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January 24, 2011

VIA ELECTRONIC DELIVERY

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

Re: Foreign Asset Manager Comments on:

File Number S7-37-10 (Release No. IA-3111: Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets Under Management, and Foreign Private Advisers); and

File No. S7-36-10 (Release No. IA-3110: Rules Implementing Amendments to the Investment Advisers Act of 1940)

Dear Ms. Murphy:

We respectfully submit this letter on behalf of a large asset management group headquartered outside the United States (the "Foreign Asset Manager")[1] in response to a request by the U.S. Securities and Exchange Commission (the "Commission" or "SEC") for comments regarding the above-referenced releases implementing Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, known as the "Private Fund Investment Advisers Registration Act of 2010" ("Advisers Registration Act").[2]

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[1] Dechert LLP is an international law firm with a wide-ranging financial services practice that serves clients in the United States and abroad. We serve as counsel to the Foreign Asset Manager with regard to the matters covered in the releases. The views expressed in this letter are views being expressed on behalf of our client. Our law firm is also submitting other comment letters which either reflect the views of other clients or our own views as set forth in such letters.

[2] The proposed rules were presented in the two above-referenced releases. Release No. IA-3110 (File No. S7-36-10; *Rules Implementing Amendments to the Investment Advisers Act of 1940*) is referenced herein as the "Implementing Release"; and Release No. IA-3111 (File No. S7-37-10; *Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150*

US Austin Boston Charlotte Hartford New York Orange County Philadelphia Princeton San Francisco Silicon Valley Washington DC
EUROPE Brussels Dublin London Luxembourg Moscow Munich Paris ASIA Beijing Hong Kong

Of particular interest to the Foreign Asset Manager are the provisions of the Advisers Registration Act that amend the U.S. Investment Advisers Act of 1940 (the "Advisers Act") and may require investment advisers, wherever located, to register with the Commission even if they already are subject to regulation in their home jurisdictions and only have very limited contacts with U.S. investors and U.S. markets. Of particular concern to the Foreign Asset Manager is the potential extraterritorial application of the Advisers Registration Act to its global group and thus the potential difficulties of harmonizing the requirements of the Advisers Act and those of the local regulatory regimes to which the various entities within the group are already subject, and the additional compliance costs which would be generated by the Advisers Registration Act and such harmonization effort.

The Foreign Asset Manager recognizes and supports the efforts made by the Commission and its staff (i) to apply pragmatic limits to the extraterritorial application of U.S. rules and (ii) to avoid interfering with the regulatory schemes of other countries with which both U.S. and foreign investment managers also must comply. The Foreign Asset Manager is making several comments to the proposed rules that are intended to help the Commission and its Staff to continue this path, consistently with Congress's intent and the protection of U.S. markets and investors.

I. BACKGROUND

A. The Foreign Asset Manager

The Foreign Asset Manager's group is one of the largest asset managers worldwide. The group is led by a company that is approved by its national securities regulator and subject to that regulator's continuous oversight and jurisdiction. The Foreign Asset Manager conducts business directly as well as through subsidiaries and branches, representative offices and strategic partnerships throughout the world. The Foreign Asset Manager's group provides investment advice worldwide to investment funds with various investment strategies that are sold to retail and institutional investors. It also provides investment advice directly to individuals and institutions through other managed accounts. Directly or through its subsidiaries and partners, the Foreign Asset Manager has management teams operating in the major financial centers around the globe, including in the United States. In the United States, the Foreign Asset Manager's group is present through SEC-registered subsidiaries and partnerships.

Million in Assets Under Management, and Foreign Private Advisers) is referenced herein as the ("Exemptions Release").

Most of the Foreign Asset Manager's non-U.S. subsidiaries, branches, offices and partnerships already are subject to regulation and oversight by the regulators of the jurisdictions where they are located.

B. Impact of the Advisers Registration Act

Several wholly-owned subsidiaries of the Foreign Asset Manager (either located in the United States or elsewhere in the world) are registered with the Commission under the Advisers Act. Other subsidiaries also may render investment advice to U.S. persons directly or through U.S. and non-U.S. investment funds without registration with the Commission, in accordance with long-standing provisions of the Advisers Act and notably current Section 203(b)(3) of the Advisers Act (the "private adviser exemption"). In addition, the Foreign Asset Manager's SEC-registered investment advisers may rely on resources, such as portfolio management personnel, of other entities in the group based on guidance provided by the Commission Staff in various no-action letters (the "Participating Affiliate Letters").[3]

