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TUDOR
INVESTMENT CORPORATION

September 15, 2004

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OFFICE OF THE SECRETARY

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

Re: Securities and Exchange Commission Proposed Rule 203(b)(3)-2 (File Number S7-30-04)

Dear Mr. Katz:

This comment letter ("Comment Letter") is submitted to the U.S. Securities and Exchange Commission ("Commission") by Tudor Investment Corporation ("Tudor") in response to, and as a commentary on, the Commission's proposed Rule 203(b)(3)-2 ("Proposed Rule")[1] that, if enacted, would require the registration of virtually all investment advisers with the Commission under the U.S. Investment Advisers Act of 1940 as amended ("Advisers Act"). As set forth in this Comment Letter, although Tudor is supportive of the Commission's mission to protect investors and the U.S. securities markets, Tudor believes strongly that the Proposed Rule is not the best means of accomplishing the Commission's goals and may have unintended consequences that could affect negatively the hedge fund industry, investors, and the U.S. financial markets generally.

Tudor Investment Corporation

Established in 1983 by Paul Tudor Jones II as an asset management firm, Tudor is one of the largest hedge fund advisers operating in the United States (with over $9 billion of assets under management), and is recognized as one of the preeminent alternative asset management firms in the world. Tudor is primarily responsible for the investment activities of large-scale private investment vehicles that are organized in both the United States and abroad. Tudor and its affiliates manage the securities, currency, and commodities trading activities of such investment vehicles for a sophisticated U.S. and foreign clientele.[2] Tudor accepts investments from such investors prudently in order to ensure that their participation in vehicles managed by Tudor is appropriate.

In each country in which Tudor and its affiliates conduct business, they are subject to regulatory oversight by a primary financial services regulator. In the United States, Tudor is registered with the U.S. Commodity Futures Trading Commission ("CFTC") as a commodity pool operator ("CPO") and commodity trading advisor ("CTA"), and is a member of the U.S. National Futures Association ("NFA") in such capacities. Tudor is not registered with the

Commission as an investment adviser under the Advisers Act in reliance on Section 203(b)(3) of the Advisers Act and Rule 203(b)(3)-1 thereunder. Accordingly, the CFTC is Tudor's primary regulator in the United States. Tudor submits to the CFTC, NFA, and commodity exchanges various reports, including Form 40 large trader reports as well as questionnaires and audited annual reports in respect of its investment vehicles. Additionally, Tudor submits regulatory filings with several other U.S. federal regulators. For instance, Tudor files foreign currency position reports with the U.S. Board of Governors of the Federal Reserve System ("Federal Reserve") and treasury-auction reports with the U.S. Department of Treasury ("Treasury Department"). Tudor files with the Commission Forms D (pursuant to Regulation D under the U.S. Securities Act of 1933 as amended ("Securities Act")), Schedules 13D, F, and G, as applicable (under Section 13 of the U.S. Securities Exchange Act of 1934 as amended ("Exchange Act")), and Forms 3, 4, and 5, as applicable (under Section 16 of the Exchange Act). Additionally, once final rules are promulgated with respect to hedge funds, Tudor will be required to file certain notices with the Treasury Department to help prevent money laundering pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Tudor Capital (U.K.), L.P. ("Tudor U.K.") is an investment adviser affiliate of Tudor organized in the United Kingdom. Tudor U.K. is registered with, and subject to extensive regulation and oversight by, the U.K. Financial Services Authority ("FSA").[3] Tudor U.K. also is registered with the CFTC as a CPO and CTA, and is a member of the NFA in such capacities. Tudor U.K. is not registered with the Commission as an investment adviser under the Advisers Act in reliance on Section 203(b)(3) of the Advisers Act and Rule 203(b)(3)-1 thereunder. In addition, a Tudor investment adviser affiliate soon will become registered in Singapore with the Monetary Authority of Singapore ("MAS"). Previously, affiliates of Tudor were registered with the Japanese Ministry of Finance ("MOF") and the Australian Securities and Investments Commission ("AISC").

Since its inception, Tudor has built a substantial infrastructure to support its investment operations. Tudor and its affiliates currently have approximately 300 employees located in six offices throughout the world. Over half of these employees are on the management and control side of Tudor, and ultimately report to either Tudor's President or Chief Operating Officer, neither of whom is involved in Tudor's day-to-day trading activities. In addition, Tudor's Legal and Compliance Departments monitor Tudor's trading and investment programs and operations to ensure compliance with applicable laws and regulations in the various jurisdictions in which Tudor and its affiliates operate.

