy reasons as the Commission articulated for private fund advisers, we suggest that a non-US adviser should consider only its clients that are US persons in determining whether it is an adviser "solely" of venture capital funds and thus eligible for this exemption.

Rule 203(m)-1: Private fund advisers

We generally agree with the scope and details of this proposed exemption. However, we outline certain thoughts below as suggested improvements.

Rule 203(m)-1(b)(1), no US non-fund clients. As what we believe is a purely technical drafting point, we note this subpart could be read to suggest that a non-US adviser seeking to rely on the exemption must have one or more US private fund clients. We suggest that the provision instead say: "If the investment adviser has any client that is a United States person, each such United States person is a qualifying private fund."

Rule 203(m)-1(d), transition rule. There is presently proposed only a 90-day transition period within which a firm that loses the ability to rely on this exemption would be required to register. Our experience is that registering an investment adviser firm in a thoughtful and deliberate manner is often closer to a six-month task (that can sometimes take even longer depending on the need to engage new or additional service providers to the firm or its funds), so that an at least 180-day transition period would be more appropriate. We also have concerns specific to the proposed "penalty" under which no transition period is available for any adviser that has not "complied with all applicable Commission reporting requirements". We first note that the registration process is not more quickly attainable for such a noncompliant adviser than for a compliant adviser. Second, if needed, the Commission is equipped to sanction a noncompliant adviser in ways that relate more directly to the noncompliant filings. Should the Commission nonetheless maintain this proviso, we suggest: (i) a "substantial compliance" standard; (ii) giving the Commission the discretion to shorten the transition period with respect to a noncompliant adviser rather than this apparently self-executing termination of the transition period in full; and (iii) confirming that "all applicable Commission reporting requirements" refers only to "all reports required of a private fund adviser as such"; otherwise, any technical noncompliance with any SEC filing – whether under the Advisers Act, the Securities and Exchange Act, the Securities Act or otherwise – could be interpreted to be at issue.

As a closely related matter, and while no parallel transition period was proposed in connection with the foreign private adviser exemption, we believe the policy basis supporting an appropriate transition period to be equally relevant in that context.

Private fund reporting. In some instances, an investment adviser will not be eligible for the foreign private adviser exemption, but also will not provide any private fund reporting because it has no US investors in its private funds. Such a circumstance could arise if, for example, the fact that an adviser has a (even if not primary) place of business in the United States is the sole reason why the adviser is ineligible for the foreign private adviser exemption. We would suggest that, in the event an adviser has no private fund reports to submit, it should not be required to make the partial-Form ADV reports required of an exempt reporting adviser. This could be documented either internally in the permanent records of the firm or by a special, short-form notice to the Commission.

Rule 203A-1: Transition Period

The Commission proposes to require a 90-day transition period for state-to-SEC registration. As with our comment above with respect to Rule 203(m)-1(d), we suggest providing for a 180-day transition period.

Rule 203A-2: Multiple State Registration

We agree with the proposal to change the 25-state threshold to 15 states and would support an even lower threshold. The burdens of maintaining multiple state registrations can be significant.

Rule 203A-5: Transition Rules

Rule 203A-5(a), August reporting. We understand that each investment adviser will be required to file an other-than-annual amendment to its Form ADV between July 21 and August 20, 2011. In this connection, we would suggest changing "and shall determine it assets under management" to "solely to determine its assets under management." Otherwise, advisers could view that filing as needing to update other information. As Form ADV already has instructions with respect to material other-than-annual amendments, we believe it appropriate that this special filing be permitted to be made solely to update the assets under management figure. The provision also would require that assets be valued within 30 days of the filing. We suggest that the assets be valued as of a date on or after June 30th, as many advisers of illiquid assets would be more able to value such assets at a quarter-end. The few extra weeks between such valuation and the report should not be so material as to require what could be an enormously burdensome mid-month valuation.

Rule 203A-5(b), transition period. As above, we suggest a 180-day period, rather than an October 19, 2011 compliance date. Transitioning to state registration – particularly if the transition is to registration with multiple states – may carry significant burdens.

Rule 204-2: Books and Records

Transition rule. As what we believe is a purely technical drafting point, we note that this subpart (ii) seems to contemplate registration by an adviser only on July 21, 2011. Many advisers will register prior to July 21st, in which case this transitional recordkeeping rule would appear not to be available to them. To avoid that result, we would suggest that, in the first line, "prior to July 21, 2011" be changed to "at any time between July 21, 2010 and July 20, 2011", and that the later reference to "July 21, 2011" be followed by "during which" rather than "provided that".

Reports by Exempt Reporting Advisers

Confidentiality. We suggest that each report made on a partial Form ADV be made to the Commission, but not be made publicly available on the agency's web site. In adopting the manager registration provisions in Title IV of the Dodd-Frank Act, Congress placed a general emphasis on maintaining the confidentiality of required reports to the Commission. In that context it is truly unexpected to find that a class of fund managers that are ostensibly "exempt" from registration nonetheless are proposed to publicly file detailed information about themselves. Public reporting may also cause confusion among investors; if an unregistered adviser's information comes up in an IARD search, an investor's perception may be that the adviser is registered.

