CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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September 15, 2004

VIA E-MAIL: rule-comments@sec.gov

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File S7-30-04 Proposed Rule to Require Registration of Certain Hedge Fund Advisers under the Investment Advisers Act of 1940

Dear Mr. Katz:

This letter contains the comments of the Chamber of Commerce of the United States of America (the "Chamber") on the rule proposed by the Securities and Exchange Commission (the "Commission") in Release No. IA-2266 (the "Release")[1] to require certain "hedge fund" managers to register with the Commission under the Investment Advisers Act of 1940 (the "Advisers Act").

I.

Introduction and Summary of Comments

The proposed mandatory registration rule would implement the recommendation of the Commission's staff in a report[2] reflecting the results of a study, undertaken at the Commission's direction and focused on "investor protection concerns raised by the growth of hedge funds."[3] Given the growth in hedge funds in recent years, we believe such a review was entirely appropriate and we commend the Commission and its staff for undertaking it. Nevertheless, we are opposed to the mandatory registration rule and we urge the Commission not to adopt it.

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[1] 69 Fed. Reg. No. 144, pages 45172-45200 (July 28, 2004) ("Federal Register").
[2] *Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission* (September 2003) (the "Staff Report").
[3] Federal Register at 45174.

As discussed more fully elsewhere in this letter, there is no dispute that hedge funds play a critical role in the capital markets of the United States. They are a source of financial innovation, provide liquidity and increase efficiency. The important contributions that hedge funds make to our capital markets has been recognized by the President's Working Group on Financial Markets and by the Commission itself.[4] These benefits were aptly summarized at a recent hearing of the Senate Committee on Banking, Housing and Urban Affairs:

> Hedge funds play a critical and special role in our capital markets and are enormously important to helping institutional investors diversify their investment portfolios and meet their future funding needs. The liquidity hedge funds provide to the marketplace in the form of risk capital creates more stable and efficient markets and reduces systemic risk. Simply stated, hedge funds act as "risk absorbers" in the markets by serving as ready counterparties to those wishing to hedge risk, even when markets are volatile. In addition their active trading and research contribute to greater pricing efficiencies in our financial markets. Because the returns hedge funds provide tend to be uncorrelated to traditional stock and bond investments, they have proven key to helping university endowments, foundations and other institutional investors achieve enhanced returns at lower volatility tan would otherwise be the case, thereby helping them meet their funding needs.[5]

In such circumstances, the Chamber feels compelled to comment on the proposed rule as we believe it will have a substantial adverse effect on the ability of these types of private investment funds to continue to make these important contributions to our capital markets.

As a general proposition, we believe the proposed rule reflects an attempt by the Commission to address a perceived problem that it has failed to define with sufficient clarity by imposing a solution--mandatory registration of hedge fund advisers--that is not directly responsive to the perceived problem as described in the Release. To illustrate, the Release appears to rationalize the proposal principally on the grounds of investor protection, but the technical contours of the proposal suggest it may be directed to other concerns. Specifically, the proposed rule would apply only with respect to certain private investment funds that prohibit their investors from redeeming their investments for a period of at least two years from purchase. If investor protection is indeed the rationale for the proposal, we fail to see why the degree of protection arguably provided by the proposal is less for the least liquid investments and can be avoided completely by the use of extended "lock-in" periods.

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[4] See notes 21-23, *infra,* and the accompanying text.
[5] Oral Statement of Adam C. Cooper, Chairman, Managed Funds Association before Committee on Banking, Housing and Urban Affairs, United States Senate, July 15, 2004.

We also feel constrained to emphasize that there are significant dangers to regulatory initiatives that are based upon ill-defined perceived problems. In addition to the problem of unintended consequences, and as discussed elsewhere in this letter, there appears to be significant doubt that the proposed rule will in fact accomplish its apparent objective to deter fraud and, should that prove to be true, the result could be attempts at further regulation that could seriously harm the capital markets.[6]