Commission's Goals

As stated in the Proposing Release, the Commission is cognizant of the significant growth in the hedge fund industry and concerned about its effect on the Commission's mission to protect investors and the U.S. securities markets. The Proposed Rule attempts to address the Commission's main goals of (i) collecting vital information regarding the size and scope of hedge fund activities, (ii) preventing hedge fund-related fraud, and (iii) avoiding the "retailization" of hedge funds. Tudor supports these goals. However, the Proposed Rule will not aid substantially the Commission in achieving these goals, and instead will have negative collateral consequences.

Primary Regulator

The U.S. Congress has long recognized the inefficiency of overlapping regulatory schemes.[4] Many hedge fund advisers are already subject to comprehensive regulation by a primary regulator that oversees their operations and activities in order to promote best business practices, prevent fraud, and protect investors and the financial markets. As indicated above, Tudor is registered with the CFTC as a CPO and CTA, and the CFTC is Tudor's primary regulator in the United States. As a registered CPO and CTA, Tudor is subject to extensive regulation, including periodic on-site audits by the NFA, disclosure of background information on the firm and its principals and associated persons, fitness checks, examination requirements, and ethics training for such principals and associated persons, compliance and recordkeeping requirements, and investor reporting and disclosure requirements.[5] As Patrick J. McCarty, General Counsel of the CFTC, has stated, "to the extent the hedge fund adviser is registered with the CFTC as a CPO or CTA, there is no need for Commission registration."[6] Moreover, in 1999, the President's Working Group on Financial Markets ("PWG") issued a report ("PWG Report") that also suggested that CPO filings could provide the best vehicle for conveying information regarding hedge funds.[7] In addition, as outlined above, Tudor and its affiliates have a primary financial services regulator in each foreign jurisdiction in which they operate (*e.g.*, the FSA in the United Kingdom, the MAS in Singapore, and previously the MOF in Japan and the AISC in Australia).

Imposing overlapping and layered Commission registration and regulation on investment advisers that are already registered with the CFTC or another primary regulator is duplicative, inefficient, and unnecessary, will be burdensome and costly to the Commission and to industry participants, and is contrary to the notions of deference to other regulatory authorities and of sensible regulation and regulatory authority coordination. When legislators in foreign jurisdictions (such as the United Kingdom) have established single financial services regulatory regimes, they have expended considerable time and effort in analyzing in depth the various market participants and businesses, the relevant policy considerations, and the effects and costs of regulation, and they have reconciled conflicting and overlapping regulatory objectives and jurisdiction. This has resulted in integrated, coordinated, and efficient regulatory regimes that are sensible and beneficial to the financial markets, investors, and participants. Tudor believes that this considered approach is far preferable to the Commission taking the unilateral action advanced in the Proposed Rule.

The Commission requirements applicable to registered investment advisers will conflict or be inconsistent with regulations imposed by other primary regulators, and will result in legal uncertainty and increased compliance burdens and costs. In that regard, inasmuch as the Proposed Rule will require the registration of virtually all hedge fund advisers, it does not distinguish among the numerous and diverse hedge fund investment strategies (such as macro, currency, managed futures, arbitrage, among others). Historically, the U.S. Congress has assigned to the CFTC and NFA the task of regulating and overseeing many of such investment strategies, including the responsibility for developing and maintaining the requisite expertise, experience, and resources in its examination programs. Tudor believes that such allocation of regulatory and oversight responsibility between the CFTC/NFA and the Commission is sensible and efficient.

The Proposed Rule and its related consequences will strain the Commission's already thin resources (both personnel and funding). The Commission must balance the likely benefits of the Proposed Rule against its probable costs. The Commission does not have unlimited resources.[8] Other more traditional areas regulated by the Commission require the Commission's immediate attention.[9] As Commissioners Paul S. Atkins and Cynthia A. Glassman ("Dissenting Commissioners") have stated, "[The Proposed Rule] would...significantly increase industry and Commission burdens...Effective inspection of all hedge fund advisers will require the Commission to invest substantial resources and expertise that it does not yet have."[10] The addition of hundreds of new hedge fund advisers to the Commission's direct oversight (that employ a variety of complex investment strategies) will test the expertise, experience, and resources of the Commission's examination program.[11] Accordingly, requiring Tudor and other similarly situated hedge fund advisers to register with the Commission will not be the best use of the Commission's already scarce resources. However, if the Commission proceeds to adopt the Proposed Rule, it should exempt from registration investment advisers that already have a primary regulator in the United States.

