Hamilton Lane

May 27, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: File No. S7-12-11; Rel. No. 34-64140
Incentive-Based Compensation Arrangements

Dear Ms. Murphy:

Hamilton Lane Advisors, L.L.C. ("Hamilton Lane") is pleased to submit this letter in response to the proposing release referred to above (the "Release"). Hamilton Lane is registered with the Securities and Exchange Commission (the "Commission") as an investment adviser under the Investment Advisers Act of 1940 and provides private equity investment management services to investors in the U.S. and abroad. Hamilton Lane manages private equity funds-of-funds, secondary funds and co-investment funds, and would be deemed a "covered financial institution" under the Release and the proposed rule set forth therein (the "Rule").

The Release indicates that the Rule is intended to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which requires the Commission and other federal agencies to prohibit incentive-based payment arrangements at covered financial institutions that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss. The term "covered financial institution," as defined in the Dodd-Frank Act, includes, among others, investment advisers that have $1 billion or more in assets. Our comments relate to the calculation of assets for purposes of determining whether an investment adviser is a covered financial institution and the types of incentive-based compensation that are covered by the Rule.

Calculation of Assets. The Release requests comments on how assets should be calculated and whether the method of calculation should be different for advisers to private equity funds and hedge funds than for other investment advisers. For the reasons set forth below, we believe that there are significant differences for advisers to private equity funds that should be taken into account in applying the Rule.

The Rule defines "covered financial institutions" as investment advisers that have total consolidated assets of $1 billion or more. Total consolidated assets are determined based on the adviser's balance sheet for the most recent fiscal year. Under current and controversial accounting rules, advisers to private equity funds are required to consolidate on their balance sheets the assets of the funds that they manage unless the investors in the

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funds have the right by a simple majority vote to remove the adviser as the manager of the fund. Application of these accounting rules can result in significant distortions of advisers' balance sheets by essentially treating the advisers' assets under management (or a portion of them) as actual assets of the advisers. These removal rights, often referred to as "kick-out rights," have become a critical factor in determining the assets included or excluded from the balance sheets of investment advisers that serve as fund managers. Advisers that ordinarily would not be regarded as large enterprises quickly become significantly larger when the assets of funds that they manage are added to their traditional assets. We believe that the Rule should take into account the distorting effect of these accounting rules on advisers to private equity funds and measure their consolidated assets without regard to the assets of the funds they manage. In applying a rule that focuses on material financial losses, only the capital of the adviser that is actually at risk should be taken into account, not the capital of other investors in funds that the adviser manages. Fund managers generally have an insignificant ownership interest in the funds (often 1% of the total capital of the funds) and are not at risk for significant gains or losses of the funds. If these factors are not taken into account, the Rule will apply unfairly to advisers to private equity funds as opposed to other investment advisers and effectively will apply on the basis of assets under management rather than commonly understood balance sheet assets.

Incentive-Based Compensation. The Rule defines incentive-based compensation as "any variable compensation that serves as an incentive for performance." We believe that this definition is overly broad and will result in covered financial institutions spending considerable effort and expense explaining and justifying to regulatory agencies commonly used compensation plans that do not pose any real risk of excessive compensation or material financial loss. We urge the Commission to create a "safe harbor" for compensation arrangements that do not pose these risks or to provide specific guidance on how covered financial institutions can analyze these elements and apply the Rule.

Revenue and profit sharing plans that apply broadly to an institution's employees are designed to provide an additional, and usually modest, compensation benefit when the institution has achieved good financial results. Such plans do not encourage the type of risky behavior that could harm the institution. Such plans do not pose risks of excessive compensation or material risk of loss to the institution and therefore should be exempt from the Rule.

In addition, incentive compensation arrangements that incorporate terms identified in the Rule as important to protecting against these risks similarly should be exempt from the reporting requirements. Managers of private equity funds often are eligible to earn performance fees, or carried interest, if the funds they manage meet specified return goals. Carried interest arrangements are inherently deferred compensation plans. Private equity funds typically take several years to invest their capital and often several more years to return that capital to investors. The funds

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generally must provide to their investors a specified annual return plus management fees and expenses, before the fund manager is entitled to a carried interest. Even if the fund manager is permitted to receive carried interest on individually profitable investments, the manager is subject to a "clawback", which requires the return to the fund's other investors of profits in excess of the share allocated to the manager in the fund's governing documents. These arrangements are fundamentally different from incentive compensation that results in immediate payments based on short-term revenues or profits and provide no recourse to the institution if those profits evaporate. We believe that the Rule should recognize these differences and expressly provide that carried interest and similar arrangements that require deferral of payments, profitable investments, and the return of payments if those profits ultimately do not meet stated minimums are permitted and do not violate the Rule.

Hamilton Lane appreciates the opportunity to respond to the proposed Rule. Please direct any questions concerning our comments to the undersigned at (610) 617-6076 or rcleveland@hamiltonlane.com.

Sincerely,

Robert W. Cleveland
General Counsel
Hamilton Lane Advisors, L.L.C.