CAPITALISTPIG ASSET MANAGEMENT LLC

HEDGE FUND & PORTFOLIO STRATEGY

531 SOUTH PLYMOUTH COURT · SUITE 604

CHICAGO, ILLINOIS 60605

TELEPHONE (312) 588-1685

WWW.CAPITALISTPIG.COM

Mr. Christopher Cox, Chairman
Mr. Paul S. Atkins, Commissioner
Ms. Kathleen L. Casey, Commissioner
Mr. Roel C. Campos, Commissioner
Ms. Annette L. Nazareth, Commissioner

Securities Exchange Commission
100 F Street, NE
Washington, DC 20549

Via email

February 8, 2007

Ladies and Gentleman:

I strongly urge the Commission to reconsider further regulation of the hedge fund industry. As it stands, it is my sincere belief the government isn't protecting investors, but violating their individual property rights as protected under the Constitution of the United States.

At the outset, it appears the Commission does not fully understand what hedge funds really are. While many assume that hedge funds trade frequently and make big bets on financial esoterica, the truth is a hedge fund is a legal structure, not an investment technique. So while hedge funds are routinely characterized as "risky" or "highly leveraged," the reality is that hedge fund strategies, just like mutual fund strategies, run the gamut from the ultra-conservative to the highly volatile. Some funds use high levels of leverage, others sit in cash for months at a time. Some employ complex spread trades while others simply buy and sell stocks.

Based on the Commission's actions thus far, it appears you've already decided hedge funds are ticking time bombs, teetering on the verge of throwing international markets into a meltdown. Despite the fact that the size of assets controlled by hedge funds are still dwarfed by those controlled by mutual funds and other investors, this mischaracterization has been fueled by the financial press who've become quite comfortable with attributing every market maelstrom to this woefully misrepresented group.

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This is precisely where SEC regulation contributes to the problem. Because hedge funds are required to be nonpublic entitles, it is rare they are able to silence the rumor, innuendo and gossip that now permeates the industry. This is best exemplified by the simple fact that major media outlets continue to describe hedge funds as "unregulated." As you well know, under current SEC regulation, hedge funds are already *exceedingly* regulated. You propose to further tighten that noose for purposes the industry and investing public cannot understand.

No doubt in your deliberations you will cite the massive losses at Amaranth Advisors as another example of why hedge funds need much closer oversight. Yet any rational, knowledgeable observer knows that Amaranth didn't implode because it was a hedge fund or because it traded energy on the OTC market. The meltdown was caused for the same reason that virtually every other meltdown occurs, no matter if it's in a hedge fund, mutual fund or retail investor's brokerage account: huge positions, massive leverage and poor risk management.

Amaranth failed because the manager lost his discipline, not because of the market he traded or the legal framework of the organization. It was bad investment technique – not flawed regulatory oversight. In terms of potential harm to the greater investing public, it is worth noting that there was no interruption to the commodity, stock, bond and currency markets in which Amaranth operated.

I've worked closely with investors as a hedge fund manager and journalist for the better part of ten years. And if your interest is in protecting the public, I would note that the real loss of capital over the years hasn't been caused by hedge funds but by investments regulated by the SEC. On the corporate side, Enron, WorldCom and Adelphia were all highly regulated firms. And it is impossible to tally how many trillions of dollars were lost during the tech crash thanks to the recommendations of SEC-regulated mutual funds and investment advisers.

In reality, while not every fund has made money, hedge funds have generally provided investors with superior risk-adjusted results. And even beyond benefiting their investors, hedge fund activities have behooved the general public by adding liquidity to the marketplace, helping to ensure that investors of every size can assume or lay off risk at will. Far from disruptive, their influence is steadying, taking risks and entering markets that less adventurous investors would likely avoid.

Finally, I hope you will consider that hedge funds aren't run by lawless bandits who, if not for federal regulators, would defraud every investor out of their last dime. They are governed, as every one of us is, by the rule of law that prohibits violating individual rights. When cheating, fraud or financial

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impropriety occurs, existing law already protects investors and offers legal recourse.

My suggestion would be to abandon your efforts to regulate hedge funds altogether. By lifting the public solicitation restrictions that keep hedge funds in the shadows, the investing public would be better informed of how the industry's risks and opportunities compare with other investment options.

Consider the outcome of the proposed regulation: an investor who doesn't quite have $2.5 million dollars can put $2,499,000.00 into the NASDAQ 100, but is legally prohibited from allocating even $100,000 to a hedge fund of his rational choosing.

More than any other country in the history of mankind, the U.S. stands as the international example of freedom, liberty and individual rights. The ability to invest, however and with whomever one chooses, is as inherently American as religious autonomy or freedom of speech. As philosopher Ayn Rand wrote, "Political freedom cannot exist without economic freedom; a free mind and a free market are corollaries."

People who aren't free to trade their property, time or productive effort in accordance with their own values aren't free at all. Any restriction on how one may save, spend, invest or keep his money violates the basic principals on which this country was founded. In short, your proposed rule isn't just impractical, but immoral as well.

I encourage you to contact me directly if I can provide further comment on this most important matter.

Sincerely,

Jonathan Hoenig
Managing Member