In addition to these general concerns, we have three specific objections to the proposed rule. First, as discussed in Part II of this letter, we believe that the findings and analysis with respect to investor protection issues contained in the Staff Report, and summarized in the Release, do *not* provide an adequate factual or policy basis for the conclusion that mandatory registration of hedge fund advisers is necessary to protect investors. Second, for the reasons explained in Part III, we also believe that adoption of the mandatory registration proposal, which the Commission's majority apparently views a "modest first step",[7] could have adverse effects on the United States capital markets by deterring financial innovation and reducing liquidity. Third, as explained in Part IV, adoption of the mandatory registration rule would require the Commission to reinterpret the term "client" in a manner that would overturn well established administrative interpretations of many years' standing that were known to Congress in enacting amendments to the Advisers Act. We believe such a sharp reversal in regulatory interpretation is entirely inappropriate here and we note that other commentators on the proposed rule have made a strong case that the Commission lacks the authority to make such a change unilaterally and without Congressional approval.[8] In short, we believe that the proposed rule is at best an unwarranted reversal of long-standing regulatory interpretations of the federal securities laws and at worst an action that exceeds the Commission's authority and could result in a round of protracted but unnecessary litigation.

While we are strongly opposed to the proposed mandatory registration rule, we do not object in principle to the desire of the Commission to collect and evaluate a broader range of information about hedge funds and their advisers. There are, however, feasible alternatives to the mandatory registration proposal (including use of information already provided by the funds advisers involved to other government agencies) that would enable the Commission to gather such information and to do so in a manner that would be less costly and intrusive and avoid the

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[6] See note 18, *infra,* and the accompanying text.
[7] Federal Register at 45198.
[8] *Letter of Wilmer Cutler Pickering Hale and Dorr LLP* (September 8, 2004) ("Wilmer Cutler Comment Letter").

risk of adverse effects on the capital markets. As discussed in Part V, we urge the Commission to pursue these alternatives vigorously.

II.

Mandatory Registration is Not Required to Protect Investors

As noted in the Staff Report, there is no generally accepted definition of the term "hedge fund" and the term generally refers to an entity such as a limited partnership that invests in securities or other assets.[9] Hedge funds of the type with which the proposed rule is concerned generally do not engage in public offerings of equity interests in their funds and thus are not required to register those interests under the Securities Act of 1933. In addition, these hedge funds limit their investors to institutions and other sophisticated parties so that the funds are not required to register with the Commission under the Investment Company Act of 1940 (the "Company Act") and their advisers are not required to register with the Commission under the Advisers Act.[10] As a result, these hedge funds and their advisers have been widely understood not to engage in activities that implicate the traditional touchstones of the federal securities laws: regulating public offering of securities and protecting "retail" investors (i.e., those investors of limited means who lack both the financial sophistication necessary to evaluate investments on their own and the means to employ others to make those evaluations).

Notwithstanding the foregoing, the Release suggests the growth of hedge funds in and of itself has raised investor protection concerns and indicates that the staff study focused on "investor protection concerns raised by the growth of hedge funds".[11] Relying principally on the Staff Report, the Release cites three general areas of concern as the basis for the proposed rule: the growth of hedge funds, the growth in hedge fund fraud, and the "retailization" of hedge funds. As discussed below, we do not believe that the facts underlying these stated areas of concern warrant adoption of the mandatory registration proposal.

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[9] Staff Report at 3.
[10] Section 3(c)(1) of the Company Act exempts from registration funds that have no more than 100 investors and have not made, and do not propose to make, a public offering of securities. Investors in these funds generally are limited to "accredited investors" (as defined in the Commission's regulations). Section 3(c)(7) of the Company Act exempts from registration funds whose securities are owned only by "qualified purchasers" (e.g., individuals with more than $5 million in investment assets) and that do not make a public offering of securities. Advisers to funds that are exempt from registration under the Company Act are *currently* exempt from registration under the Advisers Act if they have less than 15 clients (counting each fund, rather than the investors those funds, as a single client).
[11] Federal Register at 45174.

A. <u>Growth of Hedge Funds</u>

The Release correctly notes that hedge funds constitute only "a relatively small portion" of America's financial markets, but nevertheless states that hedge funds are of concern because of their greater rate of growth in recent years and their role as traders in the securities markets. As discussed more fully in Part V, we agree that, in light of the growth in hedge funds, the Commission should receive more information about hedge funds and their advisers, but, as a core principle of public policy, we believe it is indisputable that neither size alone nor rate of growth can properly be treated as a sufficient basis for regulation.

