



March 7, 2007

Ms. Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549

***Re: File No. S7-25-06; Release No. 33-8766***

Dear Ms. Morris:

This response is an assessment of important issues contained in the current SEC proposals. While it is direct and critical of SEC actions and proposals, the sole intent is to be constructive in upholding the rights of individuals who are consumers and producers in the financial arena. The author has 20 years of experience as both a consumer and producer in the hedge fund industry, and a healthy interest in the underlying principles of individual rights, the limits of government, and social justice.

**The SEC has lost its way.**

*“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others”* John Stuart Mill, in *On Liberty*.

This wisdom articulated by Mill is the core-tenet of the principle of the Inherent Rights of Individuals and is the foundational principle of the U.S. Constitution and the Bill of Rights. These legal documents clearly state that the most important responsibility and duty of the U.S. Government (the SEC) is to uphold and defend the Inherent Rights of individuals. The SEC is lost because they are unable to accurately define the boundary line between socially progressive and socially regressive behavior in the financial markets which leaves the SEC grasping at straws in isolating regressive human behavior to legally prohibit. The SEC has abdicated its most important responsibility and duty through the creation and enforcement of rules and laws that trample on the constitutional rights of individuals. The profession of manufacturing the compulsory laws of society is one of the most important responsibilities on the planet and the American people deserve greater competence than is currently being exhibited.

Current SEC laws that relate to the hedge fund industry are outmoded, outdated, regressive, anti-liberty, anti-equality, restrict the flow of important information and hence create inefficient closed markets. The recent proposals by the SEC threaten to make it worse not better. In order to cure the root cause of the problem we must address the fact

that existing foundational laws of the SEC contain regressive fundamental errors and constitutional violations. These laws need to be changed rather than seeking to compound the error by building on top of them as the SEC is currently proposing.

The SEC is in violation of the law as set forth in the U.S. Constitution and Bill of Rights because it has exceeded its valid constitutional authority and is trampling on the constitutionally protected freedoms and liberties of producers and consumers in the financial arena. Instead of protecting the rights of individuals that it is supposed to represent, the SEC has instead violated the rights of individuals through the creation of laws that strip them of their valid rights to “non-harmful” behavioral freedoms and liberties in the financial markets. Arbitrarily selected producers and consumers in the financial markets have been stripped of fundamental rights to *help themselves* through restrictions and prohibition on behaviors that present no harm to others. These violations of rights (four separate and distinct constitutional violations) have occurred through SEC rules and laws that legally prohibit certain behaviors of individuals, based on arbitrary objectives and reasons that have no basis in any “identifiable harm” caused to others by the individual behavior prohibited. Absent of identifiable harm to others, such non-harmful behavior of individuals is their constitutionally protected freedom and liberty. Not only can these now SEC prohibited individual freedoms and liberties be objectively proven to be non-harmful to others by objective means-tests (which makes such individual behavior ones constitutionally protected rights), these prohibited behaviors can also objectively be proven as socially progressive behavior (that which is mutually beneficial to the individual and society).

### **The Four Constitutional Violations**

The four constitutional violations of the valid rights of individuals by SEC rules and U.S laws are:

1. SEC regulations that prohibit arbitrarily selected producers from openly communicating their legitimate product or service (their labor) to willing consumers.
2. SEC regulations that prohibit arbitrarily selected producers from selling their labor, in the form of a legitimate product or service to 95% of natural consumers in free and open markets.
3. U.S. law that prohibits arbitrarily selected producers from selling their legitimate product or service to more than 100 consumers, or by size and volume.
4. SEC regulations that prohibit performance based compensation with arbitrarily selected consumers.

Why are these SEC restrictions of individual behavioral freedoms and liberties a violation of the law? The restrictions are unlawful because the limits are arbitrarily created and not based on identifiable harm caused by the behavior that is being prohibited. The behavior prohibited is based on arbitrary categories and arbitrary numbers that are pulled out of a hat. These laws have no valid basis or premise that is universally

applied by government within society, which makes these laws arbitrary. This behavior by government tramples on the valid rights of individuals and in the process destroys any credibility that the U.S. Constitution and Bill of Rights are based on the principle of “equal and identical” rights between individuals. Such behavior by government creates un-equal legal rights between individuals, an unequal field of competition, and is diametrically opposed to the most fundamental responsibilities and duties of government.

The SEC is forging laws using an opinion-based method with no valid center of gravity from which logic flows and this is why the SEC is lost. This has resulted in the creation of harmful SEC laws that deprive individuals of their valid freedoms and liberties to engage in socially progressive behavior.

Current SEC laws trample on the valid rights of individuals under the guise of “investor protection” and are directly responsible for causing identifiable harm to these individuals in the financial markets on a daily basis. In addition to the identifiable harm caused by preventing these individuals to “help themselves” through restricting their freedoms and liberties (in production and consumption), direct identifiable harm has been caused to the financial markets by the SEC.

