BRYAN CAVE

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VIA ELECTRONIC MAIL

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File Number S7-30-04: Proposed Registration Under the Advisers Act of Certain Hedge Fund Advisers

Dear Mr. Katz:

We are respectfully submitting our comments to the rule proposed by the Securities and Exchange Commission ("SEC") on July 20, 2004,[1] the stated purpose of which is to require the registration of certain hedge fund managers under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). We have represented a variety of hedge funds, funds of funds and other pooled investment vehicles and their managers and advisers for nearly 20 years and have a full-time team dedicated to servicing our hedge fund clients' needs. We are delighted and grateful for the opportunity to share our experiences and insights.[2]

The hedge fund industry has experienced tremendous growth in recent years, with sources estimating that there are currently about 7,000 hedge funds with assets of approximately $800 billion. That said, it is further estimated that the amount of total assets invested within the hedge fund industry is only one-tenth of the total amount invested within the mutual fund industry. Nevertheless, we do believe that the SEC's concerns about the rapid growth of the hedge fund industry are valid. In our view, the Proposed Rule is an attempt to achieve the following core regulatory objectives: (1) the collection of census information about the hedge fund industry, (2) the prevention of hedge fund related fraud and (3) the limitation of the "retailization" of hedge funds. We agree with these objectives and believe that achieving them is in the best interests of individual investors, as well as the financial markets as a whole. We do not believe, however, that effectively requiring hedge fund advisers to register with the SEC -- the stated purpose of the Proposed Rule -- is the best method for

[1] Registration Under the Advisers Act of Certain Hedge Fund Advisers, 69 Fed. Reg 45172, at 45184 (proposed July 28, 2004) (to be codified at 17 C.F.R. 275.203(b)(3)-2) (hereinafter, the "Proposed Rule").

[2] The opinions and views expressed herein represent those of Bryan Cave LLP and not necessarily those of our clients.

achieving these objectives. We generally agree with the minority view expressed by Commissioners Glassman and Atkins that the adoption of the Proposed Rule, as it is currently formulated, will not be the most cost-effective means for implementing the SEC's core objectives and may very well result in significantly increased burdens on both the SEC and the hedge fund industry.[3] That said, if the SEC decides that registration is the appropriate framework for addressing its concerns, we believe that our proposal (the "Bryan Cave Proposal") can serve as an optimal exception to the Proposed Rule, allowing hedge fund advisers to opt out of the system while ensuring that the core objectives of the SEC are served with minimal intrusion into the hedge fund industry.

On the other hand, independent of the Proposed Rule, we believe that the Bryan Cave Proposal stands on its own as a true 'middle ground' between the current regulatory environment and the Proposed Rule. The Bryan Cave Proposal provides a discrete regulatory framework for achieving all of the SEC's objectives in a manner that is less intrusive, less costly and less burdensome. It will allow those hedge fund advisers who wish to remain unregistered to do so while still achieving the core objectives of the Proposed Rule. Accordingly, we are pleased to hereby submit the Bryan Cave Proposal for your review, and look forward to any questions or comments you may have.

EXECUTIVE SUMMARY

The Bryan Cave Proposal is premised on amendments to existing forms and rules currently applicable to hedge funds, their advisers and other financial institutions, including broker-dealers and banks. The basis of the Bryan Cave Proposal is the amendment of Regulation D and Form D promulgated under the Securities Act of 1933, as amended (the "1933 Act"). Form D is a notice filing submitted by issuers seeking to conduct a non-public offering in reliance on a safe harbor from the registration requirements of the 1933 Act. We believe that substantially all hedge fund advisers cause the hedge funds they manage to issue securities in reliance on Regulation D through the filing of Form D. Pursuant to the Bryan Cave Proposal, Form D will be amended to collect information on hedge funds and their advisers, including, among other things, the name and address of each adviser, the number of hedge funds managed by each adviser, and each adviser's total assets under management (the amended Form D will be referred to herein as "BC Form D").

In addition, Suspicious Activity Reports ("SARs") required by the Financial Crimes Enforcement Network ("FinCEN"), a bureau established by the U.S. Treasury Department (the "Treasury"), which are prepared by broker-dealers, banks and other financial institutions suspecting potential or actual illegal activities, will be amended to include reporting of illegal activity by hedge funds and their advisers. Information contained in these amended forms with respect to hedge fund related activity could then be passed along or otherwise made available to the SEC.

Should the SEC decide that registration is the proper regulatory method for achieving its core objectives, the Bryan Cave Proposal creates an exception to the Proposed Rule. In general, under the Proposed Rule, advisers will be required to look through the hedge funds they manage to the investors in counting their clients, and will be required to register with the SEC if they have more than 14 clients in the previous 12 months and total assets under management of at least $30 million. If, however, all of the hedge funds managed by the adviser have filed a BC Form D, the adviser will not be required to

[3] Proposed Rule, at 45197.

look through such hedge funds to determine the number of clients to whom it provides investment advisory services. Each hedge fund will only count as one client. By encouraging the use of BC Form D, the SEC will be able to create a central depository of information about the hedge fund industry without subjecting hedge fund advisers to full regulation under the Advisers Act. The depository will remain current by requiring the amendment of each BC Form D at least annually, within 90 days of the end of the hedge fund's fiscal year.

Several measures aimed at preventing fraud and limiting the "retailization" of hedge funds are included in the Bryan Cave Proposal. Educational seminars will be established for hedge fund advisers to receive training on a bi-annual basis with respect to, among other things, securities laws, fiduciary obligations and compliance procedures. Hedge fund advisers that are not registered under the Advisers Act will be required to certify in BC Form D, in a manner consistent with new certification requirements under the Sarbanes-Oxley Act of 2002, that key employees thereof have attended a seminar. Additionally, all hedge fund advisers will be required to comply with the Rule 206(4)-2 under the Advisers Act (the "Custody Rule"). Finally, to address the SEC's concerns about the "retailization" of hedge funds, the Bryan Cave Proposal enhances the eligibility requirements for investment in all hedge funds.

With respect to offshore advisers, we suggest certain measures that we believe act as a "reasonable limitation on the extraterritorial application of the Advisers Act."[4] Offshore advisers to publicly offered funds will not be required to look through such funds in determining the number of their U.S. clients. Offshore advisers to privately offered hedge funds will be required to look through such hedge funds and register with the SEC if the adviser has more than 14 U.S. clients in the previous 12 months and a certain threshold of assets under management from U.S. investors. However, offshore advisers will be able to rely on the exemption provided by BC Form D, and will not be required to look through an offshore privately offered hedge fund sold in the U.S. to the extent all such funds issue their interests in the U.S. pursuant to BC Form D.

The Bryan Cave Proposal minimizes the burdens on the hedge fund industry while still achieving the core objectives of the Proposed Rule. Based on SEC estimates, the average cost to each hedge fund adviser from registration and compliance with the Advisers Act is at least $46,000,[5] with an average annual increased workload of 1,469 hours.[6] We believe that requiring compliance with the full provisions of the Bryan Cave Proposal will not impose burdens of this magnitude on hedge fund advisers. For example, it is our experience that the completion of Form D entails significantly less time and lower costs than the completion of Form ADV. We believe that this will remain the case with respect to BC Form D, particularly because substantially all hedge fund advisers are familiar with current Form D.

In addition, the Bryan Cave Proposal minimizes the burdens on the SEC. The SEC will not have to review incoming Forms ADV, nor will it have to ensure that all newly registered hedge fund advisers

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[4] Id., at 45184.

[5] $45,000 for a compliance infrastructure and approximately $1,000 in filing fees. Id., at 45189.

[6] 30 hours for filing Form ADV and distributing a code of ethics, 192 hours for Rule 204-2, 694 hours for Rule 204-3, 118 hours for Rule 204A-1, 335 hours for Rule 206(4)-2, 1.5 hours for Rule 206(4)-3, 1.5 hours for Rule 206(4)-4, 17 hours for Rule 206(4)-6 and 80 hours for Rule 206(4)-7. Id., at 45191-45193.

are in compliance with the full provisions of the Advisers Act. Furthermore, it is our view that substantially all hedge funds issue their securities in reliance on Form D, which the SEC currently receives and processes. Thus, the SEC will not see a significant increase in the number of submissions. While increased staff will be required to monitor and process incoming BC Forms D and ensure compliance with the Custody Rule, we do not believe that this will equal the increase required should the Proposed Rule be adopted.

In sum, the Bryan Cave Proposal is a cost effective method for achieving the SEC's objectives of creating a central and easily accessible database of information on the hedge fund industry while deterring and detecting fraud, ensuring compliance with securities laws and preventing the "retailization" of hedge funds.

THE BRYAN CAVE PROPOSAL

BC FORM D

One of the foremost stated purposes of the Proposed Rule is the collection of census information about the hedge fund industry. By requiring hedge fund advisers to complete and file Form ADV, the SEC hopes to create a database of information detailing "the number of hedge funds that advisers manage, the amount of assets in hedge funds, the number of employees and types of clients these advisers have, other business activities they conduct, and the identity of persons that control or are affiliated with the firm."[7] We believe that the same information can be collected and maintained at considerably less cost by the amendment of Form D. BC Form D, attached hereto as Exhibit A, will create a database of such information "that is reliable, current and complete ... in a form easily susceptible to analysis" by SEC staff.[8]

The filing of Form D puts the SEC on notice that an issuer is planning a transaction that is exempt from the registration requirements of the 1933 Act (i.e., a non-public offering). As hedge funds are required to issue their securities in non-public offerings in order to qualify for an exemption in Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, as amended ("ICA"), we believe that substantially all hedge fund advisers have already caused the filing of and are familiar with Form D.