Hedge funds have grown because they provide important investment opportunities sought by institutional investors and other sophisticated parties. This growth has been fostered by regulatory policies previously supported by the Commission on numerous occasions, both unilaterally and through the President's Working Group on Financial Markets.[12] Most recently, in 1992, the Commission staff published a study recommending that Congress enact an additional exemption from registration to facilitate larger unregistered hedge fund offerings to those with very substantial investment assets.[13] Congress responded affirmatively in 1996 by enacting section 3(c)(7) of the Company Act. In this connection, it should be emphasized that the lack of direct regulation of those hedge funds and other private investment funds that do not make public offerings of securities or solicit funds from retail investors is consistent with U.S. regulatory policies in other markets involving institutional or sophisticated investors such as those involving private placements and over-the-counter derivatives instruments. The mere fact that hedge funds have grown substantially in recent years cannot and should not justify the sharp reversal of regulatory policy contemplated by the proposed rule.

To summarize, we do not believe that mere size or rate of growth is a valid basis for expanded regulation. Rather, we believe that regulatory initiatives undertaken by the Commission should focus on the principal and traditional touchstones of the Commission's jurisdiction: regulation of public offerings of securities and protection of retail investors. Hedge funds managed by those unregistered advisers to which the proposed rule is directed do not make public offerings of interests in those funds and limit their investors to institutions and other sophisticated parties and, as discussed below, we do not believe the two specific investor

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[12] *Hedge Funds, Leverage, and the Lessons of Long Term Capital Management—Report of the President's Working Group on Financial Markets* (April 1999) (the "Working Group Report").

[13] *Protecting Investors: A Half Century of Investment Company Regulation*, Division of Investment Management of the U.S. Securities and Exchange Commission (May 1992).

protection issues highlighted in the Release (fraud and retailization) provide a sufficient factual or policy basis for the mandatory registration proposal.

B. Hedge Fund Fraud

As the Release itself acknowledges, unregistered hedge fund advisers are subject to the anti-fraud provisions of the Advisers Act and the comparable provisions of the other federal securities laws.[14] Nevertheless, in support of the need for the proposed mandatory registration rule, the Release states that "[t]he growth in hedge funds has been accompanied by a substantial and troubling growth in the number of our hedge fund fraud enforcement cases".[15] The underlying findings in the Staff Report provide scant support for this proposition. Indeed, the Staff Report indicates that the staff found "no evidence indicating that hedge funds or their advisers engage disproportionately in fraudulent activity".[16]

There also appears to be substantial doubt that the proposed mandatory registration rule would in fact increase the Commission's ability to detect and address fraud. In this connection, the analysis of the Commission's hedge fund enforcement actions contained in the dissenting views of Commissioners Glassman and Atkins suggests that the proposed rule would not have the effects envisioned by the Commission's majority. Specifically, Commissioners Glassman and Atkins noted that many of the instances of fraud cited in the release involve small funds that would be exempted from mandatory registration, funds that were already registered under the current regulations and funds that deliberately evaded registration.[17] Moreover, in response to a question from Senator Crapo, a member of the Senate Committee on Banking, Housing and Urban Affairs, the Chairman of the Board of Governors of the Federal Reserve expressed doubt about the efficacy of the proposed rule as an anti-fraud rule:

> I am concerned with the proposal. The proposal seeks to deter fraud and market manipulation. The information reported to the SEC by registered advisers is very limited and would be of little value for these purposes. Nor are examinations of advisers likely to uncover much fraud. Our experience with bank examinations indicates that examiners have great difficulty uncovering fraud. Most often it is uncovered through complaints by customers or disaffected employees rather than through exams. I believe that this was also the case with the recent scandals in the regulated mutual fund industry.[18]

[14] Federal Register at 45173.
[15] Federal Register at 45175.
[16] Staff Report at 73.
[17] Federal Register at 45197-98.
[18] Response of Alan Greenspan, Chairman, Board of Governors, Federal Reserve, in connection with July 20, 2004 hearing of the Senate Committee on Banking, Housing and Urban Affairs ("Greenspan Response").

C. Retailization

We likewise do not believe that mandatory registration of hedge fund advisers is necessary to address the concerns expressed in the Release concerning the possible retailization of hedge fund investors. As noted earlier, hedge fund advisers are generally exempt from registration under the Advisers Act only if, among other things, the funds they advise qualify for exemption under either section 3(c)(1) or 3(c)(7) of the Company Act, which by definition generally limits direct investment in those funds to institutions and other sophisticated investors. Moreover, in practice, many of these funds have imposed their own minimum investment levels (e.g., $1 million) that in and of themselves are of sufficient size to preclude the participation of retail investors.