The Foreign Asset Manager has carefully reviewed the relevant provisions of the Advisers Registration Act and the text of the proposed rules in order to evaluate the impact of the proposed rules on its operations and to ensure continuing compliance with U.S. as well as foreign laws and regulations. The Advisers Registration Act and the final rules will require the Foreign Asset Manager to reevaluate its approach to the U.S. market in light of the possibility that additional entities within its group will be required to register under the Advisers Act, and in light of the increased cost and compliance burden such registrations would entail. The Foreign Asset Manager believes that most other global asset management firms based outside the United States face the same situation. For this reason, it believes that the Commission should carefully consider the balance between the legitimate interests of the United States in regulating certain activities of these global firms and the potential to extend unnecessarily the application of U.S. rules to foreign conduct. Otherwise, a large burden will be imposed on advisers, their clients and the Commission (which will have to extend its limited resources to oversee a large number of newly registered or "exempt reporting advisers," with little benefit, if any, to U.S. investors). This burden could cause a reduced presence of foreign advisers in the United States, directly or from their U.S. subsidiaries, which would deprive U.S. investors of valuable services and investment options.

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[3] Most notably: *Royal Bank of Canada*, SEC No-Action Letter (June 3, 1998); *ABN AMRO Bank, N.V.*, SEC No-Action Letter (Jul. 7, 1997); *Murray Johnstone Holdings Limited*, SEC No-Action Letter (Oct. 7, 1994); *Kleinwort Benson Investment Management Limited*, SEC No-Action Letter (Dec. 15, 1993); *Mercury Asset Management plc*, SEC No-Action Letter (Apr. 16, 1993); *Uniao de Bancos de Brasileiros S.A.*, SEC No-Action Letter (Jul. 28, 1992) ("*Unibanco*").

II. COMMENTS

As a truly global asset management group, the Foreign Asset Manager has a unique experience with structuring a global asset management organization that must comply with the laws and regulations of multiple countries around the world. It understands the Commission's challenges inherent in regulating global providers of financial services and the difficult balancing necessary to accommodate the legitimate concerns of foreign nations about unwarranted extraterritorial overreach while still protecting U.S. markets and investors. Again, the Foreign Asset Manager recognizes that the Commission and its Staff have sought to take a constructive approach in the proposed rules and hopes that the following comments will assist the Commission and its Staff to finalize rules that continue this path.

A. Exemptions Release – "Advisory Affiliates"

In the Exemptions Release, the Commission requested comments on the application of the proposed rules to "advisory affiliates" (see section II.D).

1. Global Advisers Need the Flexibility to Rely on Different Exemptions

Global asset management groups (U.S. as well as non-U.S. groups) render investment advisory services through separate entities. Each entity may have its own asset management specialties or may focus on different client bases in different areas of the world. Each has to comply with local regulatory regimes. Also, each has to consider the application of the Advisers Registration Act to its activities.

As a general matter, each advisory entity should be able to consider independently its registration obligations as well as the exemptions upon which it may rely based on the facts and circumstances, and recognizing that this approach cannot be used to do indirectly what cannot be done directly (as provided under Section 208(d) of the Advisers Act). Based on these principles, the Foreign Asset Manager believes that the Commission would greatly assist global asset management groups in indicating explicitly when it adopts its final rules that:

- Separate advisory entities that exist for *bona fide* business reasons should be able to rely on separate available exemptions (and the Commission should explicitly acknowledge that the positions of the Commission Staff set forth in the Staff's 1981 *Richard Ellis* letter are excessively strict and do not constitute the only way to create separate entities – see discussion below).

- An SEC-registered adviser should be able to draw upon the resources of its affiliates following the guidance provided in the Participating Affiliate Letters.

- Participating affiliates relying on the Participating Affiliate Letters should be able to rely on exemptions from registration with regard to their own businesses (and could, as a consequence, separately be "foreign private advisers" or "exempt reporting advisers" as those terms are used in the releases).

These clarifications, which the Foreign Asset Manager believes are fully consistent with (i) the Advisers Registration Act, (ii) the proposed rules and (iii) prior Commission and Staff guidance, would permit global asset managers to preserve their existing group structures and to allow each advisory entity within the group to consider its SEC registration obligations.

For example, an SEC-registered asset manager could continue to have access to resources from a second entity within the group based on the Participating Affiliate Letters while that second entity could determine that it falls within the "foreign private adviser exemption," or the "private fund adviser exemption" (and is thus an "exempt reporting adviser" in that case), based on a review of its own advisory business.