Inter-Agency Cooperation and Information Sharing

The Commission asserts that requiring hedge fund advisers to register with the Commission is the best means to gain access to vital information about hedge funds.[12] Tudor does not agree with this position. First, the Commission's current position contradicts recent Commission statements and views regarding this issue. In 1992, the Commission stated that the need to acquire information regarding hedge funds for enforcement purposes would not be an adequate reason for requiring the registration of hedge fund advisers.[13] In addition, the Dissenting Commissioners stated that, "Mandatory registration of hedge fund advisers under the Advisers Act would not fill in these information gaps..."[14] Moreover, the PWG concluded that the registration of hedge fund advisers was not needed in order to monitor hedge funds.[15] In addition, in its present state, Form ADV does not require the disclosure of the type of information the Commission seeks.[16]

Hedge funds and their advisers are already subject to extensive reporting requirements that provide oversight and transparency of market activities. Presently, the Commission has access to substantial sources of information regarding the hedge fund industry from multiple filings made by the various industry participants (including advisers, operators, broker-dealers, and lenders) with the Commission and other U.S. federal and state regulators in addition to the Commission itself. Hedge fund advisers that are not registered with the Commission are still subject to numerous regulations, and must provide significant information to various regulators in connection with their operations and activities. Moreover, when hedge fund advisers interact with regulated third parties (such as prime brokers or commercial banks), safeguards already exist to protect investors and the financial markets. United States governmental agencies should share information regarding hedge funds and hedge fund advisers with each other (including the Commission) and coordinate better the existing regulation of hedge fund advisers. As the Dissenting Commissioners stated, "the Commission should review the vast array of data that the Commission and other government agencies already receive...there are other ways of obtaining information that would help us with our investor protection mission."[17] For instance, the CFTC's General Counsel has pointed out that the CFTC's enforcement group already coordinates its efforts with those of the Commission staff, assuring that enforcement issues of interest to the Commission uncovered during the CFTC/NFA examination process are subject to Commission review. In addition, the Commission could obtain information through reports filed with the CFTC, Federal Reserve, and Treasury Department. Furthermore, prime brokers perform valuation, custodial, recordkeeping, clearance, and financing services for hedge funds. Thus, prime brokers (which are registered with, and regulated by, the Commission as broker-dealers) are in a unique position to assist the Commission's information gathering efforts.[18] In addition, commercial banks (which are licensed and regulated by U.S. federal and state and, in some cases, foreign banking authorities) often act as lenders or counterparties to hedge funds in a variety of transactions designed to provide leverage to hedge funds. Rather than imposing registration, the Commission should share in information regarding hedge fund activities already available to the Commission, CFTC, Federal Reserve, Treasury Department, U.S. Office of the Comptroller of the Currency, and U.S. Federal Deposit Insurance Corporation.

The Commission could obtain additional information about the hedge fund industry through more efficient measures than required registration. As an alternative to the Proposed Rule, the Commission should consider requiring all unregistered investment advisers to file a notice with the Commission that would provide the Commission with information it deems necessary. This process would address directly the Commission's goals without creating a new extensive regulatory regime. The Commission could require notice filings be made when hedge fund advisers claim exemption from registration under the Advisers Act or when hedge funds claim exclusions from registering under the U.S. Investment Company Act of 1940 as amended ("Investment Company Act"). For instance, the Commission could require each hedge fund adviser that relies on the exemption provided by Rule 203(b)(3)-1 under the Advisers Act to file a notice of claim for exemption with the Commission and provide background information regarding such claimant.[19] Alternatively, the Commission could amend certain regulatory filings already made to the Commission by hedge fund advisers.[20] Through either of these methods, the Commission could obtain information at lower costs to both the Commission and hedge fund advisers. These initiatives are a much more efficient and sensible application of regulatory resources than the Proposed Rule.