Thus, in today's terms, investors in hedge funds that are managed by unregistered advisers generally are well within the class of persons that Congress and the Commission have long treated as either sufficiently sophisticated to evaluate investments on their own or able to retain their own experts to advise them. As the Senate Committee on Banking, Housing and Urban Affairs observed in 1996 in connection with the enactment of section 3(c)(7) of the Company Act, the individuals covered by that exemption "can evaluate on their own behalf matters such as the level of a fund's management fees, governance provisions, transactions with affiliates, investment risk, leverage and redemption rights".[19] In short, hedge fund investors are not within the category of so-called "retail" investors whose protection historically has been a principal touchstone of the federal securities laws.

Certain portions of the Release suggest that a majority of the Commission may believe that the proposed rule can be justified in part by a need to extend regulatory protection to large investors.[20] Given the resource constraints under which the Commission now operates and will likely operate for the foreseeable future, it seems questionable whether those resources should be diverted in this manner. Moreover, we believe it is unnecessary to do so. This is because, as has been widely documented, the private sector has responded vigorously in response to the failure of Long Term Capital Management. For example, counterparty surveillance (e.g., extended pre-investment due diligence by investors and discipline imposed by lenders) is today pervasive among institutions and other sophisticated investors in hedge funds and other private investment funds. Thus, we fail to discern an important public policy rationale for diverting resources into a

[19] S. Rep. No. 104-293 at 10 (1996).
[20] Federal Register at 45173.

new program to provide governmental protection (beyond the application of the antifraud rules) to a class of investors who do not need it.

Finally, the specific instances of retailization cited by the Commission's majority in the Release do not in our view provide an adequate factual or policy basis for the mandatory registration proposal. First, if by reason of the passage of time and inflation, some "retail" investors now can qualify as "accredited investors" and thus can invest *directly* in unregistered hedge funds under section 3(c)(1) exemption, the Commission has full power and authority to increase those dollar thresholds at any time. Second, the Commission's majority also appears to be concerned that retail investors may be *indirectly* investing in hedge funds either through so-called funds of funds (i.e., funds that invest in hedge funds) or pension funds. When funds of funds make public offerings of securities to retail investors, those funds and their managers must both be registered with the Commission. Thus, investors in those funds are today afforded the full protections provided under the securities laws.

We believe the fact that pension funds invest in hedge funds should be irrelevant to the issue of mandatory registration of hedge fund advisers. For 30 years, pension funds, their managers and investment advisers have been subject to substantial and substantive regulation by the Department of Labor pursuant to the Employee Retirement Income Security Act of 1974, as amended. There is thus no need for the Commission to insert itself into this comprehensive regulatory regime. Moreover, if the Commission were to use this rationale to justify its mandatory registration proposal, that proposal logically would have to be expanded to encompass a broad range of other private and unregistered investment funds and their advisers, including venture capital funds, where the level of pension fund investment is greater than exists with respect to hedge funds.

To summarize, we do not believe that policy considerations related to the principal touchstones of the Commission's regulatory jurisdiction (regulation of public offerings of securities and protection of retail investors) warrant adoption of the mandatory registration proposal. As discussed below, we also believe that adoption of the proposal could have adverse effects on the capital markets.

III.

Adverse Effects on Capital Markets

It is universally acknowledged that hedge funds play a critical role in the capital markets of the United States. The Working Group Report recognized that hedge funds have been significant contributors to financial innovation and have provided increased pricing efficiencies and liquidity.[21] The Staff Report likewise acknowledges the important role played by hedge funds in the U.S. capital markets, as does the Release itself.[22] Significantly, the Release explicitly acknowledges the potential that actions by the Commission could compromise the ability of hedge funds to continue to make these important contributions:

> Hedge funds contribute to market efficiency and liquidity. They play an important role in allocating investment risks by serving as counterparties to investors who seek to hedge risks. They provide their investors with greater diversification of risk by offering them exposure uncorrelated with market movements. *Therefore, in evaluating alternative courses we might take, we have paid particular attention to the extent to which our actions might encumber the operation of hedge funds and thus damage the very markets we seek to protect.* (Emphasis added.)[23]

While we appreciate the Commission's sensitivity to the importance of capital markets issues, we believe that the apparent conclusion of the Commission's majority that mandatory registration under the Advisers Act will not inhibit hedge fund performance is unwarranted.