2. Clarification of Precedents

In the Exemptions Release, the Commission noted that an adviser with advisory affiliates could encounter interpretive issues as to whether it may rely on any of the exemptions without taking into account the activities of its affiliates. It further noted that an adviser might have advisory affiliates that are registered or that provide advisory services in a manner inconsistent with an exemption on which the adviser seeks to rely (section II.D). In a footnote (footnote 270) discussing this issue and noting that the existence of separate legal entities may not be sufficient to avoid integration of affiliated entities (thus preventing the use of separate exemptions by each entity), the Commission refers to its Staff's 1981 *Richard Ellis* letter.

The Foreign Asset Manager respectfully notes that the conditions set forth in *Richard Ellis* are excessively strict. Under *Richard Ellis*, an advisory entity would avoid integration with its parent company only where the subsidiary (1) has a board or similar governance buffer the majority of the members of which are independent of the parent, (2) has advisory personnel who are not engaged in the parent's advisory business, (3) makes investment decisions independent from the parent, (4) keeps its investment advice confidential until communicated with the client, and certain other requirements are met. These conditions are no longer adapted to today's global asset management groups.[4]

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[4] In addition, the Foreign Asset Manager respectfully notes that the Participating Affiliate Letters were issued by the Staff after the Richard Ellis letter as an alternative approach of compliance with the Advisers Act within a global group and recognizing that the Richard Ellis conditions were

The Foreign Asset Manager submits that a return to the *Richard Ellis* conditions would result in the best of a global adviser's personnel, information and abilities no longer being available to U.S. persons. Accordingly, the Foreign Asset Manager respectfully submits that the Commission should indicate that the guidance set forth in *Richard Ellis* is not the only way to create independent affiliates.

In addition, the Foreign Asset Manager believes that the Commission should clarify that this reference to *Richard Ellis* is not intended to question the ongoing validity of the guidance set forth in the Participating Affiliate Letters, which would likely cause global asset management groups to reconsider their participating affiliate arrangements (see discussion below). The Foreign Asset Manager stresses that the ability to rely on such arrangements is critical.

3. Global Advisers Need to Continue to Rely on the Participating Affiliates Letters

The Foreign Asset Manager respectfully notes that the Participating Affiliate Letters have permitted global investment managers to register with the Commission the entities within the group that provide investment advice directly to U.S. clients while drawing upon certain investment management resources and expertise within the group (from "participating affiliates") without causing all advisory affiliates to register with the Commission.

This approach adequately protects U.S. investors because the participating affiliates and the individuals involved in providing advice to U.S. persons through these arrangements must comply with strict conditions set forth in the letters (which incorporate the relevant provisions of the Advisers Act and rules thereunder). This approach affords protection to U.S. investors while providing certain limits to U.S. rules, resulting in substantial cost savings (ultimately to the

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difficult to follow. In *Unibanco*, the Staff observed that: "[w]hile the *Richard Ellis* conditions have provided a framework that permits foreign advisers to offer advice to United States clients, many foreign advisers find it difficult to operate under these conditions. For example, foreign advisers often have been unwilling to dedicate their most senior personnel solely to a United States-registered subsidiary. United States clients therefore may find it difficult to gain access to the services of the adviser's most experienced employees." The Staff further explained *in Unibanco* that: this caused the Division of Investment Management to reexamine "its interpretation of the reach of the Advisers Act [and] conclude[] that the policies and purposes of the Advisers Act, coupled with . . . the conduct and effects tests . . . lead to the conclusion that a more flexible approach is appropriate"; and that this more flexible approach was intended to "allow non-United States advisers greater flexibility than permitted under Richard Ellis in organizing United States-registered subsidiaries."

benefit of clients and investors) and helps minimize potential conflicts with the regulatory regimes that apply to foreign investment advisers in their respective jurisdictions.

The benefits of the approach described in the Participating Affiliates Letters include:

- This approach generally avoids applying U.S. laws to a participating affiliate's non-U.S. clients.

- This approach permits international asset management groups to structure their businesses in order to comply with both the U.S. and foreign legal regimes to which they are subject.

- This approach permits international firms to preserve existing business structures and would lessen the need for foreign advisers to consider whether to commit significant resources to the U.S. market.

- It permits U.S. investors to have access to SEC-registered investment advisers that draw on the resources and expertise of a global asset management group.

The Foreign Asset Manager believes that continuation of the approach articulated in the Participating Affiliates Letters should be explicitly endorsed by the SEC when it adopts final rules implementing the Advisers Registration Act.

