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September 15, 2004

VIA E-MAIL

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

Re: File Number S7-30-04: Proposed Registration under the Advisers Act of Certain Hedge Fund Advisers

Dear Mr. Katz:

We thank you for the opportunity to comment on the proposed rule and rule amendments (the "Proposed Rules") contained in SEC Release No. IA-2266 that would require the registration of certain hedge fund advisers under the Investment Advisers Act of 1940, as amended (the "Advisers Act").

Our law firm has been representing registered and unregistered advisers to private investment funds for over 30 years and currently represents over 200 such advisers, both large and small, domestic and foreign. We believe that our collective experience and diverse client base has given us an understanding of the hedge fund industry and how it will be affected by the Proposed Rules.[1]

We do not believe that the Securities and Exchange Commission ("SEC") has made a compelling case for the adoption of the Proposed Rules. In particular, we feel that other comments transmitted to the SEC in connection with the Proposed Rules have suggested proposals that demonstrate that the SEC can obtain the information it desires about private investment funds and their advisers through less disruptive and more effective means than registration under the Advisers Act. For example, the SEC could obtain census information concerning hedge funds via the filing of an expanded Form D or some

[1] Our comments contained herein reflect our firm's views only, and not necessarily the views of any of our clients.

other census form.[2] Additionally, we feel that it is inappropriate for the SEC to adopt the Proposed Rules in light of the fact that the "look-through" test contained therein is contrary to Congress' intent under the Advisers Act and the SEC's long-standing interpretation of the term "client."[3]

We also wish to add our names to the long list of commenters who have requested that the deadline to comment on the Proposed Rules be extended to October 28, 2004. We fear that unless the comment period is extended, the legitimacy of the comment process will be tainted, especially in light of Commissioner Glassman's and Commissioner Atkins' request for alternatives to the Proposed Rules. We believe that the Proposed Rules are too significant a change in the regulatory landscape and are too far reaching to adopt without the alternative investment industry feeling that it has had a reasonable opportunity to be heard.

However, if the SEC determines to adopt the Proposed Rules, we believe that it should provide an exemption from the "look-through" provisions of the Proposed Rules for a private investment fund that is operating under the exemption contained in Section 3(c)(7) of the Investment Company Act of 1940, as amended (the "Investment Company Act") (i.e., a fund that limits its investors to "qualified persons" and "knowledgeable employees").[4] This exemption would allow the SEC to focus its enforcement and oversight efforts on so-called 3(c)(1) funds which are effectively not required to impose minimum financial requirements on their investors and are far more likely to cater to "retail" investors.

The federal securities laws clearly embrace the philosophy that effective capital formation and efficient deployment of capital are furthered by not imposing regulatory requirements on those able to fend for themselves. This philosophy has worked well in fostering capital formation (via Section 4(2) of the Securities Act of 1933, as amended, and Regulation D thereunder, among other exemptions from registration) and efficient capital deployment (via Rule 144A and other exemptions available to secondary market trading). In the investment management arena, the exemption available to private investment companies in Section (3)(c)(7) of the Investment Company Act has facilitated the efficient management of pools of capital for the benefit of sophisticated persons.

We believe that the substantial financial requirements that need to be met for an investor to be considered a qualified purchaser ensure that such investors can adequately protect their own interests. As the U.S. Senate report issued in connection with the enactment of the National Securities Market Improvement Act stated, "The qualified purchaser pool reflects the Committee's recognition that financially sophisticated investors are in a position to appreciate the risks associated with investment pools that do not have the Investment Company Act's protections. Generally, these investors can evaluate on their own behalf matters such as the level of a fund's management fees, governance

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[2] See, for example, the comment letter submitted to the SEC by Bryan Cave LLP dated August 16, 2004.
[3] See, for example, the comment letter submitted to the SEC by Wilmer Cutler Pickering Hale and Dorr LLP dated September 8, 2004.
[4] The term "qualified person" is defined in Section 2(a) (51) of the Investment Company Act, and the term "knowledgeable employee" is defined in Rule 3c-5 promulgated under the Investment Company Act.

provisions, transactions with affiliates, investment risk, leverage, and redemption rights."[5] These matters seem to us to be identical to those areas of concern raised by the SEC with respect to hedge funds in general.

We are aware that a fund of hedge funds can be a qualified purchaser even if all of its investors are not qualified purchasers (i.e., if its net investments exceed $25 million).[6] However, the Proposed Rules, adopted with our suggested exemption, would still generally require that the adviser to such a fund of hedge funds be registered under the Advisers Act, thereby keeping in place the oversight the SEC desires and providing a registered adviser as a buffer between the investee hedge fund and any potential "retail" investors.

Additionally, we agree with the suggestion, also made by other commenters, that the SEC's existing custody rule[7] be extended to unregistered advisers. This would provide some meaningful investor protection with little or no additional cost to industry participants.

In light of the foregoing, we respectfully request that the Proposed Rules, if adopted, contain an exemption from their look-through provisions for 3(c)(7) funds.

Please do not hesitate to contact Stephen M. Schultz (sschultz@kkwc.com) or Eric S. Wagner (ewagner@kkwc.com) if you have any questions regarding our proposal.

Very truly yours,

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.

[5] P.L. No. 104-290, 110 Stat. 3416, 3432-33 (1996).
[6] See section 2(a)(51)(A)(iv) of the Investment Company Act.
[7] Rule 206(4)-2 under the Advisers Act.