Investor Qualification Requirements

A concern of the Commission, as set forth in the Proposing Release, is the "retailization" of hedge funds resulting from more unsophisticated investors qualifying as "accredited investors." However, as recently as 2003, the Commission stated that, "the staff has not uncovered evidence of significant numbers of retail investors investing directly in hedge funds."[21] Also, the PWG Report stated that hedge funds are "not widely available to the public...The primary investors in hedge funds are wealthy individuals and institutional investors."[22] The Commission has counter-argued that many hedge funds accept investments from pension plans that serve as intermediaries for retail investors. Pension plans have invested $72 billion in hedge funds.[23] However, this figure represents only one percent (approximately) of the total amount invested in private and public pension plans in the United States.[24] Investment managers that oversee such pension plans are already subject to regulation by the Commission under the Advisers Act and the U.S. Department of Labor under the U.S. Employee Retirement Income Security Act of 1974 as amended. These regulations provide significant protection to pension plan investors, because they impose on pension plan managers significant fiduciary and other obligations with respect to investment decisions. In complying with such obligations, such pension plan managers employ sophisticated and comprehensive initial and periodic due diligence investigations and risk management metrics and portfolio analysis tools, including independent analyses and verification of portfolio composition, diversification, concentration, leverage, volatility, and liquidity.

In any event, Tudor believes that hedge funds are not the proper vehicles for direct investment by retail investors and is sympathetic to Commission concerns regarding the retailization of hedge funds. It is Tudor's view that the Commission should prevent the retailization of hedge funds more directly by increasing certain investor eligibility criteria and making threshold entry requirements stricter. For instance, the Commission should raise the net worth or annual income requirements in the "accredited investor" definition in Regulation D under the Securities Act. In addition, hedge funds that rely on the exclusion from registration provided by Section 3(c)(7) of the Investment Company Act can only accept investments from U.S. investors that are "qualified purchasers."[25] If the Commission proceeds to adopt the Proposed Rule, the Commission should exempt from registration investment advisers that only advise hedge funds that rely on Section 3(c)(7). Investors in such funds are not retail investors, and are highly sophisticated.[26] If the hedge fund itself does not need to register under the Investment Company Act, then the adviser of such fund should not be required to register. Also, the Commission should exempt from registration those investment advisers that only advise hedge funds that only accept investments from "qualified clients" under the Advisers Act.[27] These proposals are a more discrete and less disruptive means of achieving the Commission's stated objective of avoiding the retailization of hedge funds.[28] More importantly, these alternatives preserve the well-established principle that the Commission should not subject private transactions between sophisticated parties to exhaustive regulation.

<u>Harm to Domestic and Global Financial Markets</u>

As Federal Reserve Chairman Alan Greenspan and others have noted, the activities of hedge funds benefit greatly the financial markets and investors, because hedge funds: (i) provide investors with portfolio diversification and risk reduction; (ii) act as "shock absorbers" by placing capital at risk when markets are volatile and other investors are hesitant to risk capital;[29] (iii) make capital markets more efficient and help refine the pricing of financial instruments;[30] (iv) bring information to the market regarding troubled companies (through short-selling strategies); (v) help counterbalance "herd" investment behavior;[31] and (vi) trade frequently and provide tremendous liquidity to the capital markets.[32] The Proposed Rule extends the Commission's regulation of hedge funds beyond its stated goals. The primary risk of the Proposed Rule is that increased regulation will hinder hedge funds' flexibility and ability to provide such benefits to domestic and global financial markets.[33] As the PWG Report set forth, "[a]ny resort to government regulation should have a clear purpose and should be carefully evaluated in order to avoid unintended outcomes."[34]

Conclusion

Tudor shares the Commission's desire to protect hedge fund investors and maintain the integrity of the securities markets. However, Tudor does not believe that requiring registration of virtually all hedge fund advisers is the best means to accomplish the Commission's goals. Requiring advisers that already have a primary regulator to register with the Commission will be redundant, inefficient, costly and not beneficial to investors or the U.S. financial markets. The primary regulators for such advisers already monitor comprehensively such industry participants' operations and activities in order to promote best business practices, prevent fraud, and protect investors and the financial markets. In addition, hedge fund advisers that are not registered with the Commission are still subject to numerous regulations, and already provide significant information to various regulators in connection with their operations and activities. The Commission currently has, or should have, access to substantial sources of information regarding the hedge fund industry from multiple filings made by the various industry participants with the Commission and other U.S. federal and state regulators. Coordination and information sharing between the Commission and other U.S. federal and state regulators is a much more efficient and sensible application of regulatory resources for investment advisers who already have a primary regulator. Furthermore, the "retailization" of hedge funds can be addressed more directly through increased investor suitability standards rather than through required registration.

