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Via Email to: rule-comments@sec.gov
Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: *Release No.IA-3111; 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 (the Proposed Rules)*

Dear Ms. Murphy:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), signed into law on July 21, 2010, amended the Investment Advisers Act of 1940 (Advisers Act) (i) to eliminate the current exemption from registration for investment advisers having fewer than 15 clients and (ii) to provide for a new exemption from registration for investment advisers solely to venture capital funds. In accordance with the Dodd-Frank Act, the Securities and Exchange Commission (the Commission) has published Proposed Rules relating to the definition of a venture capital fund (VCF) for the purposes of the Advisers Act.

Trident Capital appreciates the opportunity to comment on the Proposed Rules

About Trident Capital

Trident Capital is a venture fund with $1.8 billion under management across seven funds since inception in 1993. We recently completed raising our latest fund, the $362 million Trident Capital Fund-VII. We focus on investments in Software and Technology-Enabled Services; Healthcare IT; Internet; and CleanTech. Within our sector focus, we invest across multiple stages. Trident has made over 160 investments since inception in 1993.

Trident Capital invests in companies as early as seed stage venture, backing an entrepreneur often possessing solely an idea and a PowerPoint presentation. We invest at expansion stage venture, where a company has completed its initial product development, has demonstrated some level of market acceptance by virtue of a small number of initial customers, and is raising expansion capital to build out its management team, sales force and customer service organization, enhance its product development organization and expand its marketing presence. We invest in late stage venture where a company has proven itself in the market, has built out its management team and organization, but continues to present the opportunity for venture-quality returns achieved through substantial revenue growth.

We also invest from time to time in buyouts or "PIPEs" (private investments in public equities), but when we do so it is because we perceive the opportunity as a "venture-like" opportunity where (i) we are taking on substantial risk because of the strategic and operational changes that need to be implemented but (ii) we can potentially achieve significant venture-quality returns via the classic venture approach, such as instilling a new strategic vision, enhancing the management team, developing and promoting new products and solutions, and through these means creating meaningful growth. In these instances, the legal structure of the entity is not so important to us as the venture profile of the opportunity. We note that it is rare to find a "venture-like" opportunity in a public company, and the amount we have invested in PIPEs since inception represents less than 2.5% of our total capital commitments under all funds.

It is rare for a venture firm to invest across as broad a spectrum of venture stages, as we do at Trident. However, because of the broad range of venture stages at which we invest, we believe we are uniquely positioned to appreciate what differentiates venture capital from private equity/buyout firms, including the different investment philosophies inherent in each, and the different mindset and culture in the venture capital world as compared to the private equity world.

Characteristics of Venture Capital

We believe that the principal difference in philosophy between a venture firm and a private equity firm is that a venture firm achieves returns primarily by (i) taking on and surmounting significant operational risks that stand in the way of potential success, such as uncertain markets, unproven technology and incomplete management teams and (ii) achieving meaningful company growth, which involves growing sales, generating profits, and creating jobs . In contrast, a private equity/buyout firm generally seeks to minimize risk and, while it certainly seeks to achieve company growth, structures its investment such that it can often achieve adequate returns solely by financial and company reengineering.

The Commission has articulated its views as to the character of venture capital. We agree with those attributes of venture capital highlighted by the Commission as they apply to the nature of an initial investment in a specific portfolio company and some but not all follow-on investments in the same company. In this regard, we agree that venture capital is characterized by: (i) the provision of capital to expand operations and business, and (ii) the provision of significant managerial assistance. We caution, however, that the definition of venture capital must focus solely on the character of the company at the time of the initial investment and the nature of the initial investment, and should not be based on the nature of the business as it may evolve over time or the nature of follow-on investments. For example, we urge the Commission to distinguish between leverage incurred as a prerequisite to a fund's initial investment in a portfolio company (a sign of a "private equity" investment rather than a venture investment) versus leverage secured in the ordinary course of operations to fund business expansion or leverage incurred as an ultimate means of liquidity (each of which is often the consequence of company growth).

