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VIA E-MAIL

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Attention: Elizabeth M. Murphy, Secretary

Comments to Proposed Rule – File No. S7-37-10

Ladies and Gentlemen:

This letter is written in response to the Commission's request for comments regarding Release No. IA-3111 (File No. S7-37-10) and more specifically regarding the scope of the "private fund exemption" under proposed Rule 203(m)-1. We urge the Commission to allow advisers who have their principal (and often only) place of business in the United States to be able to treat a fund organized in a jurisdiction other than the United States (an "Off-shore Fund"), and managed in whole or in part by them, as a "private fund" for purposes of the "private fund exemption"[1] under circumstances where the Off-shore Fund issuer (i) does not offer its shares to persons in the United States, and (ii) meets the numerical limitations or the "qualified purchaser" requirements of Sections 3(c)(1) or 3(c)(7) of the Investment Company Act (the "ICA").

There exist a number of closely-held U.S. entities ("Advisers") that provide certain investment management services to Off-shore Funds which are not offered for sale in the United States. Such Off-shore Funds typically either have fewer than 100 shareholders or have only "qualified purchasers" as shareholders. The Advisers providing such services to the Off-shore Funds typically have less than $150 million of assets under management in the aggregate. For a variety of personal and professional reasons, the principals of these Advisers prefer to live and work in the United States where they can best service these Off-shore Funds. In fact, certain Advisers also provide investment advice not only to Off-shore Funds but also to funds organized in a US jurisdiction (an "On-shore Fund"). Those On-shore Funds would qualify as a "private fund" assuming the other requirements of the definition of the term "private fund" are satisfied, and the Advisers would therefore qualify for the "private fund exemption" under Rule 203(m)-1, if the other requirements of that Rule were satisfied. It would present a hardship to require those Advisers to register as an investment adviser simply to enable them to provide advice to an Off-shore Fund.

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[1] Although this comment letter addresses the scope of the "private fund exemption" under proposed Rule 203(m)-1, the comments apply to "private funds" generally, and would also be applicable to "venture capital funds" under proposed rule 203(l)-1.

It would appear from the comments made at the end of Section II.A.8 and in footnote 175 of Release No. IA-3111 that a "private fund" might not include a fund organized in a jurisdiction other than the United States (*i.e.*, an Off-shore Fund). Therefore, such Advisers would be denied the ability to rely on the "private fund exemption", even though the Off-shore Fund satisfied the numerical limitations or "qualified purchaser" requirements of Sections 3(c)(1) or 3(c)(7) of the ICA, with the result that, absent any other exemption, such Advisers would be required to register as investment advisers with the Commission or the relevant state authority.[2] This result would obtain even though the "private fund exemption" would have been available to them had they advised funds organized in the United States (*i.e.*, an On-shore Fund) whose shareholders met the numerical limitations or "qualified purchaser" requirements of Sections 3(c)(1) or 3(c)(7) of the ICA .

That result would be anomalous. A US-based adviser to an Off-shore Fund should not be treated differently than a US-based adviser to an On-shore Fund simply because the Off-shore Fund does not market its securities in the United States. Indeed, there would be less reason for Commission oversight since typically no offering of such Off-shore Fund's securities are made to persons in the United States. Moreover, there is no apparent policy reason for requiring registration as an investment adviser of a U.S.-based adviser to an Off-shore Fund, when that adviser could claim the "private fund exemption" for being the adviser to an On-shore Fund, assuming the other requirements of the exemption are met.

The term "private fund" should be construed not to exclude funds that are organized in a jurisdiction other than the United States and that would be "private funds" had they been organized in the United States. We hope that the Commission will make this clear when it issues its final release adopting these rules.

We thank the Commission for its attention to its comment.

Very truly yours,

FOX HORAN & CAMERINI LLP

By: Patrick L. Ferriere

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[2] Registration with the Commission would be more likely in view of the numerical client and other exemptions from registration available under state laws and rules regulating investment advisers. *See, e.g.,* N.Y. Gen. Bus. Law §359eee, and 13 NYCRR 11.13.