January 24, 2011

VIA E-Mail

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: *Release No. IA-3111; File No. S7-37-10, Exemptions for Advisers to Venture Capital Funds (the "VC Fund Exemption"), Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers (the "Proposed Rules")*

Dear Ms. Murphy:

We appreciate the opportunity to submit comments regarding the SEC's proposed "venture capital fund" definition ("VC Fund") in connection with the rules that would implement new exemptions from the registration requirements of the Investment Advisers Act of 1940, enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Advanced Technology Ventures ("ATV") is a national venture capital firm that has been helping to create and grow businesses for over thirty years. We primarily invest in early-stage and emerging growth technology companies. Under the current formulation of the SEC's rules, we would not be considered a "VC Fund," as defined. Although the significant majority of our investment activities would fall within the proposed limitations, there are certain activities that are, at times, unavoidable in our business that would disqualify ATV from using the VC Fund Exemption under the current Proposed Rules. We request that the rules allow for ordinary, financial activities of a venture firm, as described in more detail below.

Advanced Technology Ventures Background Information

ATV has offices in Palo Alto, CA and Waltham, MA. We currently have 17 employees. Eight of those employees are investing professionals and the remaining employees provide administrative and operations support. Our funds invest primarily in three core technology markets – IT, Healthcare and Cleantech. ATV has raised more than $1.6 billion to fund new ideas and help create market leaders. We've established a legacy of partnering with entrepreneurial teams at the forefront of technology innovation. We typically expect to invest $5 to $20 million in our portfolio companies and own a significant, but non-controlling, interest in these companies, usually in the 5% to 30% range. However, for certain promising companies, we may commit more capital to maintain or increase our ownership. Our goal is to build companies that will enjoy long-term, sustainable growth. Over our three decades in business, the companies we have invested in have added thousands of jobs to the American economy.

We are currently investing out of our 8th fund, which has approximately $300 million in capital commitments. Since inception, across all of our core funds, we have invested in over 200 companies, many of which have gone public or were acquired for in excess of $100 million. We have a solid reputation of playing an important leadership role in our investments, and have Board seats at most of our portfolio companies ("PCs").

We also have an impressive list of Limited Partners ("LPs"). Our current fund has 30 LPs including well respected university endowments, pension funds of Fortune 100 companies and various state pension funds, as well as reputable fund of funds managers. The majority of our LPs have been investing with us over multiple funds.

Proposed Modifications to the definition of Venture Capital Fund

We appreciate the amount of time the SEC has put in and the amount of research done, to properly define what it means to be a VC Fund, and understand the difficulty of creating a definition that is not overly broad. However, we are concerned about some of the details of the proposed definition that may be more restrictive than intended, as we describe in more detail below. In our opinion, if some necessary changes are not made to the Proposed Rules, neither ATV, nor any of the traditional venture funds that we co-invest with, will qualify as a VC Fund.

Permissible non-qualifying investments or activity.

The VC Fund Exemption should provide for a permissible level of non-qualifying activity, not to exceed 20% of a VC Fund's capital commitments. We fear that many venture funds, including ATV, could unwittingly participate in a non-qualifying activity or could be in a situation where it is in the best interests of the fund's limited partners not to comply with the strict definition of a VC Fund. We therefore request that the rules allow for a reasonable margin of permissible non-qualifying activity.

Qualified Portfolio Company ("QPC") borrowing limits.

We request that the SEC clarify that QPC borrowing will be treated as "in connection with" a VC Fund investment only if (i) the proceeds of such borrowing are required by the fund to be used to buy out shareholder stock or return capital to the fund; or (ii) the loan were extended to the QPC by the VC Fund; or (iii) the QPC borrowing were a condition of a contractual obligation of the VC Fund.

It is not uncommon for an early stage VC, like ATV, to be in a position of having to support a PC through a later stage round in which a PE/later-stage type fund steps in to lead the investment round and invests in the form of both debt and equity. Typically, ATV will invest in a PCs earlier preferred stock rounds, and when the company finds it still needs more capital to get to a sale or IPO, it is not unusual for a later-stage investor to lead the financing, often insisting on investing in the form of both debt and equity. ATV would participate in this round to maintain our percentage ownership, even though we would not invest in the form of debt. Therefore, we propose that the definitions be modified to permit leverage in connection with equity investment, so long as the firm that is seeking to be classified as a VC Fund is not the one mandating or providing the debt instrument in connection with its equity investment.

Secondary transactions.

ATV agrees that VC Funds typically do not acquire portfolio company securities from existing shareholders. Because of the varying nature of founder/angel participation in different types of venture-backed companies, however, we believe that the 20% secondary acquisition limitation should apply to the VC Fund as a whole (rather than on a company-by-company basis). This would mean that up to 20% of the VC Fund's capital commitments could be used to acquire stock from existing investors of the VC Fund's various portfolio companies.