The regulatory program that would result from the Proposed Rule would be an inefficient use of the Commission's already strained resources. In addition, an increased regulatory burden will constrain the ability of hedge funds to act flexibly and efficiently, which will be detrimental to the financial markets. The required registration of virtually all hedge fund advisers with the Commission is not a necessary or desirable regulatory scheme, and will result in substantial additional costs to all market participants without commensurate benefits to investors or the financial markets. The Commission should consider the less duplicative, onerous, and costly alternatives set forth above and those articulated by other commentators on the Proposed Rule. Such alternatives are appropriate particularly when a hedge fund adviser is already subject to extensive and comprehensive registration, oversight, and regulation by another U.S. federal regulator. Required registration of such advisers with the Commission will create another layer of duplicative regulation that will provide only limited benefits to a small number of sophisticated investors relative to costs imposed on hedge funds, hedge fund advisers, domestic and global financial markets, and the Commission.

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Thank you for providing us with the opportunity to comment on the Proposed Rule. Should the Commission or its staff require further information or comment from Tudor, please contact the undersigned or Andrew S. Paul at (203) 863-6700.

Respectfully submitted,

Mark F. Dalton

Mark F. Dalton
President

cc: Ms. Jean A. Webb
Secretary, U.S. Commodity Futures Trading Commission

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[1] See Release No. IA-2266; File No. S7-30-04, 69 F.R. 45172, dated July 20, 2004 ("Proposing Release").

[2] Investors in funds managed by Tudor include high net worth individuals and families and institutional investors.

[3] The FSA is the United Kingdom's principal financial services regulator. The comprehensive nature of the FSA's regulatory regime was described in detail at the Commission's Roundtable on Hedge Funds in May 2003. See comments of Christina Sinclair, Head of the FSA's Department of Business Standards, before Panel 7 (*"Assessment of the Current Regulatory Framework,"* May 15, 2003).

[4] An example of recent Congressional efforts to limit duplicative regulation and apply efficiently government resources is the division of labor between the Commission and state regulators embodied in the U.S. National Securities Markets Improvement Act of 1996 as amended ("NSMIA"). Among other things, NSMIA amended the Advisers Act by adding Section 203A, placing larger advisers under Commission jurisdiction and smaller advisers under state jurisdiction.

[5] See Part 4 of the CFTC Rules under the U.S. Commodity Exchange Act as amended ("CEA") applicable to CPOs and CTAs. Subject to certain exceptions dependent upon the types of clients involved, registered CPOs and CTAs are required to provide pool participants and advisory clients (as applicable) with appropriate disclosures that must be updated every nine-months. These disclosures normally will include information regarding the investment program, risk factors, past performance, fees and expenses, and conflicts of interest regarding CPOs or CTAs (as applicable). Registered CPOs also must provide periodic account statements as well as an annual audited financial statement for any pool they operate, and both registered CPOs and CTAs must comply with sales practice requirements. Registered CPOs and CTAs are subject to anti-fraud and anti-manipulation requirements. In addition, the NFA conducts routine periodic examinations of compliance by registered CPOs and CTAs with CFTC and NFA requirements. Registered CPOs and CTAs are examined on a three-year audit cycle, unless circumstances require otherwise. See comments by Jane Kang Thorpe, former Director of the CFTC's Division of Clearing and Intermediary Oversight, before Panel 7 (*"Assessment of the Current Regulatory Framework,"* May 15, 2003) ("Former Director Thorpe's Comments").

[6] See comments of CFTC General Counsel McCarty, before Panel 6 (*"Enforcement/Fraud Concerns,"* May 15, 2003) ("McCarty's Comments").

[7] See *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management – Report of the President's Working Group on Financial Markets*, by representatives from the Commission, the Treasury Department, the Federal Reserve and the CFTC (Apr. 1999) (available at: http://www.treas.gov/press/releases/reports/hedgfund.pdf), at 32. In addition, the CFTC General Counsel has noted that "the vast majority" of the CFTC's hedge fund fraud actions have been taken against unregistered CPOs, and that registered CPOs largely maintain clean, compliance-oriented operations. From 1997 to 2002, only 2% of all enforcement actions brought by the Commission and CFTC were brought against hedge funds. Significantly, the CFTC General Counsel noted that 44 of the 100 largest hedge fund managers are registered with the CFTC. See McCarty's Comments.

