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January 21, 2011

NASAA

Attn: Joseph Brady
750 First Street, NE, Suite 1140
Washington, DC, 20002

Via E-Mail: advcomments@nasaa.org

RE: Proposed NASAA Model Rule on Private Fund Adviser Registration and Exemption

Dear Mr. Brady:

We appreciate the opportunity to comment on the proposed model rule relating to private fund adviser registration and exemption (Model Rule) that was posted on December 10, 2010. The Model Rule recognizes, in part, the importance of expanding regulation of private fund advisers and it provides a regulatory structure for those states that do not already have one in place.

We strongly support the way in which the Model Rule focuses state resources on areas of concern by requiring registration of investment advisers to those funds most likely to be composed of "retail" investors, (3)(c)(1) funds. We also support the way in which the Model Rule excludes from the exemption those persons disqualified under Section 230.262 of title 17, Code of Federal Regulations.

However, the elimination by Congress of the "private adviser exemption" under previous Section 203(b)(3) of the Investment Advisers Act of 1940 was intended to bring transparency and oversight to private fund advisers. Yet, the exemption proposed by the Model Rule, while only posed as an option for a state administrator to consider, may have the unintended consequence of allowing advisers to private funds with less than \$100 million in assets under management (AUM) to avoid regulatory oversight entirely, which could be detrimental to the protection of investors. We would ask you to consider the reasons for distinguishing between the federal registration requirements of private fund

Joseph Brady
January 21, 2011
Page 2

advisers, including advisers to 3(c)(7) funds, with more than \$150 million AUM, and the Model Rule's proposed exemption for advisers to 3(c)(7) funds with less than \$100 million AUM, for which there is no federal preemption.

Also, please consider the possibility that a group of "retail" investors may combine their investments to satisfy the qualified purchaser requirements of a 3(c)(7) fund for which the Model Rule would provide an exemption. As you may know, Texas and possibly other states currently require registration of investment advisers to private funds composed partially or entirely of natural persons. We encourage other states to consider a similar requirement and ask that you consider modifying the scope of the Model Rule to restrict the exemption provided for (3)(c)(7) funds to those qualified purchasers that are not composed partially or entirely of natural persons.

While some states may be concerned with the resources needed to require this additional oversight, please keep in mind that sister states may assist each other in conducting examinations and sharing information pursuant to the Memorandum of Understanding Concerning the Examination of Investment Advisers (IAMOU).

For the purposes of encouraging uniformity among the states and consistent with your attempt to, in many respects, mirror at the state level the treatment of private fund advisers at the federal level, we would support a provision that would exempt advisers solely to venture capital funds, without regard to the number of such funds advised by the adviser or the size of such funds.¹ In including such a provision, please consider that private equity funds have been excluded from the SEC's definition of a "venture capital" fund.² Therefore, adopting the SEC's definition of "venture capital" could have the unintended consequence of requiring advisers to private equity funds to comply with existing registration and compliance processes that may not be appropriate for private equity fund advisers.

Finally, please consider that some confusion may result from using the SEC's definition of a "private fund" to include both 3(c)(1) and 3(c)(7) funds while the Model Rule only provides an exemption for 3(c)(7) funds.

¹ See SEC Release No. IA-3111; published in the December 10, 2010 *Federal Register*/Vol. 75, No. 237, page 77191.

² *Id.* at 77193

Joseph Brady
January 21, 2011
Page 3

Thank you again for the opportunity to comment. If you have any questions, please contact Kara L. Kennedy, General Counsel, at 512-305-8303.

Very truly yours,



DENISE VOIGT CRAWFORD
Securities Commissioner

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