Limits on QPC redemptions, exchanges, repurchases and distributions.

Under the Proposed Rules, a QPC is not permitted to redeem investors in connection with a VC Fund investment, yet a VC Fund can directly acquire stock of existing investors subject to the limitations described above.

Given that the end result of a direct versus indirect secondary stock acquisition is similar, ATV does not believe that increased systemic risk or investor protection risk is implicated. Accordingly, we request that the Commission apply the limitations described above on a combined basis, to both direct and indirect acquisitions.

ATV further requests that the language of the Proposed Regulations be clarified so that QPC redemptions, exchanges, repurchases or distributions are "in connection with" a VC Fund investment only if such QPC action was a condition of a contractual obligation of the VC Fund. In addition, the exchange/conversion by a VC Fund of a permissible bridge note should be expressly permitted. Further, we believe that permissible secondary stock acquisitions and exchanges/conversions of bridge loans (as requested above) should not be subject to this provision.

Public company investments.

ATV believes that follow-on investments in portfolio companies after they become public companies should qualify as permissible fund investments provided the VC Fund continues to hold at least a majority of its original investments made earlier in privately acquired equity securities. This type of follow-on investment is not uncommon with our healthcare companies that sometimes become public companies prior to revenue generation. These companies often need the support of their existing investor base to participate in financing the company until they achieve revenue, similar to the support provided while they were still privately held.

In addition, ATV agrees with the Commission that a VC Fund's public company holdings that are permissible under the Proposed Rules should not be limited in terms of time or amount.

Exit opportunities.

In addition, ATV believes that consideration received from an acquiring company in the form of acquiring company stock in a bona fide acquisition intended to provide liquidity to VC Funds and their investors should not disqualify a private fund from VC Fund status.

Bridge loans.

ATV requests that non-convertible bridge loans to portfolio companies that are of a limited duration should qualify as permissible fund investments. Bridge loans are sometimes required to support a company to a sale or to a new round of financing in which the existing investors may not be fully participating. Restricting the ability of VC Funds to provide this necessary "bridge" of cash may force portfolio companies to seek out less favorable terms of financing.

Private funds and other pooled investment vehicles.

ATV funds are restricted by their respective limited partnership agreements from investing in the securities of any other pooled investment vehicle with respect to which any person is entitled to a share of profits disproportionate to its share of the contributed capital of the vehicle, without the approval of the fund's board of advisors (typically made up of representatives of the largest limited partners); provided, however, that the fund is not prevented from investing in operating businesses through a holding company structure or in special purpose partnerships or other comparable entities. This restrictive provision protects the limited partners of ATV, while allowing ATV to participate in arrangements that are advantageous to the Fund and its limited partners, including the following: (1) a technology incubator that creates and spins out start-ups; and (2) an LLC whose other members (in addition to our fund) are well-connected technology entrepreneurs who help us identify promising companies and then invest in them with us, side by side, through this LLC.

Accordingly, we request that it be permissible to invest in an entity that is not an operating company so long as any of the following is true: (1) the entity does not charge any carried interest to the VC Fund or its LPs (i.e., the entity in question is used simply for structural reasons); (2) the entity itself could qualify as a VC Fund; or (3) no more than 20% of the VC Fund's committed capital is invested in such flow-through entities.

Managerial Assistance and Control.

ATV requests confirmation that a "management rights" letter received by a VC Fund from a portfolio company for purposes of the "venture capital operating company" (VCOC) rules under ERISA would qualify as an offer of managerial assistance.

VC Fund Redemptions.

ATV agrees that VC Fund investors should be permitted redemption rights only in extraordinary circumstances, usually based on legal, tax or regulatory restrictions (most commonly, under ERISA) or written investor policies. ATV does not believe that there should be a minimum period of time before even extraordinary redemptions may be permitted since the extraordinary event is generally not controllable by the investor and, if a strict lock-up period were required, it would result in non-compliance by that investor.

Again, we appreciate the time and effort that the SEC put into the proposed "venture capital fund" definition in connection with the rules that would implement new exemptions from the registration requirements of the Investment Advisers Act of 1940. However, as discussed above, we believe that the SEC definition does not take into account certain venture capital fund practices that are routinely carried out that are currently supported by our limited partners. We hope this letter has been informative and helpful in explaining our typical investment activities. We would welcome the opportunity to discuss this matter further.

Sincerely,

Steve Baloff
Mike Carusi
Jean George
Tom Rodgers
Bob Hower
Bill Wiberg

On behalf of Advanced Technology Ventures