BC Form D differs from existing Form D in several respects. First, the issuer will be required to identify in a separate section on the front cover that it is a "private fund."[9] Additionally, BC Form D includes a new section devoted entirely to information about the "private fund" and its adviser(s), regardless of whether the adviser is registered with the SEC. Each adviser that provides investment advisory services to the fund will be required to provide its name and principal place of business, as well as the total number of hedge funds to whom such adviser, directly or indirectly, provides investment advice. Various other questions modeled after Form ADV will be included in BC Form D, including questions regarding the number of employees of each adviser, other types of business activities engaged in by each adviser, the types of clients to whom each adviser provides advisory

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[7] Id., at 45178.

[8] Id.

[9] For the purposes of this letter, the terms "hedge fund" and "private fund" (as defined in the Proposed Rule) will be used interchangeably.

services and each adviser's total assets under management (including assets from managed accounts and otherwise). In addition, each adviser to the fund will be required to list the name, position and business address of each promoter, executive officer, director and general and/or managing partner, as well as certain beneficial owners (as currently required by Form D).

The hedge fund will also be required to list information about itself, including the current number of investors and the total assets currently invested in the fund. It will be required to list, where applicable, its custodian, prime broker(s), administrator and/or auditor. This will give the SEC a considerable amount of information about the activities of the fund and will significantly assist the SEC in conducting investigations. Additionally, it will better enable the SEC to coordinate information with respect to the various industries it regulates, which in turn will better position it to deter and detect hedge fund related fraud and manage overall systemic risk.

To ensure that the information contained in BC Form D remains accurate over time, each hedge fund will be required to amend its BC Form D at least annually (within 90 days after the end of the fund's fiscal year) and at such times that the information contained therein becomes materially inaccurate or information becomes known to the fund or its adviser(s) the omission of which makes the existing BC Form D materially inaccurate.

In addition, BC Form D will include a representation by each adviser as to the fitness of its key employees that must be completed each time BC Form D is filed. The representation will essentially provide that none of the adviser's employees or principals listed in BC Form D meet the disqualification criteria of Section 203(e) of the Advisers Act. If the adviser cannot make this representation, the adviser will not be allowed to rely on the exemption from the Proposed Rule provided by BC Form D.[10] For the purposes of Section 203(b)(3) of the Advisers Act, such an adviser will be required to look through each hedge fund it manages in determining the number of clients to whom it provides investment advisory services. Accordingly, any such adviser with more than 14 clients in the previous 12 months and assets under management of at least $30 million will be required to register as an investment adviser with the SEC. In such cases, the SEC will be able to "screen individuals associated with the adviser, and to deny registration if they have been convicted of a felony or had a disciplinary record subjecting them to disqualification."[11]

BC Form D will provide the SEC with a central depository of information about all hedge fund advisers, registered or unregistered, and the hedge funds they manage. This information will be readily available in one location, and at no significant increase in costs to either advisers or the SEC. Substantially all advisers currently rely on Form D in making a non-public offering in the U.S., and the SEC currently receives and processes each of these submissions. Thus, there should only be a minimal increase in costs to advisers from completing new forms and to the SEC from receiving and processing additional submissions. The use of BC Form D allows the SEC to collect significant information about hedge funds and their advisers without the costly preparation and SEC review of a Form ADV. Costs are further reduced by including information from Form ADV and otherwise that should be readily available to the adviser.

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[10] The hedge fund filing BC Form D will, however, still be able to rely on the safe harbor from the 1933 Act.

[11] Proposed Rule, at 45179.

We believe that most, if not all, advisers to hedge funds will rely on BC Form D in issuing the securities of such funds in the U.S. Substantially all private issuers, including those in the hedge fund industry,[12] already use Form D. Furthermore, as provided below, the Bryan Cave Proposal provides for the enhancement of investor eligibility criteria. Under the revised eligibility criteria, all investors in hedge funds must qualify as "accredited investors," thus making BC Form D a clear and reasonable alternative for conducting a non-public issuance of securities. Since hedge fund advisers will have the foregoing incentives to rely on Regulation D in issuing their securities, we believe that amending Form D is an ideal method for the collection of information about the entire hedge fund industry.

SAFE HARBOR

Should the SEC require the registration of hedge fund advisers pursuant to the Proposed Rule, the Bryan Cave Proposal provides that the filing of BC Form D will act as a safe harbor from its application. In general, investment advisers to a hedge fund will be required to look through the hedge fund to determine the number of clients to whom the adviser provides advisory services for the purposes of the exemption in Section 203(b)(3) of the Advisers Act. If the number of such clients is greater than 14 in the previous 12 months and the adviser has assets under management of at least $30 million, the adviser will be required to register pursuant to the Proposed Rule and will be subject to the full measures of the Advisers Act, as amended by the Proposed Rule.

The Proposed Rule will not apply, however, if all hedge funds to whom the adviser provides investment advisory services have issued their securities pursuant to BC Form D and have remained timely with all required annual and other amendments. Advisers to such hedge funds will be able to rely on Rule 203(b)(3)-1 under the Advisers Act and count the hedge fund as a single client. This will further encourage the use of BC Form D for offerings by an adviser to a hedge fund. We have considered the alternative of requiring an adviser to look through only those hedge funds that do not file a BC Form D (i.e., applying the safe harbor on a fund-by-fund basis), and do not believe that it would provide sufficient assurance that the SEC's objectives will be met.

The SEC should allow existing advisers to qualify for the safe harbor by filing a BC Form D within 90 days after the end of the fiscal year of each of the adviser's hedge funds, regardless of whether the hedge fund filed a Form D in connection with the issuance of its securities.[13] Each adviser filing a BC Form D will have to comply with its requirements on a going forward basis.

BC Form D will allow the creation of a central and comprehensive database containing information about the hedge fund industry. We believe that most, if not all, currently unregistered advisers to hedge funds will issue securities pursuant to BC Form D in order to qualify for the exemption to the Proposed Rule. In addition, most registered and unregistered advisers will issue securities pursuant to BC Form D to ensure that the hedge funds they manage fall within the Regulation D safe harbor to the 1933 Act and thus remain eligible for the exemptions from the ICA. Requiring completion of BC Form D by advisers to hedge funds is more cost-efficient than requiring the completion of Form

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[12] Staff Report to the U.S. Sec. and Exch. Com., Implications of the Growth of Hedge Funds, (2003) at 31-32 (hereinafter, the "2003 Study").

[13] Existing hedge funds that did not file a Form D on the issuance of their securities will not qualify for the safe harbor from the registration requirements of the 1933 Act by the filing of BC Form D; the filing of such a BC Form D will only provide a safe harbor from the provisions of the Proposed Rule.

ADV and compliance with the full provisions of the Advisers Act. BC Form D allows the SEC to collect the census information it seeks from the Proposed Rule without compromising its objectives.

SUSPICIOUS ACTIVITY REPORTS

FinCEN, a bureau established by the Treasury, requires that certain financial institutions file an SAR in the event of a known or suspected violation of law or regulation. Financial institutions required to file an SAR include broker-dealers, banks, bank holding companies, futures commission merchants and introducing brokers in commodities.[14] In general, SARs are used to identify the suspicion of various forms of potential or actual illegal activity, including fraud, terrorist financing and money laundering. Filing an SAR is only required in certain circumstances,[15] but can be used by any of the above institutions to report to "any suspicious transaction that it believes is relevant to the possible violation of any law or regulation."[16] The filing of an SAR provides a financial institution with a safe harbor from any civil liability arising out of the suspicious activity. SARs are confidential filings that are not susceptible to public release under the Freedom of Information Act, as amended.

We propose to amend Form SAR, used by banks, and Form SAR-S-F, used by broker-dealers and other members of the securities and futures industries, to provide for the reporting of the suspicion of various types of potential or actual hedge fund fraud to FinCEN. This information can then be made available to the SEC. We believe that increased coordination among the SEC and FinCEN resulting from these amendments would create a strong deterrent and early detection system with respect to securities fraud in general, including hedge fund related fraud.

Specifically, we propose including among the types of illegal activity that may be reported the suspicion of certain fraudulent activities that have resulted in actions against unregistered advisers by the SEC, including misappropriation of assets, improper valuation of assets, portfolio pumping and misrepresentation of portfolio performance. Where applicable, hedge funds will be added as a particular instrument category, and hedge fund advisers will be added as a particular category of institution or individual, susceptible to fraudulent activity. In addition, the SEC will be included as an applicable federal law enforcement agency. An amended Form SAR ("BC Form SAR") is attached

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[14] See 31 C.F.R. § 103.11 et. seq. (2003).

[15] A bank (including, among other things, savings and loan associations, thrift institutions, foreign banks and credit unions; see 31 C.F.R. § 103.11(c) (2003)) or a broker-dealer (all brokers or dealers in securities registered or required to be registered with the SEC pursuant to the Securities Exchange Act of 1934, as amended; see 31 C.F.R. § 103.11(f) (2003)) must file an SAR for a transaction attempted against or through such bank or broker-dealer involving at least $5,000 in funds or other assets where the bank or broker-dealer knows, suspects or has reason to suspect that (i) the funds are obtained from illegal activity, or are intended or conducted to hide or disguise assets derived from illegal activity, (ii) the transaction is designed to evade requirements promulgated under the Bank Secrecy Act, as amended, or (iii) the transaction has no business or lawful purpose, is not the type normally engaged in by the customer and, after examination, the bank or broker-dealer knows of no reasonable explanation for the transaction. In addition, a broker-dealer must file an SAR for a transaction involving at least $5,000 in funds or other assets where the broker-dealer knows, suspects or has reason to suspect that the transaction involves the use of the broker-dealer to facilitate criminal activity. Despite, these specific requirements, SARs are not tailored to one specific illegal activity. For the purposes of this letter, we will focus on the requirements of banks and broker-dealers, since these institutions are most likely to already have significant contacts with the hedge fund industry.