B. Exemptions Release – Changes Need to be Made to Avoid Inadvertent Application of the Advisers Registration Act

Foreign fund advisers often manage foreign investment funds that are subject to regulations in foreign jurisdictions and sold by third parties that the advisers do not control. Local laws and fund documents may prevent prohibitions on additional investments or forced redemptions. Given the global mobility of today's fund investors, it simply is not possible to monitor and prevent additional fund investments by investors who started investing in a fund while residing outside the United States and later moved into the United States (thus becoming "U.S. persons" for purposes of the proposed rules).

The Commission and its Staff should be aware that an inadequate interpretation of the term "private fund" for purposes of all of the exemptions, or of the term "in the United States," for purposes of the proposed foreign private adviser rule, would have undesired consequences on foreign advisers to investment funds, and notably advisers to foreign retail investment funds (such as UCITS funds) because it would essentially cause a foreign investment adviser to lose the availability of the "foreign private adviser exemption" or cause it to become an "exempt reporting

adviser" solely as a result of the actions of investors who are outside the control of the investment adviser.

1. *Not All Foreign Funds with "U.S. persons" as Investors Should be Treated as "Private Funds" for Purposes of the Exemptions and the Rules.*

The Foreign Asset Manager respectfully submits that it is impossible to control the actions of all investors and that (i) some U.S. investors could invest in foreign investment funds (e.g. through a stock exchange or foreign retail distribution channels), or (ii) foreign investors could move into the United States and make additional investments in foreign funds they already own despite reasonable steps taken by the investment adviser to prevent U.S. persons from investing in its funds.

If the Commission or its Staff were to consider that a foreign investment fund would become a "private fund" as a result of these actions, which are completely outside the control of the fund adviser, then it is very likely that a large number of foreign investment funds, and notably foreign retail funds (such as European UCITS) would be treated as "private funds." This likely would, in turn, cause a very large number of foreign advisers to lose the availability of the exemptions provided by the Advisers Registration Act. The Foreign Asset Manager strongly believes that such result is not what Congress contemplated in adopting the Advisers Registration Act.

In addition, the Foreign Asset Manager believes that such a result would result in very large costs to both the Commission and the asset management industry (as many more advisers would need to register with the Commission) that are not currently contemplated in the releases, and that the limited resources of the Commission should not be used to monitor advisers that do not cause concerns to U.S. investors at large or the U.S. markets.

The Foreign Asset Manager thus respectfully invites the Commission to adopt rules or provide guidance that provide that foreign investment funds that have U.S. persons as investors as a result of the actions of the investors independent of the actions of the adviser (and despite reasonable steps taken to avoid such investments) should not be treated as "private funds" for purposes of the Advisers Registration Act and the rules thereunder.[5]

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[5] The Foreign Asset Manager is aware that the Commission Staff has considered somewhat comparable facts in the context of interpreting Section 7(d) of the Investment Company Act of 1940 in its 1996 *Investment Funds Institute of Canada* letter. The Foreign Asset Manager notes, however, that such guidance is limited in scope (for example, it does not explicitly permit additional unsolicited purchases of additional securities in an investment fund after a foreign fund investor moves into the U.S.). The Foreign Asset Manager thus believes that any rules or

2. The Definition of "Unites States" Person For Purposes of the Foreign Private Adviser Exemption Would Need to be Revised

Proposed rule 202(a)(30)-1(c)(2) (i.e., the "foreign private adviser" rule) defines "in the United States" generally by incorporating the definition of a "U.S. person" and "United States" in Regulation S under the Securities Act of 1933. The same definition is used in other proposed rules. This proposed approach has the benefit of relying on existing guidance that is generally used by investment advisers in structuring the offerings of investment products outside the United States. The Foreign Asset Manager supports the Commission for using a territorial approach to determine what "in the United States" means in the Advisers Registration Act.

The Foreign Asset Manager notes that proposed rule 202(a)(30)-1(c)(2) includes a "Note to paragraph (c)(2)(i)" that specifies that a person that currently is in the United States does not need to be treated as "in the United States" for purposes of the rule if the person was not "in the United States" at the time of becoming a client or, in the case of an investor in a private fund, at the time the investor acquires the securities issued by the fund. The note provides very helpful relief in the case of direct advisory clients at a time when advisory clients often move across international borders while keeping an existing relationship with a financial institution. This note, however, needs to be expanded (or Commission guidance needs to be provided) to cover situations where additional investments in a fund are made by a person who is now "in the United States" but who first invested in the fund while outside the United States.