Our specific comments are as follows:

Private Company Definition

The Commission proposes to define qualifying investments to require that at the time of each investment the portfolio company not be publicly traded. We agree with the Commission's selection of this criterion in lieu of other criteria such as size of company or number of employees, which we believe are potentially far too narrow and exclude many companies with the critical venture attribute of seeking substantial returns by taking on significant operating risks in the hope of achieving growth. We believe that the non-public criterion is an objective and meaningful criterion and is not likely to exclude a significant number of investments that are otherwise "venture-like" in nature. That said, it is appropriate to provide some leeway to a fund otherwise qualifying as a VCF permitting investment of a small portion of its capital in publicly traded companies. That is because there is a modest number of small public companies that present such risks to potential investors that they are too risky for typical public company investors. Venture-oriented investors are the most likely source of new capital to help those companies succeed and grow. We believe it is in the interests of the nation, and consistent with the intent of Congress to ensure that venture capital activity not be compromised, to permit investment in such companies by venture investors, to ensure the availability of capital to such companies and preserve jobs. Accordingly, we urge the Commission to permit a VCF to invest a small percentage of its total capital commitments in public companies. As will be discussed more fully below, we recommend that in the aggregate no more than 25% of a VCF's total capital commitments be permitted to be made in non-qualified investments.

We support the Commission's approach to follow-on investments, including the requirement that at the time of each follow-on investment the company remain a non-public company, provided that some modest amount of non-qualifying investments are permitted as highlighted above. It is quite rare for a venture capital fund to invest in a company as a private entity and then invest again after it is public. Trident has in fact done that, but only once. Accordingly, such rare follow-ons can be readily covered by the overall exemption for a small amount of non-qualifying investments.

Bridge Financings

The Commission has asked for comment as to whether a VCF includes by definition a fund that extends bridge loans to qualifying portfolio companies. We urge the Commission to permit such bridge loans, as they are an essential part of venture capital investing. Bridge loans are often necessary to carry a company through the time period in which it is seeking to raise new equity capital, when the fundraising process takes longer than expected. Bridge loans can also help a company postpone equity fundraising for a short period until it can achieve near term milestones that may be critical to raising additional capital or to achieving an acceptable investment valuation.

A critical component of a qualifying bridge loan should be the intent of the parties for the debt convert to equity upon a near-term investment round. In this regard, venture bridge loan documentation typically provides that the bridge loan will automatically convert into the same equity security issued in the next *bona fide* financing (whether at the same price per share or at an agreed upon discount). A *bona fide* financing is typically defined as an equity financing with an institutional investor or investors in which the company raises a specified minimum total financing.

We caution that the duration of a bridge loan not be defined as too short. In recent years it has often taken considerably longer than expected for a portfolio company to secure its next financing, and bridge loans have remained outstanding for up to a year or more. Accordingly, we believe that it is important that the intent be for the loan to convert to equity in the short term, but accommodation must be made for circumstances that extend the duration of the loan. We recommend that a bridge loan not be a disqualifying investment if (i) the bridge loan has an **initial** maturity of no more than 90 days (with any extension of the bridge loan not serving to disqualify the investment), and (ii) under the terms of the applicable instrument, upon the next *bona fide* financing the bridge loan will automatically convert into the same security issued in the new financing (whether at the same price per share or at an agreed upon discount), where (iii) a *bona fide* financing is an equity financing with an institutional investor or investors in which the company raises a specified minimum total financing.

Portfolio Company Leverage

We agree with the Commission's exclusion from the definition of a qualifying portfolio investment of companies that borrow in connection with a fund's investment, but we caution that (i) the focus of the test should be the incurrence of debt at or about the time of the initial investment in the portfolio company by the fund and (ii) some level of initial debt should be permitted that is modest relative to the amount of equity invested.

Incurring a meaningful level of debt at the time of an initial transaction is one of the hallmarks of private equity. Accordingly, a transaction in which an equity investment is leveraged by means of new debt should be a disqualifying investment. However, even venture-backed companies frequently incur and maintain some level of overall debt for working capital, equipment purchases and other purposes in the ordinary course of business. The Commission should take into account that some ordinary course borrowing may be incurred or renewed at or about the time of a venture investment. Accordingly, we urge the Commission to permit a portfolio company to incur some modest level of new debt at or about the time of any venture investment without that debt serving to disqualify the investment. We suggest that an overall level of debt that represents less than 25% of the total equity invested in the Company should not be considered the kind of leverage that poses risks to investors, and that such amount of debt therefore not disqualify an investment as a venture investment.