[16] See e.g. 31 C.F.R. § 103.18(a)(1) (2003) (with respect to banks); 31 C.F.R. § 103.19(a)(1) (2003) (with respect to broker-dealers).

hereto as Exhibit B, and an amended Form SAR-S-F ("BC Form SAR-S-F") is attached hereto as Exhibit C.

The adoption of BC Form SAR and BC Form SAR-S-F will enlist the assistance of banks and broker-dealers in the detection and prevention of hedge fund fraud and other violations of securities laws at an early stage, thus achieving one of the central purposes of the Proposed Rule. By placing advisers to hedge funds on notice that the federal government has procedures in place to detect hedge fund related fraud, the SAR forms will also act as a strong deterrent to fraud. Moreover, banks and broker-dealers already have established relationships within the industry and are familiar with hedge fund operations and systems. The SEC has found that many hedge fund advisers already maintain their client's assets with a bank or a broker-dealer,[17] and prime brokers often perform valuation services as part of the package of services they provide to hedge funds.[18] This familiarity makes banks and broker-dealers particularly suitable to the detection of hedge fund fraud.

We believe that adopting BC Form SAR and BC Form SAR-S-F is a cost-effective method for achieving the central goals of the Proposed Rule. Banks and broker-dealers are already accustomed to the SAR forms, making their preparation less costly. The review of BC Form SAR and BC Form SAR-S-F, along with the other components of the Bryan Cave Proposal, will be less costly, less intrusive and as, if not more, effective than ensuring that hedge fund advisers are in compliance with the full terms of the Advisers Act. Furthermore, by creating an atmosphere of deterrence and early detection, the SEC will hopefully realize an overall reduction in the costs of investigation and prosecution. This point becomes particularly compelling when considered in conjunction with the educational seminars and applicability of the Custody Rule discussed below. By achieving the same, if not greater, effect as the Proposed Rule without requiring compliance with the full terms of the Advisers Act, the costs of compliance placed on the hedge fund industry should be greatly reduced.

A further result from these amendments may be the enhanced inter-agency cooperation between FinCEN and the SEC, which will serve as a powerful combatant against securities fraud in general, including hedge fund related fraud. By placing banks, broker-dealers and FinCEN alongside the SEC on the front lines of the effort to deter and detect hedge fund related fraud, the Bryan Cave Proposal takes significant steps towards achieving the core objectives of the Proposed Rule.

THE CUSTODY RULE

The SEC's goals in proposing the registration of hedge fund advisers include the deterrence and prevention of hedge fund fraud and improved compliance controls. In addition, the Proposed Rule cites the misappropriation of assets and the improper valuation of assets as fraud actions recently brought by the SEC against unregistered hedge fund advisers.[19] The Custody Rule, in and of itself, is well suited to address these concerns, as one of the stated benefits of the Custody Rule is protecting the assets of an adviser's clients.[20] Therefore, we believe that all hedge fund advisers that have custody

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[17] Custody of Funds or Securities of Clients by Investment Advisers, 68 Fed. Reg. 56692, 56696-56697 (codified at 17 C.F.R. 275.206(4)-2).

[18] The 2003 Study, at 63.

[19] Proposed Rule, at 45179.

[20] 68 Fed. Reg. 56692 at 56692.

of the assets invested in a hedge fund, whether registered under the Advisers Act or not, should be required to comply with the terms of the Custody Rule.

The deterrent and preventive effects of the Custody Rule hold true regardless of the method for compliance. If an adviser to a hedge fund has custody of the assets of a hedge fund, the adviser will maintain the assets with a "qualified custodian." The adviser then has two general methods for complying with the Custody Rule. First, the qualified custodian maintains the assets in a separate account and distributes quarterly account statements to each investor in the hedge fund. In lieu of the qualified custodian, the adviser itself can distribute quarterly account statements to each investor as long as it is subject to an annual surprise examination. Second, the adviser can comply with the Custody Rule by distributing annual audited financial statements to each investor in the hedge fund within 120 days of the end of the hedge fund's fiscal year. Compliance with either of these methods will act to deter hedge fund fraud. Ensuring that investors receive this information will significantly increase the detection of fraud, as it is our understanding that most fraud cases begin after an investor complaint. In addition, the occurrence of a surprise examination or an annual audit will have a strong deterrent effect on all forms of hedge fund fraud and, therefore, ensure compliance with federal securities laws. In short, requiring compliance with the Custody Rule acts as a deterrent to all forms of hedge fund fraud because it "increases the risk of getting caught, and thus will deter wrongdoers."[21]

Requiring compliance with the Custody Rule is also a cost-effective method for achieving the objectives of the Proposed Rule. Many hedge fund advisers already maintain their investor's assets with an institution that meets the requirements of a "qualified custodian," including both banks and broker-dealers.[22] In addition, we believe that, although not required, industry practice provides for the distribution by a hedge fund to each investor of annual audited financial statements; the Custody Rule only adds a requirement that such audited financial statements be distributed within a certain time frame. However, in order to allow hedge funds the time necessary to assemble and distribute annual audited financial statements, we believe that the time period allowed for compliance should be extended to 180 days.

The Custody Rule, as amended by the Proposed Rule, should be applicable to all advisers providing investment advisory services to hedge funds regardless of whether such adviser is registered with the SEC. While less costly and burdensome than requiring full compliance with the Advisers Act, it will act as a strong deterrent to all types of hedge fund fraud.

EDUCATIONAL SEMINAR

An additional component of the Bryan Cave Proposal that helps to ensure compliance with securities laws and prevent hedge fund fraud is the implementation of a formal, on-going educational program for hedge fund advisers. We believe that advisers who understand their fiduciary and legal obligations are generally more likely to comply with these obligations. Therefore, the Bryan Cave Proposal provides for the creation of educational seminars to be conducted by one or more self-regulatory organizations ("SROs") following curricula tailored specifically to an investment adviser's legal and fiduciary obligations. SROs offering the seminars may include, among others, the National

[21] Proposed Rule, at 45178.

[22] 68 Fed. Reg. 56692 at 56696-56697.

Association of Securities Dealers, Inc., the Managed Funds Association and/or chartered continuing education organizations.

Attendance at such a seminar will be required on a bi-annual basis for key employees of unregistered hedge fund advisers and voluntary for Chief Compliance Officers ("CCOs") of registered investment advisers. To ensure that unregistered advisers have attended a seminar, the key employee of the unregistered adviser that attended the seminar will be required to certify as such on BC Form D. The certification, modeled after the certifications required under the Sarbanes-Oxley Act of 2002, must be completed each time the adviser files or amends BC Form D. In order to allow time for compliance, hedge fund advisers will have one year from the first offering of such a seminar to file the certification required on BC Form D.

The curriculum at each seminar will include sessions on an investment adviser's legal and fiduciary obligations under federal and state securities laws, internal methods for ensuring compliance and detecting non-compliance with such laws, the ethical requirements applicable to investment advisers and personal trading restrictions applicable to an adviser's personnel. A session will be devoted to methods for compliance with the Custody Rule. The seminar will also include discussions on procedures for valuing client assets, placing and allocating trades and making and substantiating performance claims. Sessions could be specifically tailored to different types of strategies employed by an adviser, discussing the particular legal requirements as to disclosure, fraud and fiduciary obligations inherent in each strategy. In addition, the curriculum could be changed over time to respond to new developments in the hedge fund industry.

Seminars will be significantly less costly and burdensome on hedge fund managers than compliance with the Advisers Act. The SEC has estimated that the costs of establishing the compliance infrastructure necessary for complying with the Advisers Act will average $45,000 per adviser.[23] Seminars could be offered over the Internet for a nominal fee. Education of hedge fund advisers will reduce the risk of harm to investors through violations of securities laws, thus reducing the costs associated with investigating and prosecuting such violations. In addition, educational seminars, along with the other components of the Bryan Cave Proposal, will result in reduced costs for the SEC when compared with the steps necessary to ensure that advisers to hedge funds are in compliance with the full terms of the Advisers Act. Seminars will help prevent fraud before it occurs, thus reducing the overall costs of investigation and prosecution.

At the same time, educational seminars should assist in achieving the Proposed Rule's goals of fraud prevention and ensuring compliance with securities laws. Seminars ensure that key employees of each hedge fund adviser are knowledgeable about the adviser's requirements under federal and state securities laws and methods for ensuring compliance, thus placing employees in the adviser's office to provide a check on hedge fund fraud. The adviser's office will be the front line of fraud prevention and detection. The SEC has acknowledged that it "cannot be at the office of every adviser at all times." The seminar, combined with the SARs discussed above and the other components of the Bryan Cave Proposal, ensures that someone else will be in the adviser's office, and at considerably less cost.

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[23] Proposed Rule, at 45189.

