KPS
CAPITAL PARTNERS, LP

January 23, 2011

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

Dear Ms. Murphy:

RE: File #: S7-37-l0

Proposed Rule: Exemptions for Certain Advisors: Title IV Provisions Dodd Frank

I am the Administrative Partner, Chief Financial Officer and Chief Compliance Officer of KPS Capital Partners, LP ("KPS"). KPS is the manager of a family of private equity funds with committed capital of approximately $2.4 billion currently. We make controlling equity investments in companies and business assets on behalf of institutional investors, including public and private sector pension funds, bank and non-bank financial corporations, college and hospital endowments and trusts.

KPS seeks to create significant capital appreciation for its investors by making controlling equity investments in companies engaged in manufacturing, transportation and service industries challenged by the need to effect immediate and significant change --- ie. Special Situations. Special Situations include turnarounds, restructurings, bankruptcies and corporate divestitures of non-core businesses and assets. We will pursue opportunities involving companies operating in bankruptcy, in default of obligations to creditors, or with a history of recurring operating losses. We have also created stand-alone independent companies from assets divested by large corporate parents and made equity infusions to recapitalize highly leveraged companies. Ours is a de-leveraging fund. We will only invest our capital concurrent with the implementation of a concrete plan~~t~~ to return a company's operations to profitability, accompanied by a new capital structure that provides the financial resources for capital investment, modernization and growth.

Through the investments KPS made in these Special Situations since our first fund was raised in 1998, thousands of American jobs have been saved and new jobs created in such industries as paper manufacturing, auto parts, transit busses, metals processing and fabrication, HVAC components, healthcare products and beverage brewing and distribution among others. KPS is often the buyer of last resort for these businesses and assets.

On behalf of pension funds, endowment funds and other investors, we invest in troubled assets and threatened jobs. Our investments, which are all private, are governed by the Security Acts of

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1933 and 1940. My firm, KPS, like substantially all private equity firms, is completely transparent – our entire portfolio is listed on our web site at www.kpsfund.com.

Dodd Frank was written with an eye towards public securities; much of it does not apply to private securities. The rule changes created by Dodd Frank were foisted upon the SEC, we believe, -without thoughtful consideration by Congress as to whether or not the SEC's existing registration/compliance/custodial process with which many private advisors were being instructed to comply were appropriate for venture capital and private equity. Nor did any consideration of the cost/benefits of such compliance receive careful thought.

It is my understanding that the purpose of Dodd Frank was to prevent a "too big to fail" event. It is objectively correct that the largest private equity buyout ever completed, KKR's acquisition of RJR-Nabisco, would have had zero, absolutely zero impact on the capital markets had it failed. Perhaps the investors in the private equity fund would lose money, and perhaps in the pedestrian normal course of business certain bondholders would be impaired, but #1 the company would continue to operate, and #2 there would be no impact whatsoever on the capital markets. Therefore if the biggest buyout ever completed by a private equity firm by a large magnitude poses absolutely no systemic risk to the capital markets, why should any private equity firm be subject to Dodd-Frank?

We believe that the examination of private equity funds by the SEC will focus on trading activity, trading reports, looking for clues of insider trading and safeguarding of registered securities. As this is not a focus private equity funds it appears to me that it would not be a productive endeavor for an SEC auditor. I have just returned from a conference of fellow CFO and COO's of Private Equity Funds where former Chairman Harvey Pitt, in his keynote speech said; "My own belief is that private equity firms are the engine of economic growth and we are now imposing restrictions on them simply for the sake of restrictions. My concern is that we will lose this engine of growth" Chairman Pitt went on to note, "The SEC is not realistically equipped to be overseeing this number Registered Investment Advisors ("RIA's" -- estimated to rise by 8,000 from 11,000 today). Congress has told the SEC to go out and regulate the free world and much of the not-so-free world and then has not given them the (financial) resources to do just that."

Compliance manuals, employee trading records, legal documentation, placing non-marketable securities with a third party custodian- and hiring of a Compliance Counsel and extra audits, etc. incur costs that are estimated to total hundreds of thousands of dollars in our case. Instead of making investments which create jobs, we will be spending our limited time, professional resources and money on compliance without the risk exposure such compliance would be meant to mitigate- hardly the type of thing that is good for the US economy and job creation.

Under Section 206B of the Investors Advisor Act of 1940, the SEC has unqualified authority to grant exemption from registration. We suggest the SEC initially grant a one year exemption, until July 1, 2012, to private equity fund managers which do not fall under the Dodd Frank definition of "venture capital", secondary funds and fund of funds investing in venture capital and private equity.

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This is similar to the small company exemption granted under Sarbanes-Oxley. The time will allow the agency to learn more about private equity, venture funds and indirect vehicles (fund of funds and secondary funds) investing in this non-liquid asset class. We think that this will give the SEC a chance to formulate appropriate requirements or extend to secondary funds, fund of funds and private equity a similar exemption as that received by venture capital. This could avoid a large waste of time and resources not only for the private equity community but for the SEC and ultimately the American Taxpayer. A thoughtful look at this process would also benefit our industry's investors, pension funds and foundations that will see a decline in their returns as they ultimately pay this new “administrative charge”.

Finally, just last week President Obama wrote an op-ed piece in the Wall Street Journal about wasteful government regulations. What better example of such wasteful regulation could there be than having firms (i) file information that is not useful and (ii) has no impact of the nation’s exposure to systemic risk? Assuming Chairman Pitt is correct, the SEC doesn’t have a budget, nor trained examiners currently in order to comply with this regulation.

We would be happy to discuss any aspects of this with you or your staff. Granting this one year exemption by the end of February is requested as the July 21, 2011 registration deadline requires that PE firms spend time and resources now through the spring of this year in order to make a timely registration.

Thank you for your consideration of this matter.

Sincerely,

Stephen E. Hoey
Administrative Partner & Chief Financial Officer

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