Reports by Fund Managers Generally

Items in private fund reports. The Commission proposes to require 29 separate items of information for each private fund managed by a private fund adviser. We think that would go far beyond the census-taking or systemic risk analysis that seems the impetus for the reports. We therefore respectfully suggest that the Commission freshly assess the need for, and associated burdens of, each proposed category of information requested. We expect that at least some of these items will be found to be unnecessary. Consider, for example, the request for information identifying a fund's service providers. A fund's investors will generally already receive this information and it generally has little public interest. We also respectfully suggest that some of these items require collection of information that will be difficult for firms to obtain. Consider, for example, the request for categories of investors. Many funds interact with their investors only through intermediaries and therefore generally do not have access to this depth of investor-by-investor analysis.

Separately, we note that the Dodd-Frank Act also refers to the Commission developing a systemic risk reporting framework for fund managers. We respectfully question whether it is desirable to proceed in the manner implicit in the current proposal, which seems to contemplate finalizing fund-specific registration reporting now and then tackling additional fund-related risk reporting later. Delaying the current fund reporting proposal and instead dealing with both reporting topics as a single package would allow the Commission, the industry and other interested constituencies to respond to these proposals more comprehensively and efficiently. To that point, we understand that various administrative and technical processes are likely to be necessary to build out in response to any reporting protocols. It would be highly inefficient to require that type of industry-wide build-out twice when doing so only once seems possible under the circumstances.

Lastly, the breadth of these proposed fund-by-fund reports is especially concerning in that they are proposed to apply to exempt reporting advisers equally to fully registered advisers. Extending these reports to exempt reporting advisers aggravates our concern noted above regarding the proposal that these exempt reporting advisers make reports required of them on a public basis. If the Commission nonetheless determines to apply the same broad reporting rules to both groups of advisers, we would suggest that a reasonable accommodation that might be made to exempt reporting advisers would be to allow them to comply through recordkeeping and "delivery on demand" in which actual reporting to the Commission – as opposed to recordkeeping – is made only when requested of a particular manager in a particular instance.

Other Proposed Changes to Form ADV

The current framework surrounding Item 7 of Form ADV for reporting affiliations appears adequate. We suggest that the Commission not expand Item 7 to require reporting on every conceivable financial industry affiliate and certain other categories of related persons as proposed. Already for larger organizations, we find that Item 7 disclosure can be extremely burdensome to prepare. As the affiliates disclosed become farther and farther afield from the business of the adviser in question, we also generally find that advisers view the reporting as of increasingly limited interest to their clients and prospective clients. In some cases, we have been told that an overly broad listing is simply confusing. Expanding the range of reportable affiliations adds to those concerns.

Particularly anomalous would be those non-US advisers who as exempt reporting advisers could report zero assets managed from within the United States, and have few US investors in their private funds, but will find themselves having to disclose the entirety of their network of affiliations. Under the proposed expansion of scope, that reporting would be made regardless of whether those affiliates have any relevance to the asset management arm of the organization. Naturally, to the extent that the Commission agrees that reporting by an exempt reporting adviser should be non-public, this concern is reduced, though the burdens of identifying and listing far-removed affiliates would remain.

"Registration Lite"

In 2004, the Commission adopted rules to require hedge fund managers to register as investment advisers.[3] Within those rules was a concept that became known informally as "registration lite" – that is, SEC-registered non-US advisers having no US clients and being "US-facing" only in terms of serving US investors in non-US funds would generally be subject solely to Sections 204, 206(1) and 206(2) of the Advisers Act. We suggest that, for the same reasons as those rules were adopted in 2004, these same rules be confirmed as applicable in connection with a non-US firm voluntarily registering in connection with Dodd-Frank Act considerations. That confirmation would add some certainty as to the effects for non-US advisers as they evaluate whether to register with the SEC and should, as it did in the 2004 period, encourage voluntary registrations and generally mitigate the tendency of some firms with limited US contacts to "purge" those contacts rather than proceed with a registration.

* * *

We appreciate the opportunity to comment on these matters and respectfully request that the Commission consider the comments and recommendations set forth above. We are available to discuss these comments and recommendations should the Commission or the Staff so desire. Nathan Greene is at 212-848-4668 or ngreene@shearman.com, Paul Schreiber is at 212-848-8920 or pschreiber@shearman.com and Jesse Kanach is at 202-508-8026 or jesse.kanach@shearman.com.

As a final note, our comments and recommendations represent the views of the attorneys of the firm named above and should not be ascribed to any current or former client of Shearman & Sterling LLP.

Respectfully submitted,

Shearman & Sterling LLP (NG)

Shearman & Sterling LLP

Please assure copies to the offices of:

Mary L. Schapiro, Chairman
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Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Eileen Rominger, Director, Division of Investment Management

3 *See* Release No. IA-2333 (December 2, 2004), Registration under the Advisers Act of Certain Hedge Fund Advisers.