INVESTOR ELIGIBILITY CRITERIA

One of the main concerns expressed by the SEC in publishing the Proposed Rule was the increased "retailization" of hedge funds. The Bryan Cave Proposal addresses the "growing exposure of smaller investors, pensioners, and other market participants, directly or indirectly, to hedge funds,"[24] by requiring that every investor in every hedge fund qualifies as an "accredited investor," as such term is defined in Regulation D, and a "New Qualified Client," as such term is defined in Exhibit D attached hereto.[25] Investors in hedge funds will be required to meet these criteria regardless of whether interests in the hedge fund are issued pursuant to BC Form D or otherwise issued in a non-public offering and regardless of whether the hedge fund is charged a performance fee. By requiring all advisers to hedge funds, regardless of registration status, to issue securities only to investors that meet these eligibility criteria, the SEC will be taking a significant step toward preventing the "retailization" of hedge funds.

In order to invest in a hedge fund, each investor will be required to qualify as an "accredited investor." Hedge funds will no longer be allowed to rely on the exemptions in Regulation D whereby securities can be issued to non-accredited investors. We do not believe that it is necessary to amend the definition of "accredited investor," as the current definition ensures that only high net worth investors that do not require the protection of the SEC invest in hedge funds.

The Bryan Cave Proposal builds on the current definition of "qualified client" provided in Rule 205-3 under the Advisers Act to ensure that investors in hedge funds truly do not need the protection of the SEC. Pursuant to the Bryan Cave Proposal, an investor will qualify as a "qualified client" (a "New Qualified Client") if the investor is a natural person or company (i) with a net worth of more than $1.5 million (either individually or together with a spouse), (ii) who qualifies as a "qualified purchaser" under the ICA, or (iii) who is an executive officer or principal of the adviser, or a member of the executive officer's or principal's immediate family. Additionally, an entity formed for the purpose of making an investment in a hedge fund qualifies as a New Qualified Client only if all of its beneficial owners qualify as New Qualified Clients. We have included family members in the definition of New Qualified Client because we believe that they are a significant source of capital for newly formed hedge funds and should be permitted to invest in these funds. We have removed the provision allowing an investor with $750,000 under management with the adviser to qualify as a New Qualified Client because we believe that only investors with a net worth of at least $1.5 million should be allowed to invest $750,000 with any one adviser. The provision was, therefore, unnecessary.

Aside from requiring that they be "accredited investors" and New Qualified Clients, we have not otherwise provided for enhanced eligibility criteria with respect to pension and profit sharing plans because it is our view that sufficient safeguards are currently in place for their protection. Pension and profit sharing plans are regulated by the U.S. Department of Labor and various state authorities. The plans are managed by trustees, many of whom are highly sophisticated and/or engage third parties to

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[24] Id., at 45176.

[25] We agree with the SEC that it is not necessary to disrupt existing arrangements between a fund and an investor. Therefore, a hedge fund's current investors who do not satisfy these criteria should be allowed to retain and add to their existing investments. Id., at 45186.

assist in making alternative investments. Additionally, the trustees of such plans are subject to strict legal and fiduciary obligations, violations of which can result in personal liability.

In addition to limiting the "retailization" of hedge funds, adopting these changes encourages advisers to hedge funds (regardless of size) to issue securities pursuant to BC Form D. Since all investors will qualify as "accredited investors," the issuance of securities by the hedge fund will satisfy the conditions of Regulation D. This will further allow the SEC to use BC Form D to create a central and easily accessible database through which information about the hedge fund industry can be collected.

OFFSHORE ADVISERS

The SEC acknowledges in the Proposed Rule that the Advisers Act is subject to "reasonable limitations on its extraterritorial application"[26] and should only apply to offshore advisers with sufficient contacts to the U.S. so as to warrant oversight by the SEC.[27] We believe that the Bryan Cave Proposal applies this principle while still fulfilling the SEC's goals of collecting information and detecting and preventing hedge fund fraud.

Consistent with the Proposed Rule, offshore advisers to offshore publicly offered mutual funds or closed-end funds will not be required to look through these funds and register with the SEC "simply because more than fourteen of their investors are now resident in the United States."[28] We believe that this should also be true with respect to hedge funds offered publicly pursuant to the laws of a foreign jurisdiction. These funds and their advisers are currently subject to regulation by a foreign jurisdiction, and the Advisers Act may place conflicting requirements on such entities.[29] We believe that a provision to the contrary will create a barrier to international securities markets.[30] An offshore adviser may be reluctant to register and provide investment advisory services to U.S. clients if the provisions of the Advisers Act apply with respect to such offshore publicly offered funds. Further, the SEC has already set forth the provisions of the Advisers Act with which a foreign adviser must be in compliance with respect to its U.S. clients, and these provisions will continue to apply in this context.[31]

With respect to offshore advisers managing offshore privately offered hedge funds, we note that many of these advisers are subject to a significant degree of regulation in their home jurisdictions, and requiring them to submit to an additional layer of costly regulation may lead to their avoiding U.S. investors altogether. With that in mind, the Bryan Cave Proposal seeks to ensure that the provisions of the Advisers Act apply only in cases where the SEC has a significant interest in their application. In general, an offshore adviser will be required to look through offshore privately offered hedge funds to determine the number of U.S. clients to whom it provides investment advice, and will be required to

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[26] Id., at 45184.

[27] Division of Investment Management, U.S. Sec. and Exch. Com., Protecting Investors: A Half Century of Investment Company Regulation (1992), at 222 (hereinafter "Protecting Investors").

[28] Proposed Rule, at 45183.

[29] Protecting Investors, at 224; Uniao de Bancos de Brasileiros S.A (hereinafter, "Uniao") (pub. avail. July 28, 1992).

[30] Protecting Investors, at 229.

[31] See e.g., Mercury Asset Management plc (pub. avail. Apr. 16, 1993); The National Mutual Group (pub. avail. Mar. 8, 1993); Uniao.

register with the SEC if the adviser has more than 14 U.S. clients in the previous 12 months. However, an offshore adviser will not be required to look through its offshore privately offered hedge funds if each such hedge fund that has issued securities in the U.S. has done so pursuant to BC Form D. Each offshore hedge fund filing a BC Form D will be considered one U.S. client of the offshore adviser. In completing BC Form D, the offshore adviser will only be required to provide information (including assets under management) with respect to its U.S. clients. In any event, the provisions of the Advisers Act should not apply with respect to the offshore clients of an offshore adviser.

We do not believe that domestic hedge fund advisers will use these exemptions to evade the requirements under the Advisers Act. The determination of whether an adviser operates offshore or domestically is based on the adviser's principal place of business, and an adviser will have to move its central operations offshore in order to evade the Advisers Act. The logistical barriers to such a move provide a strong enough deterrent so as to significantly minimize the risk posed by this exemption.

You have requested comment on whether a threshold of assets under management test should apply to offshore advisers prior to requiring their registration with the SEC.[32] We believe that it should. We do not believe that the test should be based on the percentage of assets attributable to U.S. residents. We believe that a percentage-based test will have a disproportionate impact on smaller offshore advisers and will not necessarily ensure the regulation of those offshore advisers whose conduct has significant effects in the U.S. Rather, we believe that the threshold should apply to the cumulative assets from U.S. residents managed by the offshore adviser, as this will allow the SEC to focus its regulatory resources on those offshore advisers whose conduct has significant effects on U.S. investors.

A central mission of the SEC is the protection of U.S. investors. The foregoing provisions ensure that U.S. investors receive the full protection of the Advisers Act in cases where SEC oversight is most required. They also ensure that, through BC Form D and, in the alternative, Form ADV, the SEC receives substantive information about offshore privately offered hedge funds and their U.S. investors. At the same time, the Bryan Cave Proposal provides a "reasonable limitation on the extraterritorial application of the Advisers Act" and reduces the burdens of the Proposed Rule on both the SEC and the hedge fund industry.

DISCUSSION

In the Proposed Rule, the SEC set out the main goals it hoped to achieve through adoption of the Proposed Rule: the collection of census information on the hedge fund industry, the hindrance of access to hedge funds for unfit persons, the deterrence and early detection of hedge fund fraud, the adoption by hedge funds of compliance controls, the limitation on "retailization" of hedge funds and the imposition of minimal burdens. The Bryan Cave Proposal satisfies these objectives in a manner that is cost effective to both the SEC and the hedge fund industry.

Through BC Form D, the SEC will be able to collect census information about the hedge fund industry. On the issuance of securities, advisers to hedge funds will be required to set forth their name, address and total assets under management, among other required disclosures. The adviser will

[32] Proposed Rule, at 45183.

also be required to provide information about its operations, including the number of hedge funds to which it provides investment advisory services. The information provided on BC Form D will be updated annually and upon the occurrence of events making information in the form misleading or incomplete, thus ensuring that the SEC's informational database is current.

Information will be collected for both registered and unregistered hedge fund advisers under the Bryan Cave Proposal, as both will rely on the BC Form D to ensure that a hedge fund's issuance of securities qualifies as a non-public offering under the 1933 Act and the ICA. Should the SEC adopt the Proposed Rule, unregistered advisers will also rely on BC Form D because the Proposed Rule will not apply to them if all hedge funds managed by the adviser issue their securities pursuant to the amended form. BC Form D also allows the collection of information about hedge fund advisers that are not yet large enough to register with the SEC, regardless of the application of the Proposed Rule. Like larger hedge funds, small funds issue their securities in non-public offerings to ensure that they are exempt from the provisions of the 1933 Act and the ICA. Additionally, as their investors will be required to qualify as "accredited investors," small advisers will satisfy the conditions for reliance on Regulation D. The SEC will thus get a more complete picture of the hedge fund industry than it would under the Proposed Rule.