[8] The Commission staff's increasingly "risk-based" adviser examination program acknowledges implicitly the limits of existing Commission resources.

[9] For instance, the retail market or the mutual fund industry in which approximately 90 million Americans invest require the Commission's attention and resources. In contrast, direct investors in hedge funds are limited to institutions and an estimated 200,000 sophisticated high net worth investors. See Proposing Release, 45199.

[10] The Dissenting Commissioners issued a formal written dissent with respect to the Proposed Rule. See Proposing Release, at 45197. This represents the first time dissenting Commissioners have issued a formal written statement declaring their dissent regarding a proposed rule. This highlights the tension in the beliefs of the leaders of the Commission. Moreover, testimony provided during the Commission's 2003 Roundtable on Hedge Funds suggests that it is unclear to what extent the Commission's adviser examination staff would have the resources, expertise and experience to provide regular and meaningful oversight of new registrants. It is commonly estimated that Commission-registered advisers are currently examined every 24 to 60 months. In his remarks, the CFTC General Counsel noted, in contrast, that the CFTC/NFA examination process reaches CFTC registrants approximately every 30 to 36 months. See McCarty's Comments.

[11] As the PWG Report stated, "Requiring hedge fund managers to register as investment advisers would not seem an appropriate method to monitor hedge fund activity…" See PWG Report, at B-16. In deciding not to recommend additional direct regulation of hedge funds and their managers, the PWG also considered the "formidable challenges in terms of cost and effectiveness" associated with such regulation. See Id., at 42. The Commission staff tentatively estimates that between 550 and 1050 new

registrants would result from the adoption of the Proposed Rule. See Proposing Release, at 45190. On either end of this very broad spectrum, this is a very substantial increase in the number of investment advisers the Commission would be required to oversee.

[12] Commission Chairman William H. Donaldson has stated that the Form ADV will be an important tool for the promotion of hedge fund transparency. See testimony of Chairman Donaldson before the Senate Committee on Banking, Housing and Urban Development, Hearing on the Regulation of the Hedge Fund Industry (July 15, 2004).

[13] The Commission has stated that the purpose of regulating unregulated investment advisers is to protect investors, rather than making investigations of such entities simpler (through the collection of information). See Letter from Richard C. Breeden, Chairman, SEC to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives (June 12, 1992), transmitting Memorandum from William H. Heyman, Director, Division of Market Regulation, and Marianne K. Smythe, Director, Division of Investment Management, to Chairman Breeden, regarding Hedge Funds, at 10.

[14] See Proposing Release, at 45197.

[15] The PWG suggested more frequent and meaningful information regarding hedge funds should be made public, but did not recommend requiring hedge fund advisers to register in order to accomplish such goal. See PWG Report, at 31.

[16] Part I of Form ADV only provides the Commission with background information regarding investment advisers and its principals (*e.g.*, the name, address, and amount of assets under management of the investment adviser). While Part II of Form ADV does require the disclosure of more substantive information, it would not include all the information the Commission seeks to gather. See Proposing Release, at 45198. Moreover, the Commission has stated previously, "The information contained in Form ADV would not, we recognize, give investors in hedge funds all the information that they may need or want...there would be limitations on information about specific hedge funds. In addition, Form ADV cannot provide investors with sufficient information to evaluate the character of the hedge fund adviser or its employees." See *Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission* ("2003 Staff Report"), at 98.

[17] See Proposing Release, at 45197. In addition, former CFTC Chairman James E. Newsome expressed a desire for cross-agency cooperation when he stated that, "hedge funds run across multiple [regulatory] jurisdictions. So I would suggest that the [PWG] is the appropriate mechanism [to review this issue] because that group takes the broader context." See Financial Times, 5 April 2004.

[18] See 2003 Staff Report, at 63.

[19] Presently, the CFTC requires CPOs and CTAs that claim exemption from registration with the CFTC pursuant to certain CFTC Rules to file a notice of claim for exemption with the CFTC that provides background information regarding the claimant. See CFTC Rules 4.13(b) and 4.14(a)(8)(iii).

[20] The notice filing could take place through the Form D filing. Form D is a notice submitted to the Commission by issuers relying on Regulation D under the Securities Act in order to conduct a private placement of securities exempt from registration. Most hedge funds issue their securities pursuant to Regulation D and file the Form D with the Commission. Form D could be amended to require hedge fund advisers to provide information the Commission deems necessary.

