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December 20, 2004

The Honorable Richard C. Shelby
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Michael G. Oxley
Chairman
The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Registration Under the Advisers Act of Certain Hedge Fund Advisers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Registration Under the Advisers Act of Certain Hedge Fund Advisers” (RIN: 3235-AJ25). We received the rule on December 3, 2004. It was published in the Federal Register as a final rule on December 10, 2004. 69 Fed. Reg. 72054.

The final rule requires advisers to certain private investment pools (“hedge funds”) to register with the Commission under the Advisers Act.

Enclosed is our assessment of the Commission’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Thomas McCool,

Managing Director, Financial Markets and Community Investment. Mr. McCool can be reached at (202) 512-8678.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"REGISTRATION UNDER THE ADVISERS ACT
OF CERTAIN HEDGE FUND ADVISERS"
(RIN: 3235-AJ25)

(i) Cost-benefit analysis

The Commission performed a cost-benefit analysis and while it found that most of the costs and benefits cannot be estimated with precision, the costs may be significant for some new registrants and the benefits to investors may be substantial.

The Commission estimates that between 690 and 1,260 hedge fund advisers may be required to register under the Advisers Act. The user fees the new registrants will have to pay to the Investment Adviser Registration Depository filing system will be between \$780,000 and \$1,072,500 in the first year and between \$390,00 and \$536,250 in subsequent years.

In establishing a compliance infrastructure, it is estimated that a new registrant will spend approximately \$20,000 in outside costs and \$25,000 in internal costs, for an aggregate cost of \$44 million.

The benefits to investors are difficult to quantify but will result in more information on hedge fund advisers and the investors will benefit from the deterrent effect of Commission oversight on hedge fund advisers.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission has prepared a Final Regulatory Flexibility Analysis for the portion of the final rule amending rule 206(4)-2. The analysis complies with the requirements of the act. Regarding the remainder of the final rule, the Commission has certified that it will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On July 28, 2004, the Commission published a Notice of Proposed Rulemaking in the Federal Register. 69 Fed. Reg. 45171. In response, the Commission received 161 comments, which are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains 12 collections of information that have previously been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. However, since the impact of the final rule will be to increase the number of burden hours under each collection, the Commission has submitted revised burden hours for each collection for OMB's approval.

Statutory authorization for the rule

The final rule is promulgated under the authority found in section 19(a) of the Securities Act of 1933; sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934; section 319(a) of the Trust Indenture Act of 1939; section 38(a) of the Investment Company Act of 1940 and sections 202(a)(17), 203, 204, 205(e), 206(4), 206A, 208(d), and 211(a) of the Advisers Act.

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.