Each adviser will be required to represent that the principals listed on BC Form D meet certain eligibility criteria. If the adviser cannot make such a representation, the adviser will not be able to rely on the safe harbor to the Proposed Rule provided by BC Form D. Such advisers will be required to look through the hedge funds they manage in determining if they have had more than 14 clients within the previous 12 months, and may be required to register as investment advisers. This provision will help the SEC prevent "unfit persons from using hedge funds to perpetuate frauds" by allowing the SEC to screen individuals associated with the adviser and deny registration if it determines that the adviser is unfit to offer the securities.[33]

The Bryan Cave Proposal acts as an effective detector of hedge fund fraud, especially in its earlier stages when losses to investors can be minimized. BC Form SAR and BC Form SAR-S-F allow banks and broker-dealers, respectively, to report instances of suspected hedge fund fraud to FinCEN, and through FinCEN to the SEC. These entities are particularly suited to the detection of hedge fund fraud, including the fraudulent valuation of assets, "a matter of serious concern"[34] to the SEC. The prospect of an SAR also acts to deter fraud, as it "increases the risk of getting caught, and thus will deter wrongdoers."[35] Additionally, several other aspects of the Bryan Cave Proposal act as deterrents to hedge fund fraud. Advisers will recognize that, through BC Form D, the SEC has sufficient information on file with which to conduct a thorough inquiry into the adviser's operations. Most importantly, educational seminars will ensure that key employees and CCOs of each hedge fund adviser are familiar with all applicable securities laws. We believe that the education of investment advisers about their legal and fiduciary obligations is a significant step the SEC can reasonably take to counter hedge fund fraud in general.

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[33] Id., at 45179.

[34] Id.

[35] Id., at 45178.

The Bryan Cave Proposal will also act to ensure that advisers to hedge funds are in compliance with their various legal and fiduciary obligations. Registered advisers will be required to comply with the provisions of the Advisers Act requiring a CCO, written compliance policies and procedures and a code of ethics. Advisers not required to register pursuant to the Bryan Cave Proposal will be required to attend educational seminars at which methods for implementing compliance controls to ensure that securities laws are followed will be discussed, and will be required to certify their attendance on BC Form D.

The Bryan Cave Proposal will limit the "retailization" of hedge funds by requiring all investors in hedge funds, regardless of size, to qualify as "accredited investors" and New Qualified Clients. In this respect, our proposal is even more stringent than the Proposed Rule. Under the Proposed Rule, investors will only be required to qualify as "accredited investors" if the hedge fund is issuing securities in reliance on the particular safe harbor of Regulation D and only as "qualified clients" if the adviser is required to register under the Proposed Rule and is paid a performance fee. At the same time, the definition of New Qualified Client recognizes that family members are a significant source of capital for newly formed hedge funds and should be included as permissible investors.

We have not amended the definition of "accredited investor" because we believe that these investors do not require the protection of the SEC in making an investment in a hedge fund and that any such investment is sufficiently governed by other rules and regulations. All the entities included in the definition of "accredited investor" are either supervised and examined by the state, federal or other territorial authority having supervision over such entity or are wealthy and sophisticated enough to conduct their own due diligence. For example, investments by pension plans are regulated by the Department of Labor and various state authorities, and investments made by pension plan managers are subject to strict fiduciary obligations. In addition, investment decisions with respect to pension plans are generally made by experts in the field.

Of significant importance, the Bryan Cave Proposal imposes fewer burdens on the hedge fund industry while still achieving the objectives of the Proposed Rule. The forms used to collect information on the hedge fund industry and to deter and detect fraud are already familiar to those financial institutions completing them; substantially all hedge fund advisers already file Form D and banks and broker-dealers are familiar with their respective SAR forms. This will reduce the amount of time and cost of preparation. Additionally, many hedge fund advisers currently assume the costs of Form D. Therefore, the Bryan Cave Proposal does not add any additional filing fees, which could have a substantial effect on smaller advisers.

The SEC has estimated that it will cost an average adviser $45,000 to establish a compliance infrastructure for the Advisers Act. In addition, ensuring compliance with Rules 204A-1 (code of ethics) and 206(4)-7 (compliance procedures and CCOs) will require on an annual basis 117.95 and 80 hours, respectively, from each registering adviser under the Proposed Rule.[36] While we leave it to the SEC to determine the specific cost, length and breadth of a bi-annual educational seminar, we do not believe that it will cost each adviser $45,000 and take 200 hours of each adviser's time on an annual basis.

[36] Id., at 45191-45192.

The Bryan Cave Proposal is also cost effective for the SEC. The SEC currently receives and processes each Form D filed by a hedge fund. Adding Form ADV for the advisers to these hedge funds, as well as the cost of expected additional examinations and of ensuring compliance with the full provisions of the Advisers Act, will be a significant increase in costs imposed on the SEC.

The Bryan Cave Proposal deters and detects hedge fund fraud and ensures compliance with applicable securities rules and regulations. Required attendance at an educational seminar, the filing of SARs and the universal applicability of the Custody Rule act in concert to ensure that advisers to hedge funds do not commit fraud. The seminar ensures that advisers understand their legal obligations and methods for ensuring compliance with these obligations. The Custody Rule acts as an internal check on fraud, ensuring that investors are informed of the status of their assets and that the adviser may be audited or examined annually. The Custody Rule also acts as an external check on fraud by requiring the placement of all assets with a "qualified custodian." Finally, SARs act as an external check on fraud by placing the hedge fund industry on notice that banks and broker-dealers may be reporting instances of fraud to appropriate authorities.

In the Proposed Rule, the SEC requested comments on an inference that, based on the voluntary registration of certain hedge fund advisers, registration is not burdensome.[37] We do not believe that this inference is warranted. In our view, many advisers registered with the SEC did so because they had more than 14 clients in the previous 12 months and assets under management of at least $30 million and/or the business-related benefits otherwise outweighed the burdensome requirements of registration. For example, current provisions of the Employee Retirement Income Security Act of 1974, as amended, lead many pension and profit sharing plans to invest their assets solely with registered investment advisers. In addition, specific investors may require that an investment adviser be registered with the SEC prior to making in investment. The fact that it is 'good business' for a hedge fund adviser to register does not necessarily mean that it is not burdensome.

We believe that the enactment of the Proposed Rule may have a chilling effect on the hedge fund industry. Increasing start-up costs inevitably leads to fewer start-ups. Based on SEC estimates, the costs of registration and compliance with the Advisers Act are at least $46,000[38] and an annual increased workload of 1,469 hours,[39] a significant amount for any adviser. In addition, we believe that the SEC may have underestimated the costs of registration and compliance with the Advisers Act. The chilling effect will reduce the positive effects hedge funds have on today's markets, including contributions to efficiency and liquidity, allocation of risk, and increased diversification for investors.[40] By requiring advisers to hedge funds to incur substantially lower costs, the Bryan Cave Proposal significantly reduces the possibility of the chilling effect that the Proposed Rule may have on the hedge fund industry.

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[37] Id., at 45181.

[38] $45,000 for a compliance infrastructure and approximately $1,000 in filing fees. Id., at 45189.

[39] 30 hours for filing Form ADV and distributing a code of ethics, 192 hours for Rule 204-2, 694 hours for Rule 204-3, 118 hours for Rule 204A-1, 335 hours for Rule 206(4)-2, 1.5 hours for Rule 206(4)-3, 1.5 hours for Rule 206(4)-4, 17 hours for Rule 206(4)-6 and 80 hours for Rule 206(4)-7. Id., at 45191-45193

[40] Id., at 45178.

In closing, we would like to thank the SEC for the opportunity to comment on the Proposed Rule. We recognize the enormity of the task it has undertaken and applaud its efforts. We appreciate and understand the call for greater regulation of the industry and share the frustration felt by advisers and regulators alike in trying to strike an appropriate balance. We are nevertheless confident that through meaningful debate and the public exchange of ideas and proposals a suitable 'middle ground' will be reached.

That said, we believe that the Bryan Cave Proposal is a cost effective method for ensuring that the SEC has access to pertinent information about the hedge fund industry and that measures designed to deter and detect fraud and prevent "retailization" are enacted, while at the same time minimizing the costs that full registration and compliance will have on existing hedge fund advisers and those looking to enter the industry. We hope you look upon our proposal as a reasonable 'middle ground' between the Proposed Rule and the current regulatory environment.

Please feel free to contact Robert G. Leonard (212-541-2266, rgleonard@bryancave.com), Michael F. Mavrides (212-541-1263, mfmavrides@bryancave.com), David S. Plutzer (212-541-1133, dsplutzer@bryancave.com) or Ephraim D. Lemberger (212-541-1196, edlemberger@bryancave.com) if you have any questions or comments.

Kind regards,

Bryan Cave LLP

EXHIBIT A

BC FORM D*

*Deletions in the text are marked by a strikethrough, and insertions by a double underline.

	UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 **FORM D** **NOTICE OF SALE OF SECURITIES PURSUANT TO REGULATION D, SECTION 4(6), AND/OR UNIFORM LIMITED OFFERING EXEMPTION**	OMB APPROVAL OMB Number: 3235-0076 Expires: May 31, 2005 Estimated average burden hours per response. . . . . 16.00 SEC USE ONLY Prefix | Serial DATE RECEIVED

Name of Offering ([ ] check if this is an amendment and name has changed, and indicate change.)