Indeed, under the proposed note to paragraph (c)(2)(i), a foreign person who moves to the United States would not cause its foreign investment adviser to be subject to registration in the United States because the adviser could continue to rely on the "foreign private adviser exemption." In contrast, under the note, if the same person were an investor in a foreign investment fund, any additional investment in the fund by that person while in the United States could cause that fund's investment adviser to lose the availability of the exemption.

The Foreign Asset Manager respectfully submits that, similarly to the "private fund" discussion above, Commission rules and guidance should make clear that actions of fund investors who become U.S. persons and make additional investments independent of the actions of the adviser

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guidance adopted by the Commission would need to be broader in scope. This position only would apply to bona-fide situations as Section 208(d) of the Advisers Act would effectively prevent circumvention.

(and despite reasonable steps taken to avoid such investments), should not cause the investor to be deemed to be "in the United States", which could result in a loss of the exemption.[6]

C. Exemptions Release – Private Fund Adviser Exemption

1. Core Territorial Approach

The Commission indicated in the Exemptions Release that in the case of a "non-U.S. adviser" (*i.e.*, an adviser with a principal office and place of business outside the United States), the private fund adviser exemption implemented in proposed rule 203(m)-1 would apply as long as all of the adviser's clients that are U.S. persons are "qualifying private funds." As a result, a non-U.S. adviser can take advantage of the exemption without regard to the type and number of its non-U.S. clients. The SEC requests comments on this proposed approach (Section II.B of the Exemptions Release).

The Foreign Asset Manager supports this proposed approach because it effectively protects U.S. markets and investors, consistently with the principles of the Advisers Act and the Advisers Registration Act, while providing pragmatic limits to the application of U.S. rules to foreign businesses subject to different regulatory regimes. The Foreign Asset Manager respectfully recommends to the Commission and its Staff that this approach be preserved in the final rules and accompanying guidance.

2. The Term "Assets Managed in the United States" Should be clarified for Global Advisers

Under proposed rule 203(m)-1, all of the private fund's assets of an adviser with a "principal office and place of business in the United States" would be considered to be "assets under management in the United States". Conversely, a non-U.S. adviser would need to only count private fund assets it manages "from a place of business in the United States" toward the $150 million limit. The SEC requests general comments about this approach (section II.B).

Again, the Foreign Asset Manager supports the Commission's and its Staff's efforts to provide pragmatic limits to the application of U.S. rules to foreign businesses. It believes that the proposed rules are consistent with the corresponding statutory provisions and the intent of Congress. It also believes that the application of this approach to foreign advisers is consistent with past positions of the Commission and its Staff. The Foreign Asset Manager observes that

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[6] This principle only would apply to bona-fide situations as Section 208(d) of the Advisers Act would effectively prevent circumvention.

the application of this principle to foreign parties acknowledges that these parties already are subject to regulation in their home jurisdictions.

The Foreign Asset Manager, however, respectfully submits that, consistent with the comments above about the "advisory affiliates" concepts (see Section II.A. of this letter), the "place of business" of an investment adviser should be determined on an entity by entity basis. The final rules and/or accompanying guidance should thus explicitly recognize that the presence of an affiliated adviser in the United States (which may itself be registered with the Commission) does not create any presumption of a "place of business" for the non-U.S. affiliate. This clarification would confirm that foreign investment advisers can rely on the private fund adviser exemption if they have other entities within their groups that are located in the United States. Similarly, to the extent that employees of a participating affiliate periodically visit or work at the offices of a U.S. SEC-registered affiliate, the presence in the United States of employees of the participating affiliate should not cause the participating affiliate to have a place of business in the United States. The Foreign Asset Manager strongly believes that this clarification is important in order to permit global asset management groups to continue to have U.S. subsidiaries and function as companies within the group.

D. Exemptions Release – Quarterly Calculations of "Private Fund Assets"

Proposed Rule 203(m)-1(c) provides that private fund assets for purposes of the exemptions are to be calculated quarterly. The SEC requests comments on this frequency (section II.B). The SEC also requests comments on whether values should be calculated in accordance with U.S. GAAP or another body of accounting principles.

The Foreign Asset Manager respectfully submits that the Commission should not mandate valuation by reference to a U.S.-centered set of valuation principles (such as U.S. GAAP). The SEC should recognize the valuation principles currently in place in foreign jurisdictions where the private funds or advisers are located for purposes of these rules. Requiring U.S. GAAP standards would be unduly burdensome, very costly, and contrary to international initiatives (supported by the United States) to move to a common set of accounting principles.

