Hedge Fund Association

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Elizabeth M. Murphy
Secretary Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Comments on SEC Regulatory Initiatives Under the JOBS Act: Title II, Access to Capital for Job Creators

Ms. Murphy:

The HFA believes that amending the rules that relate to capital formation is fundamental to the continued growth of the hedge fund industry and that allowing general solicitations to further that outcome will encourage emerging managers to continue to enter the industry. Further, providing rules to strengthen a manager's decision to accept a subscriber's investment by following the rules to be drafted by the SEC that will, for the first time, provide a road map for Managers to rely upon will, we believe, add further levels of compliance that the Dodd-Frank Act initiated. While Managers have had subscription agreements in place (and internal policies to provide checks and balances for the manager), having rules in place to verify that potential investors are indeed accredited will add further stability to the industry.

The HFA recognizes that the SEC may be concerned that opening the door to general solicitation may, to some degree, open the door to people who wish to perpetrate fraud in connection with false or misleading statements to induce investors to invest in hedge funds. We would remind the SEC that the JOBS Act in no way limits Section 10b-5 promulgated under Section 10 of the Exchange Act, nor does it limit Section 17(a)0 of the Securities Act. All of the state securities or "Blue Sky" rules relating to fraud remain unaffected by the JOBS Act and hedge fund managers continue to be subject to the anti-fraud provisions of the Investment Advisers Act.

Lastly, we note and support the changes to Section 3(c)(7) and would hope that the SEC will amend the language of the Investment Company Act as being available only to offerings not involving a public offering to be consistent with the JOBS Act.

Respectfully submitted,

Mitch Ackles
President, Hedge Fund Association

Richard Heller
Chairman, Regulatory & Government Advisory Board,
Hedge Fund Association

Hedge Fund Association Asks SEC for Clearer Rules on Vetting Investors, Supports Hedge Fund Advertising in Comment Letter

HFA's Regulatory and Government Advisory Board Chair Richard Heller Says JOBS Act Capital Formation Provision is "Fundamental" to Growth

NEW YORK – June 6, 2012 – The Hedge Fund Association, an international organization that represents hedge funds, service providers and investors, said liberalized advertising and solicitations rules contained in the new Jumpstart Our Business Startups (JOBS) Act would help hedge funds raise assets and "encourage emerging managers to continue to enter the industry." The HFA also asked the SEC for clearer rules to verify that potential investors are indeed accredited as a way to "add further stability to the industry."

The HFA's position was outlined in a comment letter submitted to the Securities and Exchange Commission on June 6, 2012. The SEC is soliciting comments before implementing regulations, scheduled to be published July 5, 2012, which are expected to allow hedge fund management companies to communicate directly with potential investors for the first time in their history. Hedge funds would still be restricted to selling their securities to accredited investors such as individuals with a minimum $1 million net worth and qualified institutional investors.

Richard Heller, chairman of the HFA's Regulatory and Government Advisory Board and author of the letter on behalf of the HFA, said the JOBS Act provision lifting the advertising ban does not weaken existing anti-fraud provisions forbidding people from using false or misleading statements to induce investors to invest in hedge funds. If anything, he wrote, "providing rules to strengthen a manager's decision to accept a subscriber's investment by following the rules to be drafted by the SEC that will for the first time provide a road map for managers to rely upon will, we believe, add further levels of compliance that the Dodd-Frank Act initiated."

Hedge funds have been banned from soliciting or advertising their private offerings to the general public in exchange for being exempt from having to register their interests or shares with the SEC under Rule 506 of Regulation D. The lack of a clear definition of a solicitation has created confusion about what hedge fund managers can disclose in their marketing materials, at conferences or in the media.

The HFA's comment letter comes two months after the historic signing of the JOBS Act, which the association praised at the time as being a boon to emerging hedge fund managers. The HFA's comment letter, says the association's President, Mitch Ackles, ensures that regulators are able to consider the views of the whole industry, including its service providers, investors and those smaller managers which represent a majority of hedge fund firms.

"In addition to promoting a better understanding of and education about hedge funds, our association's mission is to give a voice to the concerns of industry participants who may not otherwise have been heard," said Ackles. "That's why we include all of our members in developing policy initiatives," he added.

To download a copy of the HFA's comment letter to the SEC, click here.

About The Hedge Fund Association
The Hedge Fund Association (www.thehfa.org) is an international not-for-profit organization made up of hedge funds, funds of funds, family offices, high net worth individuals and service providers. In the U.S., the HFA has chapters in the Northeast, Southeast, Midwest and on the West Coast. Internationally, the HFA has expanded to include chapters in Europe, Latin America and the Cayman Islands. HFA works on behalf of the entire hedge fund industry, including more than 9,500 hedge funds in the U.S. and abroad which collectively manage in excess of $2 trillion in assets, as well as sophisticated investors and industry service providers.

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