



24 January 2011

Ms Elizabeth Murphy
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
UNITED STATES OF AMERICA

Dear Ms Murphy

Exemptions for Advisers to Venture Capital Funds, Private Fund Advisors with Less Than \$150 Million in Assets Under Management, and Foreign Private Advisors – File No: S7 – 37 -10

We submit this comment letter in connection with the rules (*Proposed Rules*) proposed by the Securities and Exchange Commission (*SEC*) in IA Release No. 3111 (*Release*) concerning certain exemptions from investment adviser registration under the Investment Advisers Act of 1940 (*Act*), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (*Dodd-Frank Act*).

In particular we submit this letter in support of an interpretation of the exemption of private fund advisers with less than \$150 million under management in the US. The exemption will avoid unnecessary and duplicative regulatory review of non-US advisers such as MAp Airports Limited (*MAPL*) that are already subject to extensive regulation in their domiciliary countries which impose regulatory standards equivalent to or higher than those imposed under the Act.

In this letter, we provide some detail about the regulatory framework already imposed on MAPL in our home jurisdiction, Australia. We offer this background in support of an approach by the SEC that acknowledges the limited US interest in the non-US advisory activity of non-US advisers, in particular those such as MAPL that are already subject to extensive equivalent regulation.

1. Background

MAPL holds an Australian Financial Services licence (*AFSL*) and is regulated by the Australian Securities & Investments Commission (*ASIC*). MAPL is the investment adviser for a fund called MAp which is listed on the Australian Securities Exchange (*ASX*). MAp securities have been offered to US investors in private offerings in reliance on the private fund exemptions under the Investment Company Act of 1940. MAPL is wholly owned by MAp and is therefore regarded as an internally managed fund because there is no external manager. MAPL does not promote investments in other financial products to MAp investors. Despite this, MAPL is required to hold an AFSL.

MAp has a market capitalisation in excess of US\$5 billion with 35,000 investors. MAp has substantial investments in Sydney, Brussels and Copenhagen airports. Approximately 25% of MAp's capital is owned by US pension funds and other US institutional investors.

2. Potential application of Dodd-Frank Act to MAp

MAp does not have a place of business in the United States, but would not appear eligible to rely on the private adviser exemption created by the Dodd-Frank Act because it is unable to meet certain of its other requirements. For example, it has more than 15 investors in the United States.

We are supportive of an interpretation of the registration exemption for private fund advisers managing less than \$150 million in the US that would make the exemption available to advisers such as MAPL that manage less than \$150 million from US offices (***\$150 million US management exemption***). Non-US advisers should be permitted to rely on this exemption if their only US clients are private funds, without limitation on the types of non-US clients they advise from outside of the US. If the fund is not managed in the US, the non-US regulator in the jurisdiction in which the management activity is occurring has the primary interest in the advisory activity (and the best perspective to assess the activity). The availability of this exemption for MAPL and other similarly situated non-US advisers should be clarified in the final release. If there is uncertainty, there would be unnecessary registrations by non-US advisers already registered and regulated by the SEC's counterparts in their home countries. We think this statement by the SEC in connection with the private adviser exemption in the Release is also relevant to the interpretation of this exemption: "the non-U.S. activities of non-U.S. advisers are less likely to implicate U.S. regulatory interests" as well as "consideration of general principles of international comity".

3. Support for exempt but reporting private adviser proposal

We support an interpretation of the \$150 million US management exemption clarified as described above that would permit non-US advisers to rely upon it, subject to limited reporting and recordkeeping obligations.

We support this proposal because:

- (a) MAp's investors receive extensive information from MAp already – it would not be efficient or timely for our investors to obtain additional reporting about MAp from the SEC.
- (b) MAp's existing risk and compliance regime is robust as a consequence of its regulatory obligations under the Corporations Act, the regulatory oversight provided by ASIC and the disclosure obligations imposed by the ASX Listing Rules.
- (c) Additional disclosure to the SEC will duplicate those of other regulators with no corresponding reduction in risk to investors, but will result in additional costs to investors with limited benefit given the regulatory oversight already provided by ASIC and the difficulty and cost for the SEC to undertake enforcement actions against foreign registered entities.

The following paragraphs provide factual support for the comments in paragraphs 3(a) – (c).

- (i) As a listed entity in Australia, MAp is subject to a continuous disclosure scheme under the ASX Listing Rules pursuant to which it is required to disclose all price sensitive information immediately upon becoming aware of the information. All disclosed information is accessible free of charge via the ASX website and it is republished on the MAp website. MAp reports far more information than would typically be made available to investors in unlisted managed funds.
- (ii) As a listed entity, MAp is also required to lodge a number of periodic disclosures under the ASX Listing Rules including half year and full year financial reports and an annual report. Again these are publicly available and easily accessible.

- (iii) As a listed entity, MAp is required to report on its corporate governance framework in its annual report. The ASX corporate governance guidelines mandate that audit and risk committees must be comprised of a majority of independent directors.
- (iv) MAPL as MAp's manager is required to hold an AFSL. An AFSL is only granted by ASIC if the manager can demonstrate its ability to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly. This includes:
- Demonstration of organisational competency including identified responsible managers (with police checks and professional references)
 - Demonstration of capability to provide relevant financial services
 - Adequate conflict management arrangements
 - Financial adequacy and minimum insurance requirements
 - Compliance and risk management systems to ensure compliance with the conditions on the licence and compliance with financial services laws
 - Adequate office and IT systems and disaster recovery plans
 - Ongoing staff training requirements
 - Complaints monitoring and internal and external dispute resolution systems
 - Appointment of a registered auditor
 - Audited financial reports that are lodged with ASIC and are publicly available.
- (v) The trusts comprised in MAp are each required to have a compliance plan which is registered with ASIC provided it satisfies content requirements contained in the Corporations Act. The compliance plan must set out the arrangements for ensuring compliance with the Corporations Act and the constituent documents of the fund.
- Monitoring of the compliance plan is undertaken by a compliance committee which must have a majority of members who are independent from the business. MAp's compliance committee meets three times a year to monitor compliance with the compliance plan. The compliance committee must report to ASIC any breach of the Corporations Act or the constituent documents of the fund that have not been reported by management.
- A registered auditor must provide an annual audit of compliance with the compliance plan and the audit report is lodged with ASIC and is publicly available.
- (vi) The Corporations Act requires MAPL and its directors and employees to act in the best interests of investors and to treat investors equally. These obligations are in addition to the usual director and trustee duties that exist both at common law and which are codified in the Corporations Act. Fund property is also required to be kept separately from that of the manager.
- (vii) Breaches of the Corporations Act that are likely to have a material adverse effect on the interests of investors must be reported to ASIC.
- (viii) ASIC has broad powers to investigate MAPL's office and gather information including requiring production of books and records from both MAp and its advisers.

We submit that there are a number of additional ASX listed managed funds which would benefit from a more limited information disclosure requirement under the Dodd-Frank Act.

Given the time difference with Australia, please contact me by email if you require further information.

MAp Airports Limited

Yours sincerely

Electronic signature used

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