Filing Under (Check box(es) that apply): [ ] Rule 504 [ ] Rule 505 [ ] Rule 506 [ ] Section 4(6) [ ] ULOE

Type of Filing: [ ] New Filing [ ] Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer ([ ] check if this is an amendment and name has changed, and indicate change.)

Address of Executive Offices (Number and Street, City, State, Zip Code) Telephone Number (Including Area Code)

Address of Principal Business Operations (Number and Street, City, State, Zip Code) Telephone Number (Including Area Code) (if different from Executive Offices)

Brief Description of Business

Please check here if the issuer is a private fund [ ]

Type of Business Organization

[ ] corporation [ ] limited partnership, already formed [ ] limited liability company

[ ] business trust [ ] limited partnership, to be formed [ ] other (please specify):

Month Year

Actual or Estimated Date of Incorporation or Organization: [ ] [ ] [ ] Actual [ ] Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: CN for Canada; FN for other foreign jurisdiction) [ ][ ]

GENERAL INSTRUCTIONS

Federal:

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When to File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where to File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part ~~E~~ F and the Appendix need not be filed with the SEC. Private fund issuers filing amendments must complete the notice in its entirety.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix in the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption state exemption unless such exemption is predicated on the filing of a federal notice.

SEC 1972 (6-02) **Potential persons who are to respond to the collection of information contained in this form are not required to**

respond unless the form displays a currently valid OMB control number.

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; ~~and~~
- Each general and managing partner of partnership issuers~~.~~; and
- Each investment adviser to a private fund issuer.

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: [ ] Promoter [ ] Beneficial Owner [ ] Executive Officer [ ] Director [ ] General and/or Managing Partner [ ] Investment Adviser

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

B. INFORMATION ABOUT OFFERING

		Yes	No
1.	Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering?.............................	☐	☐
	Answer also in Appendix, Column 2, if filing under ULOE.		
2.	What is the minimum investment that will be accepted from any individual?..	$_________	
		Yes	No
3.	Does the offering permit joint ownership of a single unit?	☐	☐

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)... ☐ All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [WA] [WV] [WI] [WY] [PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)... ☐ All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [WA] [WV] [WI] [WY] [PR]

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)... ☐ All States

[AL] [AK] [AZ] [AR] [CA] [CO] [CT] [DE] [DC] [FL] [GA] [HI] [ID]
[IL] [IN] [IA] [KS] [KY] [LA] [ME] [MD] [MA] [MI] [MN] [MS] [MO]
[MT] [NE] [NV] [NH] [NJ] [NM] [NY] [NC] [ND] [OH] [OK] [OR] [PA]
[RI] [SC] [SD] [TN] [TX] [UT] [VT] [VA] [WA] [WV] [WI] [WY] [PR]

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero." If the transaction is an exchange offering, check this box [ ] and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt	$_____	$_____
Equity	$_____	$_____
[ ] Common [ ] Preferred		
Convertible Securities (including warrants)	$_____	$_____
Partnership Interests	$_____	$_____
Other (Specify_____)	$_____	$_____
Total	$_____	$_____

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

	Number Investors	Aggregate Dollar Amount of Purchases
Accredited Investors	_____	$_____
Non-accredited Investors	_____	$_____
Total (for filings under Rule 504 only)	_____	$_____

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C-Question 1.

Type of offering	Type of Security	Dollar Amount Sold
Rule 505	_____	$_____
Regulation A	_____	$_____
Rule 504	_____	$_____
Total	_____	$_____

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees	[ ]	$_____
Printing and Engraving Costs	[ ]	$_____
Legal Fees	[ ]	$_____
Accounting Fees	[ ]	$_____
Engineering Fees	[ ]	$_____
Sales Commissions (specify finders' fees separately)	[ ]	$_____
Other Expenses (identify) _____	[ ]	$_____

Total.....[ ] $_____

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C - Question 1 and total expenses furnished in response to Part C - Question 4.a. This difference is the "adjusted gross proceeds to the issuer." ..... $----------

5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C - Question 4.b above.

	Payments to Officers, Directors, & Affiliates	Payments To Others
Salaries and fees	[ ] $_____	[ ] $_____
Purchase of real estate	[ ] $_____	[ ] $_____
Purchase, rental or leasing and installation of machinery and equipment	[ ] $_____	[ ] $_____
Construction or leasing of plant buildings and facilities	[ ] $_____	[ ] $_____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger)	[ ] $_____	[ ] $_____
Repayment of indebtedness	[ ] $_____	[ ] $_____
Working capital	[ ] $_____	[ ] $_____
Other (specify):_____	[ ] $_____	[ ] $_____
_____	[ ] $_____	[ ] $_____
Column Totals	[ ] $_____	[ ] $_____
Total Payments Listed (column totals added)	[ ] $_____	

6. Private fund issuers must provide the following information. Offshore private fund issuers must provide this information only with respect to their U.S. Person investors.

		Date of Calculation
Most recently calculated net asset value of the private fund issuer	[ ] $_____	[ ] _____
Most recently calculated number of investors in the private fund issuer	[ ] _____	[ ] _____

Name of Fund's Administrator .....

Name of Fund's Custodian .....

Name of Fund's Prime Broker(s) .....

Name of Fund's Auditor .....

D. INFORMATION ON INVESTMENT ADVISERS TO PRIVATE FUND ISSUERS

This section must be completed for each investment adviser to a private fund issuer.

1. Enter the information requested for the following:

- Each promoter of the investment adviser, if the investment adviser has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the investment adviser;
- Each executive officer and director of corporate investment advisers and of corporate general and managing partners of partnership investment advisers; and
- Each general and managing partner of partnership investment advisers.

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

D. INFORMATION ON INVESTMENT ADVISERS TO PRIVATE FUND ISSUERS

2. a. Approximately how many employees do you have? Include full and part-time employees but do not include any clerical workers.

[ ] 1-5 [ ] 6-10 [ ] 11-50 [ ] 51-250 [ ] 251-500 [ ] 501-1,000 [ ] More than 1,000

If more than 1,000, how many? _____ (round to the nearest 1,000)

b. (i) Approximately how many of these employees perform investment advisory functions (including research?)

[ ] 1-5 [ ] 6-10 [ ] 11-50 [ ] 51-250 [ ] 251-500 [ ] 501-1,000 [ ] More than 1,000

If more than 1,000, how many? _____ (round to the nearest 1,000)

3. What types of clients do you have? Indicate the approximate percentage that each type of client comprises of your total number of clients.

	None	Up to 10%	11-25%	26-50%	51-75%	More than 75%
(i) Individuals (other than high net worth individuals)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(ii) High net worth individuals	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(iii) Banking or thrift institutions	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(iv) Investment companies (including mutual funds)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(v) Pension and Profit sharing plans (other than plan participants)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(vi) Other pooled investment vehicles (e.g., hedge funds)	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(vii) Charitable organizations	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(viii) Corporations or other businesses not listed above	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(ix) State or municipal government entities	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
(x) Other:	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

_____

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

4. Please provide information on your other business activities. You are actively engaged in business as a (check all that apply):

[ ] (1) Broker-dealer

[ ] (2) Registered representative of a broker-dealer

[ ] (3) Futures commission merchant, commodity pool operator, or commodity trading advisor

[ ] (4) Real estate broker, dealer, or agent

[ ] (5) Insurance broker or agent

[ ] (6) Bank (including a separately identifiable department or division of a bank)

[ ] (7) Other financial product salesperson (specify):

_____

5. Please provide information on your assets under management.

a. Do you provide continuous an regular supervisory or management services to securities portfolios? [ ] Yes [ ] No

b. If yes, what is the amount of your assets under management and total number of accounts?

		U.S. Dollar Amount		Total Number of Accounts
Discretionary:	(a)	$_____.00	(d)	_____
Non-Discretionary:	(b)	$_____.00	(e)	_____
Total:	(c)	$_____.00	(f)	_____

In determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services.

6. Enter the total number of private funds to which the investment adviser provides investment advice.

[ ] 1-5 [ ] 6-10 [ ] 11-50 [ ] 51-250 [ ] 251-500 [ ] 501-1,000 [ ] More than 1,000

If more than 1,000, how many? _____ (round to the nearest 1,000)

D. INFORMATION ON INVESTMENT ADVISERS TO PRIVATE FUND ISSUERS

7. Representation of the investment adviser.

The investment adviser represents that it is not a person (i) subject to an order issued by the SEC under Section 203(f) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), or (ii) convicted within the previous ten years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A)-(D) of the Advisers Act, or (iii) who has been found by the SEC to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraph (1), (5) or (6) of Section 203(e) of the Advisers Act, or (iv) is subject to an order, judgment or decree described in Section 203(e)(4) of the Advisers Act.

By: _____
Name: _____
Title: _____
Date: _____

8. Certification of the investment adviser. (Only investment advisers not registered with the SEC are required to complete this certification.)

The undersigned, a key employee of the investment adviser, hereby certifies that he/she has attended an educational seminar within the past two years from the date of this filing in compliance with the Investment Advisers Act of 1940, as amended.

Date of attendance: _____

By: _____
Name: _____
Title: _____
Date: _____

~~D.~~ E. FEDERAL SIGNATURE

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer (Print or Type)	Signature	Date
Name of Signer (Print or Type)	Title of Signer (Print or Type)	

ATTENTION
Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

~~E.~~ F. STATE SIGNATURE

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? ..... Yes [ ] No [ ]

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed, a notice on Form D (17 CFR 239,500) at such times as required by state law.

