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SUBMITTED VIA E-MAIL: rule-comments@sec.gov

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street NW
Washington, DC 20549-0609

Re: File No. S7-30-04

Dear Mr. Katz:

We are writing to comment on one aspect of the extensive rule proposals by the Securities and Exchange Commission (the "Commission") that would, among other things, in effect require managers of many pooled investment vehicles commonly known as hedge funds to register with the Commission as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act").[1]

Renaissance Technologies Corporation ("Renaissance"), a hedge fund manager, has been voluntarily registered with the Commission as an investment adviser for a number of years. The funds managed by Renaissance employ a master-feeder fund structure whereby certain entities (feeder funds) accept investor monies, substantially all of which

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1 Investment Advisers Act Release No. 2266, July 20, 2004. Among other things, the proposed rules would:

· Require hedge fund managers to count as "clients" the investors of the hedge funds they manage for purposes of determining whether they had 15 or more clients during a twelve-month period and therefore are required to register with the SEC.

· Require managers to count as "clients" the investors of "funds of funds" and registered investment companies that invest in hedge funds that they manage.

· Require offshore managers of hedge funds (whether or not located in the U.S.) to count as "clients" investors in such funds that are U.S. residents.

· Require registered advisers of hedge funds to disclose on Form ADV certain information regarding all hedge funds managed by such advisers or their related persons, including the name of the hedge fund, the percentage of the adviser's clients who have invested in the hedge fund and the current value of the total assets of the hedge fund.

· Subject the books and records of hedge fund managers and their affiliates that serve as general partners and managing members of hedge funds to inspection and examination by the SEC.

Extend from 120 days to 180 days after the close of a hedge fund's fiscal year the period during which hedge fund managers must provide their investors with audited financial statements of the fund in order to avoid various obligations under the custody rule.

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are then invested in common portfolios, or master funds. One of such master funds is a fund of hedge funds that invests in domestic and offshore hedge funds of other managers (the "Fund of Funds").

While the financial statements of the master funds that engage in securities and futures trading are available early enough to prepare audited financial statements of the feeder funds and provide them to investors in a timely manner, in Renaissance's experience, the audited financial statements of the Fund of Funds are not so available because the underlying funds in which the Fund of Funds invests do not provide their financial statements early enough to timely complete the Fund of Funds' audit. Therefore Renaissance would be unable to comply with the 120-day rule for distribution of financial statements solely because of the Fund of Funds.

One of the rule amendments proposed by the Commission is intended to make it easier for registered managers of funds of hedge funds to comply with the reporting requirements of the Custody Rule (as hereinafter defined) by providing fund financial statements to investors by extending the distribution deadline from 120 to 180 days. For the reasons discussed below, we support the proposed rule amendment, but believe it should be available only for funds of hedge funds.

I. <u>Custody Rule Currently in Effect.</u>

Under Rule 206(4)-2 under the Advisers Act, as amended in September 2003[2] (the "Custody Rule"), registered advisers to pooled investment funds, including managers of U.S. hedge funds formed as limited partnerships or limited liability companies, are clearly defined as having custody of their fund clients' assets. Such managers are obligated to maintain client assets with "qualified custodians", as defined in the rule, and are subject to reporting requirements. There are three approaches that an adviser to a pooled investment fund may take to comply with the reporting requirements:

- A qualified custodian may send quarterly account statements directly to the investors in the funds managed by the adviser;

- The adviser may send its own quarterly account statements to the investors, setting forth the balance in the account at the end of the reporting period and all transactions in the account during the period, and undergo an annual surprise examination; or

- The pooled investment fund may be audited annually and the audited financial statements sent to all the investors in that vehicle within 120 days after the pool's fiscal year end (the "audit approach").

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2 Investment Advisers Act Release No. 2176, September 25, 2003.

The audit approach not only satisfies the adviser's reporting requirements, but makes the adviser eligible for an exception to the qualified custodian requirement with repect to client assets that are uncertificated securities. Rule 206(4)-2 (b)(2)(ii) provides such an exception, but it is available only to managers who are following the audit approach to reporting.

