VAN HEDGE FUND ADVISORS

VIA E-MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549-0609
rule-comments@sec.gov

Subject: File No. S7-30-04

Dear Secretary Katz:

The purpose of this letter is to provide feedback regarding a provision of the proposal by the U.S. Securities and Exchange Commission (the "SEC") that would require managers of most pooled investment vehicles ("hedge funds") to register with the SEC as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act").

Van Hedge Fund Advisors, LLC ("VHFA"), has been registered with the SEC as an investment adviser since 1993. In addition to working with institutions and individuals worldwide on hedge fund portfolios, VHFA is the general partner of several funds of hedge funds ("Funds of Funds").

Based on many years of experience, the annual audited financial statements of Funds of Funds are not generally available on a timely basis because the underlying funds in which the Funds of Funds invest do not provide their financial statements very quickly, certainly not in time to guarantee the completion of the Funds of Funds' audits in compliance with the 120-day rule for distribution of financial statements.

One of the amendments proposed by the SEC is to change the period during which registered hedge fund managers ("Registered Managers") must provide their investors with audited financial statements of the fund in order to avoid various obligations under the Rule 206(4)-2 of the Advisers Act to 180 days after the close of a hedge fund's fiscal year. While VHFA supports the proposed amendment, VHFA believes that it should only apply to Funds of Funds.

Current Custody Rule

Rule 206(4)-2 of the Advisers Act (the "Custody Rule") specifies that Registered Managers are deemed to have custody of the assets of the investors in their hedge funds. Registered Managers must have client assets (including the assets of hedge funds and Funds of Funds) held by "qualified custodians" (defined in the Custody Rule) and are subject to certain reporting requirements. The Custody Rule specifies that the reporting requirements may be met if a hedge fund is audited annually and the audited financial statements are sent to all the investors in such fund within 120 days after the fund's fiscal year end. This approach satisfies the Rule's reporting requirements and enables the Registered Manager to use an exception to the qualified custodian requirement for client assets that are uncertificated securities (which is the case for the majority of hedge funds).

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In VHFA's experience, auditors of Funds of Funds will not render an opinion on the financial statements without first receiving the audited financial statements of the underlying funds. Given that many of the audits of the underlying funds may not be available until the end of the 120-day period where the underlying funds are run by Registered Managers (and well after the expiration of the 120-day period where the managers are not Registered Managers), there is unlikely to be time for a Registered Manager of a Fund of Funds to complete and distribute the audited financial statements within the specified period.

The Custody Rule does permit a Registered Manager of a Fund of Funds to use the 120-day approach for 2004, if it determines that it is feasible for its underlying funds to produce their audits on a timely basis. However, based on VHFA's experience, compliance with the Custody Rule cannot be assured. As a result, VHFA has considered changing the fiscal year end of its Funds of Funds in order to comply with the Custody Rule. However, this action would increase the accounting costs to our Funds of Funds because the audited financial statements could no longer be prepared in conjunction with the preparation of the various calendar year-end tax filings. We had decided to delay this decision until the end of this year in order to see whether there might be any changes to the Custody Rule prior to year-end.

It is VHFA's understanding that many other Registered Managers of Funds of Funds are also troubled by this issue and are contemplating changing their fiscal year ends (if they have not yet already done so), which, as explained above, would increase the costs to their investors.

Proposed Change to the Custody Rule

The SEC's proposed amendment would permit Registered Managers to satisfy the Custody Rule by extending from 120 days to 180 days the period by which hedge fund audited financials statements must be sent to investors. Unfortunately, the amendment as currently proposed would apply to all Registered Managers, not just to Registered Managers of Funds of Funds.

For the reason outlined above, VHFA believes that the 180-day period should only apply to Funds of Funds to assure that all of the financial statements of the underlying funds are received and to give the auditors of Funds of Funds 60 days to prepare the audited financial statements. If the SEC were to apply the proposed amendment to all Registered Managers, Registered Managers of Funds of Funds would be in the same predicament as now, only in June instead of April.

VHFA agrees with others that there should be some definition of what comprises a Fund of Funds for purposes of the Custody Rule. VHFA proposes that this standard should have two components. **The first** is that there should be some threshold amount of other hedge funds in a Fund of Funds in order to allow it to avail itself of the proposed amendment. This threshold amount could be, for example, the percentage component of a hedge fund or Fund of Funds invested in another hedge fund that would cause the typical audit firm to require a separate audit of that component in order to render an opinion on the financial statements. **The second** is that any hedge funds managed by the same manager or a related party should not count towards the threshold percentage of a hedge fund to be deemed a Fund of Funds.

VHFA Alternate Proposal to the Custody Rule

As the SEC is already considering amending the Custody Rule, VHFA asks that the SEC consider an alternative proposal based on the rules of the Commodity Futures Trading Commission (the "CFTC"). The CFTC has considered the audit issue related to Funds of Funds and has a mechanism (pursuant to CFTC Regulation 4.22(f)(2)) whereby a Funds of Funds registered with the CFTC (through the National Futures Association) may apply for an automatic 90-day extension for the deadline by which its audited financial statements must be distributed. This mechanism allows Funds of Funds both the time to assure that all of the financial statements of the underlying funds are received and to give the auditors of the Funds of Funds time to prepare the audited financial statements.

VHFA acknowledges that it may be difficult for some Registered Managers, especially for those whose hedge funds use complex strategies or have complicated pricing issues, to complete their audited financial statements by the 120-day deadline. Whatever deadline the SEC elects to impose on hedge funds, VHFA respectfully suggests that the SEC provide some mechanism (short of Funds of Funds changing fiscal year ends) to permit Funds of Funds the additional time necessary to comply with the Custody Rule.

In anticipation, thank you for considering these comments.

Sincerely,

VAN HEDGE FUND ADVISORS, LLC

By: John Van
CFO / Senior Vice President