As noted, portfolio companies can borrow money in the ordinary course of business for many reasons and at any time. It is common for companies to finance growth through a combination of equity and debt. This is particularly obvious where a growing company reaches significant revenue levels - large numbers of still-private, venture backed companies have revenues over $100m, for example – that support debt, and yet overall growth is so rapid that the company also needs new equity financing. As we understand the Proposed Rules, if a VCF makes its initial investment in a portfolio company in an unlevered manner, and the company subsequently incurs debt, that will not disqualify the investment. We support this view and urge the Commission to maintain this approach.

Capital Used for Operating and Business Purposes

The Commission has proposed that at least 80 percent of each company's equity securities owned by a venture capital fund be acquired directly from such qualifying portfolio company and not from existing securityholders. We recommend that the threshold be set lower. To the Commission's own point that a portion of a venture capital firm's investment may be used to buy out founders or angels, we note the significant increase in angel investing in recent years, including the emergence of "superangel" investors. As companies rely more frequently on angel investors, and for more initial capital, the 80 percent test may be too high. If at least a majority of the capital invested by the VCF is invested directly into the company to help fund expansion of the business, that should be sufficiently indicative of the venture nature of the investment.

Non-Qualifying Investment Activity

As noted above, we recognize the need to provide to investment funds clear and objective guidelines as to what constitutes a qualifying venture investment and what qualifies a fund as a VCF exempt from registration under the Advisers Act. That said, there will be many companies seeking capital that present a risk profile consistent with a venture capital investment. These could include, for example, small public companies that need to change their management teams, strategy, product lineup, or business model. Those are risks that a venture investor is used to taking on, in exchange for significant growth potential. These could also include that small number of venture-backed companies (often backed by venture capital from the earliest seed stage) who have grown to considerable size without yet having gone public or been acquired. These companies are no longer startup companies.

They have considerable assets and start to take on the characteristics of large companies. They may, for example, engage in borrowing to fund acquisitions even as they are taking on additional equity financing. And yet they still may present the risks that make a venture-oriented investor the most likely source of additional capital. Moreover, existing investors – including VCFs – are always an important potential source of additional capital. If the entire class of venture investors used to making such investments are not able to invest in these companies for fear of triggering the need to register under the Advisers Act, these companies will suffer, with resultant loss of invested capital and individual jobs. Accordingly, we urge the Commission to permit a fund otherwise qualifying as a VCF to undertake non-qualifying investments to the extent of 25% of the capital committed to the fund.

In this regard, we are aware that the National Venture Capital Association (NVCA) has suggested an allowance of 15% of capital committed. We are members of the NVCA and support its activities on behalf of the venture industry as a whole. With due respect to the NVCA, however, their suggestion of a 15% limit is based primarily on the risk of "inadvertent" non-compliance. We believe it is appropriate to accommodate inadvertent non-compliance, for the reasons stated by the NVCA. However, the commentators from the NVCA do not speak on behalf of the minority of venture investors who invest across multiple stages, and are not as familiar with the kinds of investments highlighted above that compel investment from venture sources and yet may not meet the bright-line tests the Commission must adopt. Accordingly, we believe that a higher level of permitted non-qualifying investments is required. If 15% is the appropriate percentage for inadvertent non-compliance, then 25% is a very modest level of exemption for both inadvertently non-compliant activity and investment opportunities that warrant consideration by venture capital investors notwithstanding certain VCF non-qualifying attributes. Moreover, if 75% of a fund's investments are clearly qualifying VCF investments that is a strong indicator of the quality of the firm as a Venture Capital Fund.

We thank the Commission for its attention to our comments. We are happy to provide further comment or dialogue at the Commission's request.

Very truly yours,
Trident Capital, Inc.

Howard S. Zeprun
Chief Administrative Officer and General Counsel