Also, the Foreign Asset Manager submits that a yearly calculation (rather than a quarterly calculation) would be more appropriate, as some private funds may not provide for quarterly calculations of their NAV. Such a frequency also could be overly burdensome to monitor. A yearly calculation does not undermine the Congressional mandate. Also, alternative consideration should be given to calculating assets under management on an average 12-month rolling basis calculated on 12/31 to avoid significant regulatory consequences resulting from a temporary aberrational change in AUM.

E. Implementing and Exemptions Releases – Non-U.S. Exempt Reporting Advisers Should not be Subject to Reporting Obligations with Regard to Certain Non-U.S. Funds

New Sections 203(l) and 203(m) of the Advisers Act provide that exempt venture capital fund and private fund advisers shall maintain such records and provide to the SEC such reports as the SEC determines necessary or appropriate in the public interest or for the protection of investors. The Commission's proposed Rule 204-4 subjects these two categories of advisers (called "exempt reporting advisers") to many of the same detailed reporting requirements that will be imposed on registered investment advisers. In the Implementing Release (Section II.B), the SEC asks whether there are alternative approaches to reporting by exempt reporting advisers that the SEC should consider.

The Foreign Asset Manager believes that an alternate approach for non-U.S. exempt reporting advisers is appropriate. As a general matter, it is worthy of note that Congress did not mandate the Commission to adopt any specific reporting requirements. In addition, in the context of foreign advisers, the Foreign Asset Manager notes that such advisers and the foreign funds they manage (which technically could be deemed to be "private funds" for purposes of the rules – see discussion above) are usually subject to separate reporting requirements in their home jurisdictions, notably with respect to retail funds (which are heavily regulated and are subject to costly reporting requirements).

Accordingly, the Foreign Asset Manager strongly believes that, when an investment fund is regulated abroad, the Commission should primarily seek to obtain such information through foreign regulators with whom its has entered into information sharing arrangements, and it should not require information that may conflict with (or be different from) the type of information that the fund or its adviser are already required to report to its investors and its national regulator. This approach would recognize foreign regulatory regimes and would avoid unnecessary costs. Accordingly, the Foreign Asset Manager respectfully suggests that the rules provide an exception from the reporting requirements with regard to funds that are regulated in jurisdictions with which the Commission has entered into information sharing arrangements.

F. Implementing Release and Exemptions Release – The Definition of "Assets Under Management" Needs to be Adapted to the Non-U.S. Adviser Context

Proposed Rule 202(a)(30)-1(c)(4) defines "assets under management" by reference to "regulatory assets under management as determined under Item 5.F of Form ADV." Proposed Item 5.F essentially provides that an investment adviser must include in its assets: (a) family or proprietary accounts; (b) accounts for which no compensation is received; and (c) accounts of clients who are not United States persons.

The Foreign Asset Manager observes that this definition is not adapted to a foreign private adviser. For example, it is on its face inconsistent with the statutory definition of "foreign private adviser" which only refers to assets of clients and investors "in the United States". Also, there does not appear to be instructions in the proposed rule or the proposed items of Form ADV on how the term "regulatory assets under management" applies to a foreign adviser.

The Foreign Asset Manager also believes that (i) a foreign adviser should not have to count its proprietary assets (which by definition belong to a foreign person) for these purposes and (ii) a foreign adviser also should not have to count assets for which it receives no fees, unless these are assets attributable to U.S. persons (other than "knowledgeable employees", although that is unlikely in the case of a foreign adviser).

Accordingly, the Foreign Asset Manager suggests that the rule be revised to account for foreign advisers or that the Form be revised to include instructions regarding how the calculation should apply. As noted above, the Foreign Asset Manager strongly recommends that the calculation methods do not refer to calculation principles that are U.S.-based (such U.S. GAAP), in order to be easily followed by foreign advisers.

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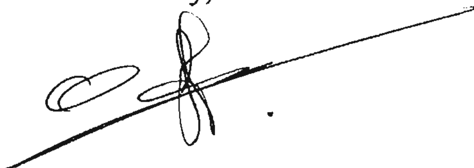
The Foreign Asset Manager appreciates the opportunity to comment on the releases. Please feel free to contact Julien Bourgeois (202.261.3451; julien.bourgeois@dechert.com), Geoffrey Kenyon (617.728.7126; geoffrey.kenyon@dechert.com) or George Mazin (212.698.3570; george.mazin@dechert.com) if you have any questions about the comments made in this submission.

Sincerely,



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