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VIA EMAIL

NASAA
Attn. Joseph Brady, Esq.
750 First Street, NE, Suite 1140
Washington, DC, 20002

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

Dear Mr. Brady:

I appreciate the opportunity to comment on the Proposed NASAA Model Rule on Private Fund Adviser Registration and Exemption (the "Proposal"). Verrill Dana, LLP is a law firm with offices in Portland and Augusta, Maine, Boston, Hartford, and Washington, D.C. We represent a number of registered investment advisers that offer portfolio management services to their clients. We also represent a small number of Maine firms that run Section 3(c)(1) funds, and which were formed to provide investment capital to early-stage companies and/or established middle-market companies. The comments offered here are my own, and do not necessarily represent the views of Verrill Dana or any of its clients.

1. I think it is entirely appropriate to design a separate regime for regulating managers of private funds, and I commend the Proposal for extending this concept to private fund advisers with less than $100 million of assets under management.

The investment adviser regulatory framework predating the Dodd-Frank Wall Street Reform and Consumer Protection Act (referred to here as the "classic RIA framework") was principally designed for advisers who offer portfolio management services to large numbers of clients (referred to here as "retail RIAs"). As Congress and the SEC have recognized, the classic RIA framework is an awkward fit for private fund managers (principally venture capital firms, private equity firms, and other similar firms that manage pooled investments for relatively wealthy and sophisticated partners). Pursuant to Dodd-Frank, the SEC has proposed a separate regulatory regime for venture capital firms and for managers of private funds with less than $150 million in assets under management. Under the SEC's proposals, these "exempt reporting advisers" will not be required to register *per se*, but instead will file simplified Form ADV reports with the SEC through the IARD system and will be subject to simplified recordkeeping requirements differing from those applicable to retail RIAs.

Under Dodd-Frank, a state has wide leeway to regulate non-SEC registered advisers who are resident in that state, and in theory could choose to extend the classic RIA framework to exempt reporting advisers and to firms that manage private funds with less than $100 million of assets. In its Proposal, NASAA wisely chooses to piggyback on the SEC's exempt private adviser framework (simplified Form ADV filing; simplified recordkeeping requirements), at least as to a narrow class

of managers – more on this below. In doing so, NASAA joins Congress and the SEC in recognizing that, generally speaking, private fund managers pose regulatory issues that are distinct from those posed by retail RIAs.

2. NASAA would stop short of adopting the simplified framework for all managers of private funds. NASAA's Proposal would limit such treatment to a relatively narrow class of funds that qualify for the exemption under Section 3(c)(7) of the Investment Company Act. Importantly, the Proposal would leave the classic RIA framework in place for non-SEC registered managers of funds that rely on Section 3(c)(1) of the Investment Company Act but do not qualify under Section 3(c)(7). Imposing the classic RIA framework on 3(c)(1) funds is difficult to justify, and I would urge NASAA to abandon this aspect of its Proposal. My reasons include the following:

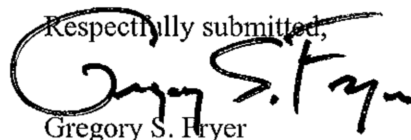
a. Venture capital firms are highly valued participants in local economies, and I would predict that many key states will simply refuse to impose the classic RIA framework on VC firms, regardless of whether the particular funds rely on Section 3(c)(1) or 3(c)(7). If key states defect, then the "model" rule that NASAA advocates will fail to become a "uniform" rule, thereby fragmenting the regulation of private fund managers in the United States.

b. NASAA perhaps was concerned by the prospect that unprofessional, fly-by-night operators might hide from state regulation under the guise of a 3(c)(1) fund, a status easily obtained if the operator is content to raise his fund through a private placement from fewer than 100 investors. The Proposal, however, contains other conditions that would disqualify or dissuade shady operators. First, the Proposal does require the operator to identify himself to the state securities administrator through a Form ADV filing, even if the securities offering itself did not require a filing. Second, if the operator runs afoul of the "bad boy" restrictions – either before the application is submitted or down the road – his state license is in jeopardy. Third, the operator is subject to future inspection, on a timetable established in the discretion of the administrator's staff.

c. Considering that private fund managers have largely been unregulated to date at the state level, and believing as I do that these fund managers present different regulatory issues than do retail RIAs, I would respectfully suggest that experience does not yet justify an artificial distinction between managers of 3(c)(1) funds and managers of 3(c)(7). If experience later suggests that 3(c)(1) fund manager misconduct warrants imposing additional conditions to licensing on this entire class of managers, then NASAA can lead an effort to solve that problem. In the meantime, let us give venture capital firms and other 3(c)(1) fund managers the benefit of the doubt and subject them to the same simplified rules as would govern 3(c)(7) fund managers under NASAA's Proposal.

Thank you for considering these comments.

Respectfully submitted,



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