Both during the comment period and after adoption of the rule amendments, funds of hedge funds and their auditors expressed concerns regarding the feasibility of complying with the 120-day requirement because, as a matter or practice, their auditors do not opine on their financial statements without first receiving the audited financial statements of the underlying funds. Given the standard 90-day audit period, those statements may not be available until after the 120-day period, and even if they become available toward the end of such period, there is generally not time to complete the audited financial statements of the fund of hedge funds within the period.

For most funds electing the audit approach, the audited statements requirement will first apply with respect to financial statements for the year ended December 31, 2004, i.e., by the end of April 2005. In contrast, advisers electing to provide their own quarterly statements would first have had to do so by June 30, 2004. This raised concerns as to how advisers to funds of hedge funds might have enough assurance that they would be able to comply with the requirements of the audit approach, so as not to have to begin quarterly reporting by June 30, 2004. In commentary published on the SEC's website, the staff stated that an adviser to a fund of hedge funds should "investigate its underlying funds' (and those funds' auditors') ability and willingness to timely complete their audits and provide the audit results within the time frame necessary for the fund of funds to complete its own audit and distribute the audited financial statements within 120 days." The ability of funds of hedge funds to comply is thus entirely premised upon cooperation from the underlying funds and their auditors. This dependence creates a level of uncertainty and inability to control one's own compliance with the Custody Rule which are problematic for registered investment advisers.

II. Proposed Amendment.

The proposed amendment to Rule 206(4)-2 would permit registered hedge fund managers to satisfy their reporting obligations under the custody rule by sending audited financials statements to their investors within 180 days, rather than 120 days. The proposed amendment would apply to advisers of <u>all</u> hedge funds, not just funds of hedge funds. In the proposing release, the Commission asked for comment on three questions:

- Is the 180-day period too long?
- Would a 150-day period achieve the same goal?
- Should we keep the 120-day requirement for non-fund of hedge funds advisers?

There are two types of hedge funds and we believe there should be a distinction between them for purposes of this amendment:

- Hedge funds that invest and trade in securities that can be valued in the marketplace or fair valued by the hedge fund manager or a pricing service engaged by the manager, but not in securities issued by other funds ("trading funds")

- Hedge funds that invest all or a material portion of their assets in other hedge funds and base their own values on values provided by the managers of such funds ("funds of funds")

Renaissance believes that the 180-day period is necessary to enable funds of funds to be certain that all financial statements of the funds in which they have invested will be available. We do not believe the 150-day period would achieve the same goal. Renaissance has never received statements from underlying funds in the Fund of Funds sufficient to complete the audit within 150 days of the close of the fiscal year.

We do not believe that the proposal, which allows trading funds as well as the funds of funds 180 days to finalize financial statements and send them to investors, would do anything to solve this problem. Managers of funds of funds will find themselves in exactly the same position they are now in, only 60 days later. The extension to 180 days should be an exception to the Custody Rule which only applies to fund of funds, which must await receipt of their underlying funds' financial statements in order to complete their own audits. The additional 60 days should give such funds enough time to integrate the information contained in such financial statements in order therefore to comply with the Custody Rule. Accordingly, we urge that the extension to 180 days of the period within which fund financial statements must be provided to investors be limited to funds of hedge funds, and not their underlying funds.

In order to avoid another potential pitfall, we suggest that the 180-day exception apply only to funds which have a material fund of funds component. Otherwise, any fund having any non-affiliated investment might take advantage of the extension and fail to provide its financial statements within 120 days, which would frustrate the purpose of the revised custody rule vis-à-vis funds of funds. We suggest a materiality standard of at least 10 percent of a fund's assets (on a look-through basis) invested in other funds not affiliated with the relevant investment adviser.

We appreciate the opportunity to provide comment on this proposed rule amendment.

Respectfully Submitted,

Mark Silber
Vice President