A principal focus of the Commission's analysis is that registration will not be costly and will impose "only minimal additional burdens on hedge fund advisers".[24] We believe that this understates the impact of registration in several significant respects. First, as noted, the Commission's current proposal is apparently "first step",[25] but the Commission has not disclosed its intentions with respect to future actions. In such circumstances, characterizing the costs and burdens of the first step as "minimal" provides little comfort to market participants. Second, as Commissioners Glassman and Atkins noted in their dissent, there are significant substantive effects of registration under the Advisers Act.[26] Third, registration will subject advisers to routine (i.e., no cause) audits and examinations by the Commission. While it is correct in theory to say that advisers who are "doing nothing wrong" should have no fear of such routine examinations, there is as discussed below an important underlying issue that the Commission's majority appears not to have addressed.

Hedge funds are risk takers and financial innovators and often pursue strategies that some would describe as "novel" or "out of the mainstream", and many hedge funds seek to provide

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[21] Working Group Report at 2-3.
[22] Staff Report at 4; Federal Register at 45178.
[23] Federal Register at 45178.
[24] Federal Register at 45180.
[25] Federal Register at 45198.
[26] Federal Register at 45199, n.32.

investors with substantial returns that are not correlated to those available from traditional stock and bond investments. Advisers may find that examiners will tend automatically to question non-mainstream strategies or treat above-market returns as "red flag" items requiring special attention during an otherwise routine audit. Moreover, since the Commission plainly lacks the resources to audit all registered advisers, novel investment strategies or high returns may increase the likelihood of examination in the first instance. As Commissioners Glassman and Atkins noted in their dissent to the issuance of the proposed rule, the Commission is moving to a risk-based examination system and "[a]bsent clearly identified red flags, we are concerned that high performance will likely invite extra Commission scrutiny".[27]

In these circumstances, even the "modest first step" of mandatory registration could have adverse consequences for the capital markets, notwithstanding statements in the Release that the Commission does not intend to regulate investment strategies directly.[28] For example, in an effort to minimize the potential for extra scrutiny by the Commission, some advisers could shy away from the very complex and innovative investment strategies that benefit the capital markets in favor of more "plain vanilla" strategies that will more nearly conform to the perceived expectations of the Commission's examination staff. Thus, so-called "first movers" may think twice before embarking on a new and novel investment strategy lest that lead to an audit. To the extent this occurs and hedge fund investment strategies become more homogenized, the U.S. capital markets will become less innovative and less efficient. Moreover, even if advisers do not alter their investment behavior, the cost of responding to audits of their complex strategies will add to the regulatory burdens imposed by mandatory registration.

Over time, the numbers of investment alternatives of the type hedge funds now provide to institutions and other sophisticated investors could be reduced. In the short term, some hedge fund managers could simply move offshore and in the longer term, the creation of new hedge funds may be discouraged. While the Commission's majority seems to have discounted this possibility, others have not. For example, in 1999, the President's Working Group on Financial Markets declined to recommend direct regulation of hedge funds based in part on concerns that regulation would drive these entities offshore, curtailing the effectiveness of any such regulation and would not be cost effective.[29]

[27] Federal Register at 45199, n.36.
[28] Federal Register at 45180.
[29] Working Group Report at 32-42. *See also* H. R. Rep. 104-622 at 18 (1996).

We do not believe it is appropriate to discount, as some have suggested, the likelihood that the Commission would pursue a vigorous program of examinations of hedge fund advisers. Indeed, if the Commission were to adopt the proposed rule and then, by reason of resource constraints or otherwise, fail to regularly examine a reasonable cross-section of the advisers who are covered by the rule, the resulting illusion of governmental supervision could create a false impression among investors and a "moral hazard" that could result in reduced investor protection.

To summarize, we believe that, even standing alone, the Commission's mandatory registration proposal has the potential to produce adverse effects in the capital markets by deterring financial innovation and reducing liquidity and efficiency. The proposed rule does not, however, stand alone. As Commissioners Glassman and Atkins note, the proponents of mandatory registration view it as merely a "modest first step".[30] This promise for future additional, but as yet undefined, substantive regulation will likely exacerbate the potential adverse capital markets effects described above. Indeed, in his previously quoted response to the Senate Committee on Banking, Housing and Urban Affairs, the Chairman of the Board of Governors of the Federal Reserve suggested that adoption of the mandatory registration rule could in fact be the precursor to more direct regulation of the type that would have a direct impact on the capital markets:

> Should registration [of hedge fund advisers] fail to achieve the intended objectives [to deter fraud and market manipulation], pressure may well become irresistible to expand the SEC's regulatory reach from hedge fund advisers to hedge funds themselves. The application of the Investment Company Act to hedge funds would greatly impede their important contributions to the flexibility and resiliency of our financial system.[31]

The current hedge fund regulatory regime was consciously created by the Commission and Congress. It has worked and worked well and great care should be taken in altering it. In this connection, we strongly believe that the mandatory registration proposal, although quite troubling in and of itself, cannot reasonably be viewed on a stand alone basis given the characterization of the proposal as merely a first step. In these circumstances, we believe it would be inappropriate for the Commission to adopt the proposed rule.

