ATLAS | HOLDINGS

March 9, 2011

via email to: Rule-comments@sec.gov

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

RE: Proposed Rule: Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF: Title IV Provisions of the Dodd-Frank Act

Subject File # S7-05-11

Dear Ms. Murphy:

As a follow-up to my conversations in Washington with several senior staff members of the SEC, including David Vaughan and Robert Plaze, as well as Commissioners Casey, Walter and Paredes, I respectfully submit these comments regarding the proposed rule on investment adviser reporting ("Form PF"). While you have raised several important questions in the draft rules, I will focus my comments on the proposed rules regarding filing of monthly valuations (Item C of Part 1b) as well as the estimates developed by staff regarding the anticipated burden attendant to providing such information.

It was apparent during our discussions on February 22 that there exists an inadequate understanding of the private equity business at the SEC and the objective of seeking monthly valuations is symptomatic of this problem.

In general, private equity firms purchase or invest in private businesses (or on occasion, purchase a public business in a going-private transaction). The portfolios of private equity firms consist of, almost exclusively, unlisted securities in private enterprises for which there exists no public market and therefore, for which current values are not easily discernable and cannot be determined unambiguously. There is no standard or reliable method to firmly establish the value of private investments, unless the subject business has recently engaged in a transaction or financing. Performance / incentive fees in private equity funds are based on realized gains, not market valuations, so these interim performance metrics have no impact on the economics of private equity firm managers or their investors. Further, privately-owned businesses held by private equity firms will not be sold for many years and therefore, there is limited ability to rely upon arm's length transactions as a timely market test. Recognizing these realities, private equity firms generally provide their investors with valuations no more frequently than quarterly and such valuations are performed pursuant to an internal (i.e. not market or third-party tested) process. Investors in private equity funds do require such valuations in order to do their own internal reporting, but they also recognize the inherent challenges in valuing private enterprises. Therefore, investors accept this valuation "proxy" without requiring third party analysis or verification,

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which would not enhance the validity or reliability of the valuations but would significantly increase costs.
Most private equity firms do prepare GAAP audited financial statements on an annual basis, and the auditors do review portfolio company valuations at that time. This review is focused on the manager's internal valuation process and does not require any third party opinions by appraisal firms or others. As a result of the audit procedure, the annual valuations are most often relied upon by investors.

While the valuation process described above is acceptable to our investors, the introduction of Form PF and its requirement that valuations are to be filed with the SEC changes the calculus entirely. Because of the inevitable ambiguity that surrounds private equity valuations, firms like mine will be forced to rely upon 3rd party experts who, over many weeks and at substantial cost, will appraise non-marketable securities and provide a valuation. We have already been advised by counsel that it would be unwise, as a liability matter, to rely solely upon internal valuation processes because, notwithstanding their acceptability to the investors, an SEC examiner may deem such processes to be inadequate. While 3rd party valuations are far from definitive or reliable (and would have no value to any party at interest), they do provide a high cost form of "insurance" for the fund manager.

You also suggest that this valuation information "... would allow FSOC to monitor certain systemic trends for the broader private fund industry, such as how certain kinds of private funds perform and exhibit correlated performance behavior under different economic and market conditions and whether certain funds are taking significant risks that may have systemic implications." With all due respect, I learned as an undergraduate in engineering school that precise analysis of faulty (monthly) information will not produce accurate conclusions. Said simply, garbage in, garbage out.

It is worth noting that, in 30 years of business, no investor has asked for or has expected to receive monthly valuations on portfolio companies or the fund – there is clarity among private equity fund managers and investors that this information would be absolutely valueless, and would require substantial cost and effort to prepare.

Finally, you have provided a "Burden Estimate" for smaller private fund advisers, estimating that such advisers "... would require an average of approximately 10 burden hours to compile, review and electronically file the required information in section 1 of Form PF for the initial filing and an average of approximately 3 burden hours for subsequent filings." During my meeting with staff at the SEC in February, I questioned the validity of this "Burden Estimate". One of the staff responded that she had spoken directly to several fund managers and in each case, she was advised that monthly (or even more frequent) valuations create no problem or burden. As soon became apparent, the only managers she had spoken with were hedge fund managers, whose business model requires immediate and accurate valuation of their portfolio of publicly-traded securities. The fact that there was no distinction drawn

between hedge funds and private equity funds is further evidence of the limited understanding of our business at the SEC that is, unfortunately, shaping the new rules with which we will be required to comply.

Regarding true burden, even internal valuations of private securities require substantially more time, by an order of magnitude, than the SEC has estimated. However my far larger concern is that, without proper understanding and guidance provided by the SEC, the seemingly innocuous request of asking for monthly and quarterly performance information could quickly balloon into a time and cost burden that quite literally would jeopardize the viability of many small to mid-sized private equity firms.

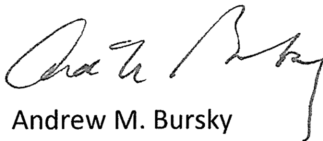
My recommendations regarding Form PF as it relates to private equity firms are:

1. Eliminate the request to provide valuation data any more frequently than quarterly, and

2. Provide explicit guidance confirming that private equity firms can rely upon internal valuations of their portfolios without the need for third party verification or market testing.

Should you have any questions regarding this letter, please do not hesitate to contact me.

Respectfully,



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