3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.

4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type)	Signature	Date
Name of Signer (Print or Type)	Title (Print or Type)	

Instruction:

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item 1)	
State	Yes	No		Number of Accredited Investors	Amount	Number of Non-Accredited Investors	Amount	Yes	No
AL									
AK									
AZ									
AR									
CA									
CO									
CT									
DE									
DC									
FL									
GA									
HI									
ID									
IL									
IN									
IA									
KS									
KY									
LA									
ME									
MD									
MA									
MI									
MN									
MS									
MO									
MT									
NE									
NV									
NH									
NJ									
NM									
NY									
NC									
ND									
OH									
OK									
OR									
PA									
RI									

SC									
SD									
TN									
TX									
UT									
VT									
VA									
WA									
WV									
WI									
WY									
PR									

EXHIBIT B

BC FORM SAR*

*Deletions in the text are marked by a strikethrough, and insertions by a double underline.

Suspicious Activity Report

July 2003

Previous editions will not be accepted after December 31, 2003

ALWAYS COMPLETE ENTIRE REPORT (see instructions)

1

FRB:	FR 2230	OMB No. 7100-0212
FDIC:	6710-06	OMB No. 3064-0077
OCC:	8010-9,8010-1	OMB No. 1557-0180
OTS:	1601	OMB No. 1550-0003
NCUA:	2362	OMB No. 3133-0094
TREASURY:	TD F 90-22.47	OMB No. 1506-0001

1 Check box below only if correcting a prior report

☐ Corrects Prior Report (see instruction #3 under "How to Make a Report")

Part I Reporting Financial Institution Information

2 Name of Financial Institution

3. EIN

4 Address of Financial Institution

5 Primary Federal Regulator

a ☐ Federal Reserve d ☐ OCC

b ☐ FDIC e ☐ OTS

c ☐ NCUA

6. City

7 State

8 ZIP code

9 Address of Branch Office(s) where activity occurred ☐ Multiple Branches (include information in narrative, Part V)

10 City

11 State

12 ZIP code

13 If institution closed, date closed

____/____/_____
MM DD YYYY

14 Account number(s) affected, if any

a. _____ Closed? ☐ Yes ☐ No

b. _____ Closed? ☐ Yes ☐ No

c. _____ Closed? ☐ Yes ☐ No

d. _____ Closed? ☐ Yes ☐ No

Part II Suspect Information

15 Last Name or Name of Entity

16 First Name

17 Middle

18 Address

19 SSN, EIN or TIN

20 City

21 State

22 ZIP code

23 Country

24 Phone Number - Residence (include area code)

( )

25 Phone Number - Work (include area code)

( )

26 Occupation/Type of Business

27 Date of Birth

____/____/_____
MM DD YYYY

28 Admission/Confession?

a ☐ Yes b ☐ No

29 Form of Identification for Suspect:

a ☐ Driver's License/State ID b ☐ Passport c ☐ Alien Registration d ☐ Other

Number _____ Issuing Authority _____

30 Relationship to Financial Institution:

a ☐ Accountant d ☐ Attorney g ☐ Customer j ☐ Officer

b ☐ Agent e ☐ Borrower h ☐ Director k ☐ Shareholder

c ☐ Appraiser f ☐ Broker i ☐ Employee l ☐ Other _____

31 Is the relationship an insider relationship? a ☐ Yes b ☐ No

If Yes, specify: c ☐ Still employed at financial institution e ☐ Terminated

d ☐ Suspended f ☐ Resigned

32 Date of Suspension, Termination, Resignation

_____/_____/_____
MM DD YYYY

Part III Suspicious Activity Information

33 Date or date range of suspicious activity
From _____/____/_____ To _____/_____/_____
MM DD YYYY MM DD YYYY

34 Total dollar amount involved in suspicious activity
$, , , .00

35 Summary characterization of suspicious activity:

a ☐ Bank Secrecy Act/Structuring/ Money Laundering
b ☐ Bribery/Gratuity
c ☐ Check Fraud
d ☐ Check Kiting
e ☐ Commercial Loan Fraud
f ☐ Computer Intrusion
g ☐ Consumer Loan Fraud
h ☐ Counterfeit Check
i ☐ Counterfeit Credit/Debit Card
j ☐ Counterfeit Instrument (other)
k ☐ Credit Card Fraud
l ☐ Debit Card Fraud
m ☐ Defalcation/Embezzlement
n ☐ False Statement
o ☐ Misuse of Position or Self Dealing
p ☐ Mortgage Loan Fraud
q ☐ Mysterious Disappearance
r ☐ Wire Transfer Fraud
s ☐ Terrorist Financing
t ☐ Identity Theft
u ☐ Misappropriation of Assets
v ☐ Other _____ (type of activity)

36 Amount of loss prior to recovery (if applicable)
$ .00

37 Dollar amount of recovery (if applicable)
$ .00

38 Has the suspicious activity had a material impact on, or otherwise affected, the financial soundness of the institution?
a ☐ Yes b ☐ No

39 Has the institution's bonding company been notified:
a ☐ Yes b ☐ No

40 Has any law enforcement agency already been advised by telephone, written communication, or otherwise?

a ☐ DEA
b. ☐ FBI
c ☐ IRS
d ☐ Postal Inspection
e ☐ Secret Service
f ☐ U.S. Customs
g ☐ Other Federal
h ☐ State
i ☐ Local
j ☐ SEC
k ☐ Agency Name (for g, h or i) .____

41 Name of person(s) contacted at Law Enforcement Agency

42 Phone Number (include area code)
( )

43 Name of person(s) contacted at Law Enforcement Agency

44 Phone Number (include area code)
( )

Part IV Contact for Assistance

45 Last Name

46 First Name

47 Middle

48 Title/Occupation

49 Phone Number (include area code)
( )

50 Date Prepared
_____/_____/_____
MM DD YYYY

51 Agency (if not filed by financial institution)

Part V Suspicious Activity Information Explanation/Description 3

Explanation/description of known or suspected violation of law or suspicious activity.

This section of the report is **critical**. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and **complete** account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. **If necessary, continue the narrative on a duplicate of this page.**

a **Describe** supporting documentation and retain for 5 years.
b **Explain** who benefited, financially or otherwise, from the transaction, how much, and how.
c **Retain** any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
d **Retain** any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
e **Retain** any evidence or cover-up or evidence of an attempt to deceive federal or state examiners or others.
f **Indicate** where the possible violation too place (e.g., main office, branch, other).
g. **Indicate** whether the possible violation is an isolated incident or relates to other transactions.
h. **Indicate** whether there is any related litigation; if so, specify.
i. **Recommend** any further investigation that might assist law enforcement authorities.
j. **Indicate** whether any information has been excluded from this report; if so, why?
k If you are correcting a previously filed report, describe the changes that are being made.

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:
l **Indicate** whether currency and/or monetary instruments were involved. If so, provide the amount and/or description of the instrument (for example, bank draft, letter of credit, domestic or international money order, stocks, bonds, traveler's checks, wire transfers sent or received, cash, etc.).
m **Indicate** any account number that may be involved or affected.

Tips on SAR Form preparation and filing are available in the SAR Activity Review at www.fincen.gov/pub_reports.html

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".
Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:

    a. **Insider abuse involving any amount**. Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

    b **Violations aggregating $5,000 or more where a suspect can be identified**. Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

    c. **Violations aggregating $25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

    d. **Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act**. Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the financial institution and involving or aggregating $5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

        i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;

        ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below $10,000 and is suspicious, the institution should only file a suspicious activity report.

2. **Computer Intrusion**. For purposes of this report, "computer intrusion" is defined as gaining access to a computer system of a financial institution to:

   a. Remove, steal, procure, or otherwise affect funds of the institution or the institution's customers;

   b. Remove, steal, procure or otherwise affect critical information of the institution including customer account information; or

   c. Damage, disable or otherwise affect critical systems of the institution.

   For purposes of this reporting requirement, computer intrusion does not mean attempted intrusions of websites or other non-critical information systems of the institution that provide no access to institution or customer financial or other critical information.

3. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

4. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit, or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

   Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980

2. For items that do not apply or for which information is not available, leave blank.

3. If you are correcting a previously filed report, check the box at the top of the report (line 1). Complete the report in its entirety and include the corrected information in the applicable boxes. Then describe the changes that are being made in Part V (Description of Suspicious Activity), line k.

4. **Do not include any supporting documentation with the suspicious activity report**. Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.

5. If more space is needed to report additional suspects, attach copies of page 1 to provide the additional information. If more space is needed to report additional branch addresses, include this information in the narrative, Part V.
6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.

EXHIBIT C

BC FORM SAR-S-F*

*Deletions in the text are marked by a strikethrough, and insertions by a double underline.

