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September 15, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0609

Re: File No. S7-30-04
Proposed Registration under the Advisors Act
of Certain Hedge Fund Advisers

The Securities and Exchange Commission ("*Commission*") published, and requested comment on, proposed rules that would require many hedge fund advisers to register under the Investment Advisers Act of 1940 (the "*Act*") by counting the investors in a "private fund" as "clients" for the purpose of the exemption for "private advisors" in Section 203(b)(3) of the Act. Proposed Rule 203(b)(3)-2 would define a "private fund" as a company that, among other things, "permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests… ."

A question has arisen about the possible application of this "private fund" definition to special purpose entities formed to engage in certain collateralized debt obligation financings, as described more fully below. This letter does not address the desirability of this proposed rule to either the Commission or the private sector. Rather, it seeks clarification of, and respectfully requests that the Commission address, the question described below in any public release that adopts the proposed rules, whether in their present or revised form.

We represent a financial institution that invests in, and provides credit enhancement for, high quality real estate loans originated throughout the United States. It also invests in real estate loan securities created by pooling these loans. Its investments consist of high-quality jumbo residential real estate loans, various other diverse residential and commercial real estate loan securities and commercial real estate loans.

It funds a portion of its investments in real estate loan securities through collateralized debt obligation ("CDO") offerings. For each of these securitizations, specific real estate loan securities and other assets are transferred to a special purpose entity (*"Issuer"*) and combined with other similar assets acquired directly by the Issuer. The Issuer is typically an off-shore entity whose equity interests are privately held by one or more investors. The selection and ongoing decision making with respect to the collateral are managed by a collateral manager, the duties of which might cause it to meet the definition of investment adviser under the Act. The Issuer issues multiple classes, or tranches, of debt securities with varying maturities and coupons (collectively, *"Notes"*). Interest is paid on the Notes on specified dates and the Notes are scheduled to mature at specified maturity dates but may be redeemed or repaid earlier, at the instance of the Issuer, if the loans subject to the underlying collateral are repaid or if certain adverse tax events occur. In addition, the terms of the Notes often provide that if certain ratings are not obtained from rating agencies within 180 days (sometimes referred to as the "ramp-up period") of the issuance of the Notes or if certain coverage tests are not met at any time after the ramp-up, sufficient Notes shall be redeemed to meet the coverage tests and to satisfy the rating agencies.

None of the scheduled maturity dates are earlier than two years from the date of issuance of the Notes and the decision to repay or redeem the Notes prior to the scheduled maturity date can only be made by the Issuer. The noteholder, or investor, has no right to demand an early redemption or repayment of the Notes. The equity interests remain outstanding until all Notes have been retired.

A concern has arisen that, because of the possibility that an Issuer might redeem certain of the Notes within six months of their issuance, a literal reading of the proposed definition of "private fund" in Rule 203(b)(3)-2 might include one of the Issuers.

However, it appears that the Issuers of the types of CDO financings described above are not the types of investment funds to which the term "hedge fund" applies. The Notes are typically sold in reliance on the exemption from the registration requirements of Section 5 of the Securities Act provided by Rule 144A or Regulation S. Moreover, the investors have no right to demand an early redemption or repayment from the Issuer (whether during the ramp-up period or otherwise).

Nor do the Issuers and debt securities present the regulatory concerns expressed in the September 2003 Staff Report "Implications of the Growth by Hedge Funds." These Issuers are not trading vehicles with the possibility of causing marked disruption. The securities are not sold to the public and the "retailization" concern expressed regarding hedge funds does not apply. The valuation concerns, again, are not relevant since the CDOs are always debt obligations with specified values at maturity. These are simply not hedge funds.

Therefore, we respectfully request that the Commission clarify in any further release that redemption provisions of the type described above would not cause a CDO Issuer to fall within the definition of "private fund."

Sincerely yours,

CHAPMAN AND CUTLER LLP

By /s/ William F. Tueting

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