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March 21, 2011

Via e-mail to: rule-comments@sec.gov

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

Re: Dodd-Frank Wall Street Reform and Consumer Protection Act Rulemakings Relevant to the Registration Provisions under the Investment Advisers Act of 1940 (*Release Nos.: IA-3098, IA-3110 and IA-3111*)

Ladies and Gentlemen:

We write to recommend that the Commission exercise its exemptive authority to provide for a delay in the date by which investment advisers must register with the Commission as a result of the Dodd-Frank Act's amendments to Section 203(b)(3) of the Investment Advisers Act of 1940. Under the July deadline that otherwise would apply – and given the lack of baseline information available as to (a) which firms will be subject to registration, (b) the scope of possible exemptions, and (c) terms that will apply to both registrations and exemptions – there is no longer sufficient time for the type of careful business planning that these matters warrant.

Absent a reasonable extension, we believe the results at times will be rushed, ill-considered registrations or determinations not to register, firms that register unnecessarily, and needless disruptions to commercial and client arrangements, all with great potential for unintended consequences. These are outcomes that suit neither the Commission, the organizations involved, nor the public interest

As a brief background to our interest in these matters, Shearman & Sterling LLP is a global law firm with offices in twenty financial centers worldwide. The firm's clients include a wide variety of US and non-US financial institutions and financial market participants.

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To more concretely illustrate our concerns, consider the following examples:

- *Venture Capital.* A firm is an adviser solely to what are "venture capital funds" under common industry views of the term. Even though the firm will not qualify for the venture capital exemption as currently proposed, the firm believes that, once the current rulemaking is concluded, it ultimately should be able to avail itself of the exemption (or at least should be able to make the necessary changes in structure to make the exemption available).

- *Family Office*. An organization considers itself to be a family office. Even though it will not qualify for the family office exclusion as currently proposed, the family office believes that, once the current rulemaking is concluded, it ultimately should be able to avail itself of the exclusion (or at least should be able to make the necessary changes in structure to make the exclusion available).

- *Non-US.* A non-US firm is considering relying on the "solely private funds managed from outside the United States" exemption, but requires restructuring of certain of its commercial arrangements to do so. Restructuring could require withdrawal of personnel from the United States and/or termination of US clients, so is not to be undertaken lightly. The firm wishes to evaluate its options once there is certainty as to the different obligations that will apply under this exemption versus full registration.

Given the increasing urgency presented by the July deadline, and the reality that registration planning and implementation is a multi-month exercise (we estimate up to six months in many cases), each of these organizations is faced with an unenviable choice:

- In what would be clear cases of wasted energies and resources, the first two organizations (the venture capital firm and the family office) can choose to prepare for a registration requirement from which they ultimately believe they will be exempt. Or they can "roll the dice" and do nothing until clarity is available – though in waiting they risk not being able to complete their registration in time, at least not thoughtfully and carefully, if that is what ends up being required of them.

- The non-US firm, meanwhile, risks simply watching its options evaporate. Once the necessary information is available to allow the firm to make a considered choice among ways forward, the firm could face either a messy, time-pressured reordering of its arrangements (assuming that is even possible in the time remaining) or an equally hasty registration.

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We also wish to draw certain related matters to the Commission's attention. We are aware of firms that fully intend to register, but are holding off pending completion of the Commission's rulemakings. A reason commonly given is that there is not yet guidance as to

grandfathering of clients that do not qualify as "qualified clients" for purposes of Advisers Act Rule 205-3. Firms reasonably do not wish to expel long-time and valued clients (as might be required in the interim following a registration) when that later may prove unnecessary. Another reason commonly given is that the Form ADV itself remains subject to change by the rulemaking. Yet another area of practical uncertainty in the case of firms that potentially may opt to be exempt reporting advisers is that the division between state and federal jurisdiction remains open to interpretation (especially in states that do not have examination programs).

Confirmation of the Commission's intent in these areas would lessen the crush of registrations that otherwise will come in at or just before any deadline. In this regard, we urge the Commission to provide for the same qualified client grandfathering it did in its 2004 investment adviser registration rulemaking. The public policy bases for that determination have not changed.

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In closing, we recognize that these rulemakings are certainly not the only business before the Commission as a result of the Dodd-Frank Act and other recent events. Please accept our sincere appreciation for the diligence of the Commission and its staff in addressing these important matters for the investment adviser community and its clients in the face of what is clearly an unprecedented volume of competing commitments. We hope our comments have been useful and are available to discuss them further should the Commission or the staff so desire. The author of this letter is Nathan Greene at 212-848-4668 or ngreene@shearman.com.

Two final notes: First, our comments and recommendations represent the views of the attorney of the firm named above and should not be ascribed to any current or former client of the firm. Second, we previously commented on the rulemakings that are at issue here; no change in views should be assumed simply because we do not reiterate our prior comments.

Respectfully submitted,

Shearman & Sterling LLP / NG

Shearman & Sterling LLP

Please assure copies to the following:

Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Eileen Rominger, Director, Division of Investment Management