FinCEN Form 101 Effective May 2004	**Suspicious Activity Report by the Securities and Futures Industries** ▶ **Please type or print. Always complete entire. report. Items marked with an asterisk * are considered critical. (See instructions)**	OMB No. 1506 - 0019

1 Check the box if this report corrects a prior (See instructions) ☐

Part I Subject Information

2 Check box a ☐ if multiple subjects box b ☐ subject information unavailable

*3 Individual's last name or entity's full name	*4 First name	5 Middle initial
6 Also known as (AKA - individual), doing business as (DBA - entity)	7 Occupation or type of business	
*8 Address	*9 City	
*10 State	*11 ZIP code	*12 Country code (if not U.S.) (See instructions) / 13 E-mail address (if available)
*14 SSN/ITIN (individual), or EIN(entity)	*15 Account number(s) affected, if any, indicate if closed. Acc't #_____yes ☐ Acc't #_____yes ☐ Acc't #_____yes ☐ Acc't #_____yes ☐	16 Date of birth ___/___/_____ MM DD YYYY

*17 Government issued identification (if available)

a ☐ Driver's license/state ID ☐ Passport ☐ Alien registration ☐ Corporate/Partnership Resolution

e ☐ Other _____

f. ID number | g Issuing state or country (2 digit code)

18 Phone number - work	19 Phone number - home	20 is individual/business associated/affiliated with the reporting institution? (See instructions)
( ) -	( ) -	a ☐ Yes b ☐ No

Part II Suspicious Activity Information

*21 Date or date range of suspicious activity
From _____/____/_____ To _____/_____/_____
MM DD YYYY MM DD YYYY

*22 Total dollar amount involved in suspicious activity
$, , , .00

23 Instrument type (Check all that apply)

a ☐ Bonds/Notes
b ☐ Cash or equiv.
c ☐ Commercial Paper
d ☐ Commodity futures contract
e ☐ Money Market Mutual Fund
f ☐ Mutual Fund
g ☐ OTC Derivatives
h ☐ Other derivatives
i ☐ Commodity options
j ☐ Security futures products
k ☐ Stocks
l ☐ Warrants
m ☐ Other securities
n ☐ Other non-securities
o ☐ Foreign currency futures/options
p ☐ Foreign currencies
q ☐ Commodity type _____ (Please identify)
r ☐ Instrument description _____
s ☐ Market where traded _____|___|___|_____ (Enter appropriate three or four-letter code).
t ☐ Other (Explain in Part IV)
u ☐ Hedge Fund

24 CUSIP number	25 CUSIP number	26 CUSIP number
27 CUSIP number	28 CUSIP number	29 CUSIP number

*30 Type of suspicious activity:

a ☐ Bribery/gratuity
b ☐ Check fraud
c ☐ Computer intrusion
d ☐ Credit/debit card fraud
e ☐ Embezzlement/theft
f ☐ Commodity futures/options fraud
g ☐ forgery
h ☐ Identity theft
i ☐ Insider trading
j ☐ Mail fraud
k ☐ Market manipulation
l ☐ Money laundering/Structuring
m ☐ Prearranged or other non-competitive trading
n ☐ Securities fraud
o ☐ Significant wire or other transactions without economic purpose
p ☐ Suspicious documents or ID presented
q ☐ Terrorist financing
r ☐ Wash or other fictitious trading
s ☐ Wire Fraud
t ☐ Other (Describe in Part VI)
u ☐ Misappropriation of Assets
v ☐ Improper Valuation of Assets
w ☐ Portfolio Pumping
x ☐ Misrepresentations of Portfolio Performance

Part III Law Enforcement or Regulatory Contact Information

31 If a law enforcement or regulatory authority has been contacted (excluding submission of a SAR) check the appropriate box.

a ☐ DEA
b ☐ U.S. Attorney (**32)
c ☐ IRS
d ☐ FBI
e ☐ ICE
f ☐ Secret Service
g ☐ CFTC
h ☐ SEC
i ☐ NASD
j ☐ NFA
k ☐ NYSE
l ☐ Other RFA
m ☐ Other RE-futures (CME, CBOT, NYMEX, NYBOT)
n ☐ Other state/local
o ☐ Other SRO-securities (PHLX, PCX, CBOE, AMEX, etc.)
p ☐ State securities regulator
q ☐ Foreign
r ☐ Other (Explain in Part VI)

32 Other authority contacted (for item 31 l through r) ** List U.S. Attorney office here.

33 Name of individual contacted (for all of Item 31)

33 Telephone number of individual contacted

( ) –

35 Date contacted

_____/_____/_____
MM DD YYYY

Part IV Reporting Financial Institution Information

*36 Name of financial institution or sole proprietorship

*37 EIN/SSN/ITIN

*38 Address

*39 City

*40 State

*41 ZIP Code –

42 Additional branch address locations handling account, activity or customer.

43 ☐ Multiple locations (See Instructions)

44 City

45 State

46 ZIP Code –

47 Central Registration Depository number

48 SEC ID number –

49 NFA ID number

50 Has this reporting individually coordinated this report with another reporting individual/entity? Yes ☐ (Provide details in Part VI) No ☐

51 Type of institution or individual - Check box(es) for functions that apply to this report

a ☐ Agricultural trade option merchant
b ☐ Affiliate of bank holding company
c ☐ CPO
d ☐ CTA
e ☐ Direct participation program
f ☐ FCM
g ☐ Futures floor broker
h ☐ Futures floor trader
i ☐ IB-C
j ☐ IA
k ☐ Investment company - mutual fund
l ☐ Market maker
m ☐ Municipal securities dealer
n ☐ NFA
o ☐ RE-Futures
p ☐ Other RFA
q ☐ Securities broker - clearing
r ☐ Securities broker - introducing
s ☐ Securities dealer
t ☐ Securities floor broker
u ☐ Securities options broker-dealer
v ☐ SRO_securities
w ☐ Specialist
x ☐ Subsidiary of bank
y ☐ U.S. Government broker-dealer
z ☐ U.S. Government interdealer broker
aa ☐ Hedge Fund Investment Adviser
ab ☐ Other (Describe in Part VI)

Part V Contact for Assistance

*52 Last Name of individual to be contacted regarding this report

*53 First Name

*54 Middle initial

*55 Title/Position

*56 Work phone number

( ) –

*57 Date report prepared

_____/_____/_____
MM DD YYYY

Send completed reports to:

Detroit Computing Center
Attn: SAR-SF
P.O. Box 33980
Detroit, MI 48232

Part VI Suspicious Activity Information - Narrative * 3

Explanation/description of suspicious activity(ies). This section of the report is critical. The care with which it is completed may determine whether or not the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete and chronological description (**not exceeding this page and the next page**) of the activity, including what is unusual, irregular or suspicious about the transaction(s), using the checklist below as a guide, as you prepare your account.

a. **Describe** conduct that raised suspicion.
b. **Explain** whether the transaction(s) was completed or only attempted.
c. **Describe** supporting documentation (e.g. transaction records, new account information, tape recordings, E-mail messages, correspondence, etc.) and retain such documentation in your file for five years.
d. **Explain** who benefited, financially or otherwise, from the transaction(s), how much, and how (if known).
e. **Describe** and retain any admission or explanation of the transaction(s) provided by the subject(s) or other persons. Indicate to whom and when it was given.
f . **Describe** and retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners, SRO, or others.
g. **Indicate** where the possible violation of law(s) took place (e.g., main office, branch, other).
h. **Indicate** whether the suspicious activity is an isolated incident or relates to another transaction.
i. **Indicate** whether there is any related litigation. If so, specify the name of the litigation and the court where the action is pending.
j. **Recommend** any further investigation that might assist law enforcement authorities.
k. **Indicate** whether any information has been excluded from this report; if so, state reasons.
l. **Indicate** whether U.S. or foreign currency and/or U.S. or foreign negotiable instrument(s) were involved. If foreign, provide the amount, name of currency, and country of origin.
m. **Indicate** "Market where traded" and "Wire transfer identifier" information when appropriate.
n. **Indicate** whether funds or assets were recovered and, if so, enter the dollar value of the recovery in whole dollars only.
o. **Indicate** any additional account number(s), and any foreign bank(s) account number(s) which may be involved.
p. **Indicate** for a foreign national any available information on subject's passport(s), visa(s), and/or identification card(s). Include date, country, city of issue, issuing authority, and nationality.
q. **Describe** any suspicious activities that involve transfer of funds to or from a foreign country, or transactions in a foreign currency. Identify the country, sources and destinations of funds.
r. **Describe** subject(s) position if employed by the financial institution.
s. **Indicate** whether securities, futures, or options were involved. If so, list the type, CUSIP® number or ISID® number, and amount.
t. **Indicate** the type of institution filing this report, if this is not clear from Part IV. For example, an IA that is managing partner of a limited partnership that is acting as a hedge fund that detects suspicious activity tied in part to its hedge fund activities should note that it is operating as a hedge fund.
u. **Indicate**, in instances when the subject or entity has a CRD or NFA number, what that number is.
v. **If correcting** a prior report (box in Item 1 checked), complete the form in its entirety and note the corrected items here in Part VI

Information already provided in earlier parts of this form need not necessarily be repeated if the meaning is clear.

Supporting documentation should not be filed with this report. Maintain the information for your files.

Tips on SAR form preparation and filing are available in the SAR Activity Review at **www.fincen.gov/pub_reports.html**. Enter explanation/description in the space below. Continue on the next page if necessary.

EXHIBIT D

NEW QUALIFIED CLIENT*

*Deletions in the text are marked by a strikethrough, and insertions by a double underline.

Rule 205-3(d)(1) will be amended to read as follows:

(1) The term qualified client means:

(i) ~~A natural person who or a company that immediately after entering into the contract has at least $750,000 under the management of the investment adviser;~~

~~(ii)~~ A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)) at the time the contract is entered into; or

~~(iii)~~ (ii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months~~.~~, or

(C) The immediate family member of a natural person mentioned in Subsection (A) or (B) above.

(D) The term "immediately family member" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships, or[41]

(iii) A company formed for the purpose of making an investment in a private fund is a qualified client only if all the beneficial owners of such company are qualified clients.

[41] See 17 C.F.R. § 204.16a-1(e) (2004).