[21] See Staff Report, at 80. The Commission has stated: (i) most hedge funds maintain investment minimums that limit the entry of retail investors; and (ii) hedge fund advisers do not seek retail investors because such investors are not appropriate for the risks associated with some hedge fund trading strategies. See Id. The Commission stated in the Proposing Release, "Many hedge funds maintain very high minimum [investment] requirements, and many of the hedge fund participants at our Roundtable expressed no interest in attracting retail investors." See Proposing Release, at 45176. In addition, hedge funds control less than 7% of total U.S. invested assets. See Wall Street Journal, *Inside Stock Information Still Flows, but Channels Are Shifting*, August 27, 2004, A1.

[22] See PWG Report, at 1.

[23] See Proposing Release, at 45177.

[24] See Proposing Release, at 45198, citing Board of Governors of the Federal Reserve System, Federal Reserve Release: Flow of Funds Accounts of the United States (June 10, 2004). In 2003, U.S., European and Canadian pension funds all reported that about "1% of portfolio assets were invested in hedge funds." See Greenwich Associates, *Alternative Investments May Disappoint Dabblers* (January 21, 2004) (available at http://www.greenwich.com/). In contrast, U.S. pension fund allocations to

real estate and private equity investments, which are managed in general by unregistered advisers, were 3.4% and 3%, respectively. See Id.

[25] In respect of natural persons, such "qualified purchasers" must have at least $5 million of investments. With respect to institutional investors, such "qualified purchasers" must have not less than $25 million of investments.

[26] In respect of qualified purchaser status, the U.S. Senate has 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 provisions, transactions with affiliates, investment risk, leverage, and redemption rights." See S. Rep. No. 104-293, at 10 (1996). See also H. R. Rep. No. 104-622, at 18 (1996).

[27] The term "qualified client" is defined in Rule 205-3 under the Advisers Act. Qualified clients must have a net worth of at least $1.5 million or have at least $750,000 of assets under management with the relevant investment adviser.

[28] However, existing arrangements between hedge funds and investors should not be disrupted, and current investors that do not meet increased requirements should be permitted to retain and add to existing investments.

[29] See Comments of Managed Funds Association for the Commission Roundtable on Hedge Funds, submitted May 6, 2003, (available at http://www.sec.gov/spotlight/hedgefunds/hedge-mfa.htm) ("MFA Comments May 2003"), at 5.

[30] As Federal Reserve Chairman Greenspan has stated, "[M]any of the things which [hedge funds] do ...tend to refine the pricing system in the United States and elsewhere. And it is that really exceptional and increasingly sophisticated pricing system which is one of the reasons why the use of capital in this country is so efficient...there is an economic value here which we should not merely dismiss...I do think it is important to remember that [hedge funds]...by what they do, they do make a contribution to this country." See testimony of Chairman Greenspan, before the House Committee on Banking and Financial Services, U.S. House of Representatives regarding the collapse of Long Capital Management (Oct. 1, 1998) ("Greenspan Testimony 1998"). Former CFTC Chairman Newsome echoed Chairman Greenspan's sentiment when he stated, "Hedge funds can and do provide positive benefits to financial markets. Their trading can increase market efficiency, in that positions taken to profit from temporary price discrepancies can reduce such gaps. Indeed, the risk-taking engaged in by hedge funds and major market participants can serve to correct incongruities in market valuations. I believe that attempts to eliminate or stifle this market activity will result in less efficiency and liquidity in the marketplace." See Statement of CFTC Commissioner (now former Chairman) Newsome before the Committee on Agriculture, Nutrition and Forestry, United States Senate, December 16, 1998.

[31] "Herd" investing is when investors take identical positions to those of other market participants without any rationale.

[32] The Commission stated in the Proposing Release, "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." See Proposing Release, at 45178.

[33]Federal Reserve Chairman Greenspan has stated, "I grant you that registering advisers in and of itself is not a problem. The question is: What is the purpose of that unless you're going to go further? And therefore I feel uncomfortable about that issue." See Greenspan Testimony 1998. In addition, the Dissenting Commissioners stated, "this [Proposed Rule] creates the inference that registration will be the first step down a slippery slope of more broad and intrusive regulation of the hedge fund industry. As the Commission determines what it is looking for, hedge fund advisers may face repeated, ad-hoc requests for paper and electronic documents. Such an approach cannot be deemed to be modest." See Proposing Release, at 45199.

[34] See PWG Report, at 35.