

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 275

[Release No. 33-8766; IA-2576; File No. S7-25-06]

RIN 3235-AJ67

Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is today proposing new rules designed to provide additional investor protections that would affect pooled investment vehicles, including hedge funds. First, the Commission is proposing a rule that would prohibit advisers to pooled investment vehicles from making false or misleading statements or otherwise defrauding investors or prospective investors in those pooled investment vehicles. Second, the Commission is proposing two rules that would revise the definition of accredited investor as it relates to natural persons. The latter rules would apply solely to the offer and sale of interests in certain privately offered investment pools specified in the rules.

DATES: Comments should be received on or before March 9, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's [Internet comment form](http://www.sec.gov/rules/proposed.shtml) (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-25-06 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-25-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: With respect to proposed rule 206(4)-8, Jennifer Sawin, Senior Special Counsel, or Daniel Kahl, Branch Chief, at 202-551-6787, and with respect to proposed rules 216 and 509, Elizabeth G. Osterman, Assistant Chief Counsel, or Tara R. Buckley, Senior Counsel, at 202-551-6825, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5041.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed new rule 206(4)-8 under the Investment Advisers Act of 1940 ("Advisers Act"),¹ and proposed new rules 216 and 509 under the Securities Act of 1933 ("Securities Act").²

¹ 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified.

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	ANTIFRAUD PROVISIONS OF THE ADVISERS ACT	4
A.	Scope of Proposed Rule 206(4)-8	7
B.	Prohibition on False or Misleading Statements	11
C.	Prohibition of Other Frauds	13
D.	No Fiduciary Duty Created.....	14
III.	AMENDMENTS TO PRIVATE OFFERING RULES UNDER THE SECURITIES ACT	14
A.	Offer and Sale of Securities Issued by Private Investment Pools.....	14
B.	Proposed Rules 509 and 216.....	19
IV.	GENERAL REQUEST FOR COMMENT.....	33
V.	PAPERWORK REDUCTION ACT.....	33
A.	Proposed Rule 206(4)-8.....	33
B.	Proposed Rules 509 and 216.....	34
VI.	COST-BENEFIT ANALYSIS.....	38
A.	Proposed Rule 206(4)-8.....	38
B.	Proposed Rules 509 and 216.....	41
VII.	REGULATORY FLEXIBILITY ACT ANALYSIS	46
A.	Certification for Proposed Rule 206(4)-8	46
B.	Initial Regulatory Flexibility Analysis for Proposed Rules 509 and 216	47
VIII.	EFFECTS ON COMPETITION, EFFICIENCY AND CAPITAL FORMATION	52
IX.	STATUTORY AUTHORITY	53
X.	TEXT OF PROPOSED RULES	54

I. INTRODUCTION

In the past few years, the Commission has been examining a variety of issues relating to hedge funds and other pooled investment vehicles with a view to strengthening protections for investors.³ We are now proposing to address two areas of particular concern. First, we are proposing to adopt a new antifraud rule under the Advisers Act that would clarify, in light of a

² 15 U.S.C. 77. Unless otherwise noted, when we refer to the Securities Act, or any paragraph of the Securities Act, we are referring to 15 U.S.C. 77 of the United States Code, at which the Securities Act is codified.

³ See, e.g., Implications of the Growth of Hedge Funds, Staff Report to the United States Securities and Exchange Commission, available at <http://www.sec.gov/spotlight/hedgefunds.htm> (“2003 Staff Study”).

