February 28, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100F. Street, NW
Washington, DC20549-0609
Via E-mail to rule-comments@sec.gov as file attachment in PDF format

Re: File No. S7-25-06

Dear Ms. Morris,

I am writing to offer comment on the proposed rules changes and additions offered by the commission on December 27th, 2006 (and published in the Federal Register on January 4th, 2007) entitled "Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles." While I find the goals of the proposed rules change laudable, there are certain defects within which are not adequately addressed.

The first is the stated goal of the designation "to help ensure that investors in these types of funds are capable of evaluating and bearing the risks of their investments."[1] However, there is no explanation of how this rule ensures that the *Accredited Natural Person* designation would ensure that someone is able to make that determination. In the existing public comments, there is a frequently-seen criticism of this proposed rule: the idea that investable income is equal to investment ability (or put another way, that money does not equal intelligence)[2]. Simply because someone has money does not mean that they are a competent trader. Someone who has $5 million invested may have started out with $15 million and having lost $10 million, this investor would still qualify to invest in hedge funds. Does this person have more investment-savvy than someone who started out with $10,000 and has turned that money into $1.5 million? The Commission's current logic would suggest that the investor who has lost $10 million is a more prepared and intelligent investor than the person who has gained over $1.4 million.

While I contest the idea that net worth and investment values directly relate to skill, I will grant that these qualifications do impact the ability of an investor to absorb a loss. However, the idea that hedge funds are the riskiest investment may not hold true. Hedge funds absorb risk in leverage and unconventional trades, as well as investing in illiquid securities. However, there are investment risks in both penny stocks and in futures, as well as (which has been seen more frequently) real estate investment and speculation. There are extensive risks in each of these investments. Traditional stocks also show great risk. Yet the qualifications for these investments are not regulated in any way. There is no minimum net worth required before someone can buy stock in General Motors, Disney or any other company. There is no minimum net worth requirement before someone invests in penny stocks. There is no minimum net worth for many different investments that all show high risk.

Hedge funds are growing more and more sophisticated every day. There is no denying this. It makes sense for the Commission to want to protect investors who might not be able to

1 72 F.R. 400 (4 January, 2007)
2 See e.g. comments by: Peter J. Chepucavage (22 February, 2007), Richard Ruskey (16 February), Dan Joldzic (8 February), Tee N. Lim (8 February) for reasoned commentary opposing the idea that net worth is a reasonable determining factor of investment acumen. Other comments put forth the same objection with less decorum.

make a fully informed decision no matter how much information they are given, to ensure that those who are investing in funds that trade in high-risk ventures are not going to go broke if this investment fails. However, by enforcing a monetary/value-based qualification, you are ensuring only that the investor has a certain amount of money. There is no guarantee that they have the experience, knowledge, or relevant facts to assess the risk of the investment. Sophisticated investment instruments have been designed by people with Ph.D's in economics. New quantitative models are developed every day. Each model creates its own risk and reward potential. Simply because someone can pick a stock does not mean that they are qualified to assess the risk of an investment that operates as some hedge funds do. The monetary and investment requirements award a degree of competency due to the existence of wealth with no comment on how it was garnered. No true test of competence exists in this method.

Another cause for concern is the fact that were this rule to take effect, investors who are currently eligible for these alternative investment pools but who do not meet the new requirements will be disqualified from their investments. The wording of this text is unclear, This could cause a wave of instability as hedge funds could be forced to liquidate assets in order to accommodate investors who must pull out of the fund. The instability that is often feared with regards to hedge funds could therefore be triggered by fear of enforcement of this rule. The current wording in the proposal ("current accredited investors ... so that they could make future investments in private investment pools, even those in which they currently are invested.[3]") does not make it clear whether the current investments would be declared void. There is also no mention in the text of the proposed rules regarding current investments. If the new standard were to act not only as a gate-keeper to private investment pools but also as a bouncer, removing those currently invested, then there is the potential for many funds to start to lose stability and face dissolution. To wit, I see two specific problems evolving from this rule. The first is the destabilization of the hedge fund market, and the forced liquidation of assets by funds in order to pay investors who are forced out of the market, and the second is the potential legal battle that may ensue with regards to whether the Commission has the power to not only prevent new investments but force investors to vacate current ones as well. Therefore, the rule would have to allow investors to (a) remain in any currently-held investment and (b) continue to invest in those currently-held pools.

With that in mind, I am not blind to the potential problem of setting a specific date and saying that all hedge fund investments after said specific date would be invalidated. There is the risk that this would lead to a run on hedge fund investments by those investors who are currently accredited but stand to lose that status. This would open the door to more hedge fund fraud as opportunists might see the ability to rush in and capitalize on the chaos. Investing in hedge funds requires proper due diligence, so some mechanism would need to be in place to ensure that investors were not making rash decisions in order to ensure their place in the hedge fund investment sphere.

Finally, the rule is flawed in its scope. The media continues to talk about hedge funds and what was once a secretive and relatively unknown investment vehicle continues to grow in the public eye. Therefore, more and more, investors of all income levels will want to invest in

3 70 F.R. 406 (4 January, 2007)

these funds[4]. See, for example, the new book *Hedge Funds for Dummies.*[5] There is no requirement that the purchaser of the book be an accredited investor. The allure and returns of hedge funds encourage many to try and find a way to invest in these pools which makes them more susceptible to be the victims of fraud.

While I find the new requirements to be inadequate, and generally do not support limiting investment based on net worth or investable income, I do support the initiative to adjust the monetary benchmarks for inflation and feel that the 5 year period is sufficient time. This will enable the intent of the rule to remain intact and constant and will allow for changes to happen often enough to keep up with the economy while not changing the benchmark amount too frequently. If this rule is going to be put into play, then inflation adjustment is the only way to prevent this from becoming ineffective.

The Commission has also asked for comment with regards to the treatment of employees of hedge funds and other private investments. In this regard, the Commission is asking two questions. First, how should employees be treated with regards to current or proposed standards of an *Accredited Person* and second, should the list of "knowledgeable persons" be extended. I would first suggest that there be a specific exemption for employees of hedge funds and other private investment pools allowing for investments by persons not meeting the standards of an accredited investor if they are (a) investing in the fund in which they are employed, or being given equity/shares in the fund by their employer and (b) are involved in the investment operations of the fund. Employees who have been employed in this capacity for over one year and can demonstrate an understanding of risk[6] should be allowed to invest as knowledgeable persons under the existing law. This would exclude employees who are not involved in certain operations (i.e. those who work in the marketing department). These excluded employees might not have the necessary knowledge of risk to make informed decisions. For those employees, I would propose that the Commission allow equity/shares be given by the employer as part of a compensation package, but prohibiting any additional investment by the person.

To conclude, I applaud the efforts of the Commission, but feel that the monetary requirements are a misplaced effort. Seeing as how the goal of this rule is to ensure that investors are aware of the risks inherent in hedge funds, a system that evaluates knowledge must be put in place. However, strictly within the scope of the rule, I do support the inflation proposal and the exemption made for employees of these investment pools as explained above.

With warmest regards,

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4 There are many comments to this rule which illustrate this point.

5 Published in October, 2006 by For Dummies Publishing; Written by Ann C. Logue

6 I do not offer any suggestions on how this would be assessed. However there are a few ways – either via evaluation of test scores (i.e. Series 6) and deciding that certain certifications make one competent; or even a signed waiver by the employee. The Commission has many different options at their disposal and a similar model could be used for investors from outside the industry as well.

Justin Meyer
Senior Research Analyst
IncreMental Advantage, LLC