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[30] Federal Register at 45198.
[31] Greenspan Response

IV.

Questionable Reversal of Settled Regulatory Interpretations

In order to implement the mandatory registration proposal unilaterally the Commission is required to reverse its prior interpretation, adopted nearly 20 years ago, of the meaning of the term “client” to require that hedge fund advisers look through the funds they advise and, in applying the “less than 15 clients” limitation discussed earlier, count each separate investor in those funds as a direct client of the adviser. This new interpretation would be inconsistent with well settled interpretations of the federal securities laws dating back to the 1960s. For example, an adviser (whether or not registered) violates the Advisers Act by making or recommending investments that are not suitable for its clients and the Commission has treated the “client” for this purpose as the fund itself and not the individual investors. Thus, if the proposed mandatory registration rule is adopted, the term “client” apparently will have different meanings, one for purposes of determining whether advisers must register and another for other purposes. We believe such inconsistencies should be avoided unless clearly required as a matter of statutory interpretation.

Significantly, Congress was well aware of, and arguably implicitly relied upon, the current interpretation, on at least two occasions. This occurred most recently in 1996 in connection with the enactment of section 3(c)(7) of the Company Act. This legislation, recommended by the Commission, expanded the class of hedge funds (and other private investment funds) and their advisers that could be exempted from registration under the Company Act and the Advisers Act, respectively. In making the recommendation and in enacting the legislation, both the Commission and Congress were well aware of the then current client counting rule and its impact.

We believe that it is entirely within the Commission’s proper jurisdiction for it to interpret the statutes it has been charged with administering. This is of course true in cases where the Commission concludes that a prior interpretation was in error and did not properly reflect the intent of Congress. This is not such a case, however, and we believe that regulatory reversals of settled interpretations of law that are not required to correct a prior error in interpretation should occur only in rare and unusual circumstances. We do not believe this is such a circumstance. Moreover, as noted earlier in this letter, other commentators have made what we believe are compelling arguments, that in this particular instance, the Commission lacks the legal authority to reinterpret the term “client” unilaterally and must instead seek action by

Congress if it wishes to expand its regulatory jurisdiction in the manner contemplated by the proposed rule.[32]

V.

Alternatives to Accomplishing the Commission's Information Objectives

For the reasons discussed above, we believe there is an insufficient factual or policy basis to support adoption of the proposed mandatory registration rule and, further, that adoption of the proposal could have adverse consequences for the capital markets of the United States. At the same time, we agree that it is important for the Commission to have adequate and timely information on this and other sectors of the capital markets. We share the views expressed by others that this could be accomplished in a manner that would be less costly and less intrusive than mandatory registration and would simultaneously avoid [entirely] the risks of adverse capital markets effects that are inherent in the mandatory registration proposal.

There is of course a variety of ways in which such an information gathering regime could be implemented. For example, the Commission could adopt a rule requiring every hedge fund adviser relying on a statutory exemption from registration under the Advisers Act to make an annual filing with the Commission specifying the specific exemption upon which the adviser relies and setting forth such census-type information as the Commission requires. We do not, however, recommend a specific information gathering regime. Our point is simply that such a regime could fully address the Commission's need for information with respect to hedge funds without (as would necessarily occur under the mandatory registration proposal) either increasing regulatory costs and burdens or producing adverse effects in the capital markets of the United States.

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[32] Wilmer Cutler Comment Letter.

We appreciate the opportunity to provide these comments to the Commission on the proposed mandatory registration rule, and would be pleased to discuss any questions the Commission may have with respect to the views we have expressed. Any questions about this letter may be directed to David Hirschmann, Senior Vice President of the Chamber, at 202-463-5609.

Sincerely,

David T. Hirschmann

cc: Hon. William H. Donaldson, Chairman, Securities and Exchange Commission
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Harvey J. Goldschmid, Commissioner