

# STROOCK

September 2, 2004

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

Re: Proposed Rule: Registration Under the Advisers Act of Certain Hedge Fund  
Advisers; File No. S7-30-04

Dear Mr. Katz:

We respectfully submit this letter on behalf of our client, Credit Suisse Asset Management, LLC, in response to a request for comment by the Securities and Exchange Commission (the "Commission") on the proposed amendment of Rule 206(4)-2 (the "Custody Rule" or "Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), relating to custody of funds or securities of clients by investment advisers.<sup>1</sup> The proposal would extend the period for advisers to pooled investment vehicles, including hedge funds, to annually distribute their audited financial statements to investors from within 120 days of fiscal year end to within 180 days of fiscal year end in order to be exempt from certain of the Rule's requirements.

We commend the Commission and its staff (the "Staff") for recognizing the need to provide hedge fund advisers with more time to distribute their audited financials. Consistent with the Commission's goal, we offer the following comments to the proposed Rule amendment.

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<sup>1</sup> See SEC Rel. No. IA-2266 (July 20, 2004), Part II.H. Amendments to Rule 206(4)-2.

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A fund of hedge funds' financial statements are necessarily dependent on the timing of the financial statements received from the underlying funds in which it invests. A fund of hedge funds must receive audited financial statements from all of its underlying funds in order to prepare its own financial statements for distribution to investors. The timing of this delivery is completely within the control of the underlying funds, beyond the control of the fund of hedge funds.

Since the underlying funds will generally take at least 90 days to prepare and deliver their audited financial statements, the advisers to funds of hedge funds should be entitled to a comparable 90 days to prepare their own audited financial statements, which rely on the data obtained from the underlying funds. Moreover, since the fund of hedge funds adviser ordinarily cannot control the timing of the delivery of the underlying financial statements, some underlying funds may take significantly more time to deliver their financial statements. Given the fund of hedge funds adviser's reliance on the financial statements of the underlying funds, a shorter period of time, such as 150 days, would, we believe, unfairly prevent many fund of hedge fund advisers from relying on the Rule's exemptions. Accordingly, we agree with the Commission's proposal that a fund of hedge funds should have 180 days to deliver financial statements following its fiscal year end.

We note that the proposed amendment as written would apply to all advisers to pooled investment vehicles. If, however, the Commission were to determine that the amendment should only apply to a more limited group of fund advisers, we believe that the amendment should make clear that it applies to any adviser to a pooled investment vehicle that invests in a pooled investment vehicle advised by an adviser unaffiliated with the investing vehicle. In addition to funds of hedge funds, examples include funds of private equity funds, single purpose feeder funds investing in unrelated master funds and certain exchange funds which for tax reasons invested in unregistered pooled investment vehicles.

In each such case, the investing vehicle is dependent on the underlying pooled investment vehicle delivering its financial statements before the investing vehicle can in turn prepare its own financial statements. Since the principle behind the extension of the time period (dependence on receipt of underlying fund financial statements) applies to all such pooled investment vehicles, we suggest that the amendment be written to clearly include them all.

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We appreciate the opportunity to comment on the Commission's proposed amendment to the Custody Rule. We hope that the Commission will find these comments helpful, and we would be pleased to discuss these matters with members of the Staff at their convenience. Please feel free to contact Hillel Bennett at 212.806.6014 or Janna Manes at 212.806.6141 if the Staff would like to discuss any of these points in further detail.

Very truly yours,

STROOCK & STROOCK & LAVAN LLP

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