January 24, 2011

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

Re: Proposed Rules Implementing Amendments to the Investment Advisers Act of 1940 – (File Number S7-36-10)

Dear Ms. Murphy:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rules ("Proposed Rules") of the Securities and Exchange Commission ("Commission"). In accordance with Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Proposed Rules would (1) implement the transition of federally registered investment advisers with less than $100 million in assets under management to state registration; (2) establish reporting requirements for private fund advisers that will remain exempt from registration under the Dodd-Frank Act; and (3) amend the recently adopted pay-to-play rule so that it will continue to cover all exempt private fund advisers.

Summary of Comments

Our comments focus on the new reporting requirements for unregistered advisers and the amendments to the Commission's pay to play rule. The reporting requirements for exempt advisers under the Proposed Rules should be expanded to include all of the information required to be submitted via the Form ADV, rather than just a subset of that information. In addition, although the Proposed Rules are laudable in extending the Commission's pay to play rules to exempt reporting advisers, they should not permit solicitation of governmental entities by municipal advisers on behalf of investment advisers unless and until the Municipal Securities Rulemaking Board ("MSRB") adopts pay to play rules that are at least as strong as the Commission's.

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[1] Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

Proposed Rules on Reporting by Advisers Exempt from Registration

The Proposed Rules fail to require certain information to be disclosed by exempt reporting advisers, but there is no statutory or policy basis for this approach. Therefore, as discussed below, such information must be required to be disclosed.

To increase transparency with respect to private funds, the Dodd-Frank Act repealed the exemption from registration for private fund advisers in Section 203(b)(3) of the Investment Advisers Act. At the same time, Congress created several new and limited exemptions from registration, including an exemption for advisers to venture capital funds and an exemption for advisers to private funds with less than $150 million in assets under management. Even as to those advisers, however, the Dodd-Frank Act required the Commission "to impose such recordkeeping and reporting requirements as the Commission deems necessary or appropriate in the public interest or for the protection of investors." Sections 407, 408 of the Dodd-Frank Act.

The Proposed Rules establish those reporting requirements. In terms of format and accessibility, the requirements are reasonable. They provide for submission of information to the Commission via the Form ADV, an electronic registration system already familiar to investment advisers as well as regulators. This system will provide both regulators and members of the investing public with ready access to the reported information.

However, the Proposed Rules must be more inclusive to fulfill the underlying goals of the rule: enhancing regulatory oversight and risk assessment, and maximizing disclosure to investors. As written, the Propose Rules would require covered advisers to report only certain amounts of the information included in the Form ADV. For example, reporting advisers would **not** have to submit information about:

- employees, clients, and compensation arrangements (Item 5);
- participation or interest in client transactions (Item 8); and
- custody arrangements (Item 9).

Nor would the reporting advisers be required to submit any of the information that registered advisers must include in their client brochures pursuant to Part 2 of Form ADV.

In the Release, the Commission does not explain its rationale for omitting this information and there appears to be none. Inclusion of this data would undoubtedly serve the underlying purposes of the reporting regime: regulatory oversight, risk assessment, and public transparency.

While a duty to report such additional information would impose some additional minimal burdens on advisers, the Release nowhere indicates that such minimal burdens would be

unreasonable or that such modest additional disclosure requirements should be the determinative factor in establishing the reporting requirements.

Most importantly, nothing in the authorizing provisions of the Dodd-Frank Act suggests that advisers exempt from registration should be excused from these or any other reporting obligations. On the contrary, only with respect to registered advisers to mid-sized private funds did Congress direct the Commission to take into account certain factors when setting the registration and examination requirements. *See* Section 408 of Dodd-Frank Act.

Its silence on the closely related issue of reporting obligations for unregistered advisers makes clear that Congress intended such disclosure to occur. In short, the Commission should expand the reporting requirements for exempt reporting advisers to include all of the information called for in the Form ADV, which will further the goals of regulatory oversight, risk assessment and public transparency.

Proposed Rules on Pay to Play

In July of 2010, the Commission adopted a new rule under the Investment Advisers Act that prohibited registered and unregistered investment advisers from engaging in pay to play practices, such as seeking advisory business from governmental entities in exchange for political contributions. *See* Rule 206(4)-5. The Proposed Rules would amend the pay to play rule in light of the Dodd-Frank Act, to ensure that the private fund advisers exempt from registration would still be covered by the pay to play restrictions. Those categories include advisers to foreign private funds, advisers with less than $150 million in assets under management, and advisers to venture capital funds.

The pay to play rule is a crucial one. It addresses a particularly pernicious form of conflict of interest, one that harms public institutions and by extension untold numbers of investors in government pension funds. Such rules have been instrumental in cleaning up the municipal securities markets. We commend the Commission for carefully adjusting the rule in light of the Dodd-Frank Act so that it applies broadly to unregistered, as well as registered, private fund advisers.

However, the Proposed Rules must not rely on standards yet to be promulgated by the MSRB, which may take no action or may take insufficient action.

The Proposed Rules would amend the solicitor provisions of the pay to play rule, allowing registered municipal advisers to solicit business from municipal entities on behalf of investment advisers. These solicitation arrangements would be conditioned on the MSRB issuing pay to play standards governing municipal advisers that are "substantially equivalent or more stringent" than the Commission's pay to play rule. Proposed Rule 275.206(4)-5(f)(9)(ii)(A).

Yet, as indicated in the Release, the MSRB simply "intends to consider" subjecting municipal advisers to similar restrictions. While that eventuality may come to pass, and while, in substance, the MSRB standards may ultimately be as good or better than the SEC's rule, the SEC simply cannot predicate its own rulemaking on those future uncertainties. Passively outsourcing such a key component of the pay to play rule is not acceptable and not consistent with the statutory intent of the Dodd Frank Act. The SEC must take action itself in these Proposed Rules to address this matter now.

Conclusion

We hope that our comments will assist the Commission as it finalizes its regulations.

Sincerely,

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