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By Email

Securities and Exchange Commission
Attn.: Elizabeth M. Murphy, Secretary
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*

Ladies and Gentlemen:

We are pleased to respond to the request of the Securities and Exchange Commission (the Commission) for public comment on the proposed rules set forth in the above captioned release, in particular the definition of "venture capital fund" contained therein.

By way of background, the Private Investment Funds group at Proskauer represents private investment funds across the spectrum, from regional focused venture capital firms to international buyout groups, hedge funds, funds of funds and sector specific (e.g., energy and timber) funds. The firm's client base in this practice area consists of over 300 sponsor groups and several of the leading institutional investors in the asset class.

While we believe the general parameters of the proposed definition of a "venture capital fund" are consistent with standard industry practice, due to the fact that the venture capital exemption contained in the Dodd-Frank Act is available only to advisers "solely" to venture capital funds and because many of our venture capital firm clients advise a number of venture capital funds, we are concerned that the "margin for error" for our clients seeking to rely on the exemption is too thin. As such, we are supportive of the comments of the National Venture Capital Association dated January 13, 2011 seeking, among other matters, to clarify the proposed rules and provide some measure of relief for limited non-conforming activities and public investing.

As a related matter, because we have venture capital clients that may not be able to rely on the venture capital exemption as proposed and because we have other clients advising private funds for which no exemption will be available, we note that venture capital funds and other private funds are usually structured in such a manner that the sponsor is entitled to a share of profit distributions or "carried interest." In certain circumstances, the carried interest would be prohibited under Section 205(a)(1) of Investment Advisers Act of 1940 with respect to funds advised by registered advisers (or advisers required to be registered) unless all of the fund's investors were "qualified clients" under Rule 205-3. A number of our clients (venture capital and other private equity firms) that relied on (and expected to be able to continue to rely upon) the "private adviser exemption" in Section 203(b)(3) of the Advisers Act did not solicit the information necessary to determine whether fund investors were qualified clients or, in some cases, they admitted non "qualified clients" who were subject to the "carried interest" as permitted for unregistered advisers. We request grandfathering relief that any private fund in existence prior to July 21, 2011 (i.e., the effective date of the repeal of the private adviser exemption) should be permitted to continue to charge a performance fee whether or not its investors were "qualified clients" at the time of their initial investment in the private fund. We believe this approach would be consistent with the relief provided to hedge funds when the Commission proposed revisions to the definition of "client" under Rule 203(b)(3). If this relief is not granted, many private funds face the difficult prospect of restructuring existing long-term arrangements the consequences of which could be detrimental and/or inequitable to fund investors as a whole.

Respectfully submitted,

David T. Jones