COUDERT BROTHERS LLP

ATTORNEYS AT LAW

1114 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-7703
TEL: (212) 626-4400
FAX: (212) 626-4120
WWW.COUDERT.COM
WELLSC@COUDERT.COM

NORTH AMERICA
LOS ANGELES, NEW YORK, PALO ALTO, SAN FRANCISCO, WASHINGTON

EUROPE
ANTWERP, BERLIN, BRUSSELS, FRANKFURT, GHENT, LONDON, MILAN, MOSCOW, MUNICH, PARIS, ROME, STOCKHOLM, ST. PETERSBURG

ASIA/PACIFIC
ALMATY, BANGKOK, BEIJING, HONG KONG, JAKARTA, SINGAPORE, SYDNEY, TOKYO

ASSOCIATED OFFICES
BUDAPEST, MEXICO CITY, PRAGUE, SHANGHAI

September 15, 2004

Jonathan A. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Rule-comments@sec.gov

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

Dear Mr. Katz:

We represent a wide range of managers and sponsors of investment funds, including both investment companies registered under the Investment Company Act of 1940, as amended, and private investment funds operating under the exemption under either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, and including substantial numbers of investment advisers based both within and outside the United States. We also represent a number of insurance companies, pension funds and other sophisticated investors, both U.S. and non-U.S., that invest in private investment funds.

As a general preliminary comment, we are very concerned that the additional administrative and compliance burdens and costs imposed upon private fund managers required to register under the proposed new rule will, if the rule is adopted, outweigh the anticipated benefits of the rule; that the principal stated benefits of increased monitoring of hedge funds, fraud detection and prevention, and information gathering, could be accomplished through mechanisms, such as notification requirements, that are less burdensome on advisers and the Commission staff than requiring full registration; and that the additional burdens imposed on the Commission staff by requiring registration of hedge fund managers will potentially overtax the resources of the Commission.

Notwithstanding the foregoing, we wish to offer some comments on the proposed rule in the event the Commission determines to move forward with its adoption.

We believe the proposed rules have several potential ambiguities:

1. Rule §275.203(b)(3)-1(b)(5). This section uses the term "United States resident". There is no definition of this term in the proposed rule. In particular, it is not clear how the term "resident" should be defined when applied to legal entities, such as partnerships, corporations, trusts or pension plans. We would recommend either substituting the term "U.S. person" as defined under Regulation S, which provides a more detailed definition and a history of interpretation of the term, or providing clarification that the intention of the rule is that "United States resident" be defined in the same manner as "U.S. person" under Regulation S.

2. §275.203(b)(3)-2(d)(3). This section provides that a non-U.S. fund is not a "private fund" if it "makes a public offering" outside the United States and "is regulated as a public investment company" under laws other than the United States. In order to avoid potential ambiguity in interpreting these terms, we would urge the Commission to clarify that shares of a fund approved for listing on a regulated stock exchange outside the United States meet this qualification.

3. The proposed rule maintains the twelve month look back requirement for counting clients. However, some private funds, particularly non-U.S. funds with non-U.S. advisers, may take steps before the new rule becomes effective to reduce the number of their investors (or the number of their U.S. resident investors, in the case of non-U.S. funds) to 14 or fewer. Since advisers were not previously required to look through and count investors in private funds as clients, we suggest that the Commission adopt a transition provision permitting advisers to count as clients only investors in private funds at the time the rule becomes effective, without the twelve month look back.

4. §275.203(b)(3)-2(d)(1). One of the proposed requirements of the definition of "private fund" is that interests in the fund have been "offered based on the investment advisory skills, ability or expertise of the investment adviser". We urge the Commission to clarify that if the adviser to a private fund has the ability to engage sub-advisers from time to time in the adviser's discretion, and if the identity of a particular sub-adviser engaged by the adviser to manage assets for the private fund is not disclosed to prospective investors in offering materials for the private fund, then the sub-adviser should not have to look through and count investors in the private fund in determining the number of clients of the sub-adviser (because interests in the private fund were not offered based on the investment advisory skills, ability or experience of the sub-adviser).

5. §275.203(b)(3)-1(b)(5). Advisers with a principal place of business in the United States are required to count all investors in a private fund as clients, including both U.S. and non-U.S. investors. If a U.S. based adviser advises a non-U.S. fund that has no U.S. investors, there does not seem to be a compelling reason to require such adviser to count all

investors in the fund as clients, rather than simply counting the non-U.S. fund itself as just one client.

We represent a number of U.S. based advisers, that are affiliated with a foreign entity that is not advising U.S. clients, and that are established in the United States in order to serve non-U.S. clients of the non-U.S. affiliate. Although generally we do not believe, based on our client base, that many U.S. based advisers will establish offshore entities in order to avoid registration if the proposed new rule is adopted, we do anticipate that, in the situation described above, certain U.S. based advisers, who effectively have no or very limited U.S. client base, may leave the U.S. if they determine that the costs of registration and compliance are not warranted, which could result in a loss of U.S. jobs.

6. §275.206(4)-2(b)(3). We applaud the Commission's response to the concern raised by many funds of funds investing in other private funds regarding the difficulty in complying with the 120 day limit for delivery of audited financial statements in the exemption under Rule 206(4)-2(a)(3). We would suggest, however, that the proposed extension to 180 days should not apply to all funds, but instead should apply only to funds that invest in other funds. If all funds are subject to the 180 day limit, rather than the 120 day limit, then funds of funds may encounter the same problem under the proposed new rule, i.e. that they will not receive audited financial statements from the funds in which they invest in time to permit them to complete their own audits in time to meet the requirements for the exemption.

7. Compliance Period. We believe that one year would be an appropriate time frame for phase in of the rule, if adopted. The work involved in adopting the various policies and procedures required of a registered adviser and assuring compliance with all applicable rules and regulations of the Commission will require considerable time, effort and expense.

As noted above, we believe that the Commission's objectives could be satisfied more economically by an appropriate notice procedure, either combined with Form D, as some have suggested, or on an additional form, similar to forms used by the Commodity Futures Trading Commission for exemption for commodity pools with sophisticated investors. However, if the Commission proceeds with adoption of the proposed rule, we believe clarification of the above points would be most helpful.

Respectfully submitted,

Christopher M. Wells
Marilyn Selby Okoshi