**A Market-based economy has been harmed by Central Planning behavior of the SEC.**

In creating market barriers that deprive consumers and producers of their rightful liberties to freely exchange goods and services in the marketplace, the SEC has also simultaneously anointed itself a Central Planning resource allocator for 95% of the population (and seeks to increase this to 99%). This behavior by the SEC is diametrically opposed to the principles of a Market Economy upon which the U.S. financial markets are supposed to be based. Such behavior is destructive to a Market Economy because this it deprives the market mechanism of the vitally important independent free thinking consumers and producers acting in their own best interests in allocating resources, and it also deprives producers from reacting in dynamic ways to the most urgent needs and desires of consumers. *The integrity of the financial markets is threatened in direct proportion that Central Planning behavior intervenes and prevents natural consumers and producers from dynamically interacting with each other in free and open interchanges of goods and services* (in this regard, the SEC should familiarize itself with Adam Smith and the “invisible hand” in the markets).

Existing SEC regulations have caused identifiable harm in the financial markets through creating an un-equal field of competition (between producers versus other producers, and between consumers versus other consumers). The behavior of certain producers of non-harmful innovative investments are restricted and prohibited in a number of ways that prevent free and open competition with other producers of non-harmful investment products. The violations to individual rights by SEC regulations have resulted in “deprived competitors” and “enhanced competitors”. These SEC violations have caused harm to free, open, and equal markets, and also destroyed any semblance of a level playing field of competition. The producers who’s rights have been violated have been isolated (within SEC regulations) in ways that are arbitrary because the basis on which

specific producers have been isolated has no basis in any “identifiable harm” being caused to others by these producers, or their products and services. These isolated producers are deprived of their rights to liberties based on four arbitrary category restrictions, where the category, and the specific behavior prohibited by the SEC has *no basis in “identifiable harm”* to others, or to society. It is a restriction of liberty for the sake of restricting liberty. There is no redeeming quality to it. It is harm caused for the sake of causing harm. Freedoms and liberties are stripped with no valid supporting basis. In usurping the valid rights of some individuals, SEC regulation has simultaneously anointed others individuals with “legal privileges” (extra rights) that have been granted by the SEC at the direct expense of those whose rights have been usurped.

The SEC, rather than pointing to an identifiable harm and prohibiting it (as is validly done with fraud), has instead chosen to simply invoke the phrase “investor protection” as a universal reason to restrict behavior in completely arbitrary ways. This action misguided because “investor protection” is an objective and does not specifically isolate identifiable harmful behavior. Consequently, while investor protection is a valid and worthy objective, investor protection is not a valid reason or basis to restrict very specific isolated freedoms and liberties of individuals in completely arbitrary ways that have no basis in “identifiable harm” being caused by the behavior now prohibited. In short, the SEC is inappropriately using the *objective* as both the objective AND as the *specific reason* to legally prohibit non-harmful behaviors. An objective is an inappropriate reason to restrict specific behaviors because *the objective has no basis in isolating harmful behaviors it is simply an objective to identify harmful behaviors*. The SEC has not done the identification part of its job, which is its core job and duty (in this regard, the SEC should familiarize itself with “The Rights of Man” and “Common Sense” by Thomas Paine).

Past intellectual giants in the field of civil liberties and rights have consistently warned to be vigilant of government officials who seek to strip individuals of their rights under the guises of protecting them. The present situation is such a case. The rules and regulations encompassed in these SEC proposals are harmful to producers and consumers, regressive to society, and regressive to the creation of a free and open market economy.

### **The Triad of Errors of the SEC**

The SEC has committed a triad of errors. Each is a harmful violations of the law that is diametrically opposed to the most fundamental mandate of government. These errors appear to be the result of tunnel-vision where the SEC has lost sight of the big-picture, and consequently of its valid role in protecting and defending the valid rights of producers and consumers in the financial sector. Instead, the SEC appears to believe that its narrow role is to “regulate financial products and services” using isolated objectives and warped logic that need not conform to its complete mandate, which includes: upholding and defending the valid rights of individuals, and allegiance to core principles and tenets that create a free, open, and efficient Market-based Economy.

The Triad of Errors (contained in the four distinct rules and laws) are as follows:

1. The SEC has lost sight of its valid role and mandate and instead *begun to build a market structure based on the market principles of Central Planning, where it has anointed itself the Central Planner*. Government has intruded into the free markets upsetting the free and open competition in ways that are prohibited by the U.S. Constitution and Bill of Rights. The SEC has exceeded its valid authority and is currently artificially diverting the investment assets of 95% of consumers, through laws that prohibit consumers from performing this vital role in the markets which is their valid right, and the SEC seeks to increase the magnitude of these regressive market barriers and Central Planning behavior to 99% within the current proposals.

2. The SEC has exceeded its valid authority and *has created rules and laws that strip consumers of their valid rights to equality in making purchase decisions in their own best interests in free and open markets*. This has occurred through arbitrary and discriminatory SEC regulations that are anti-equality. These regulations defend valid individual rights and liberties of the wealthy while usurping the same rights and liberties of the less wealthy. Additionally, less-wealthy consumers are arbitrarily prohibited from the equal right and liberty to engage in performance based compensation contracts.

3. The SEC has exceeded its valid authority and *created rules and laws that strip producers of their valid rights to equality and their ability to equally compete on a level playing field of competition*. This has occurred through arbitrary and discriminatory SEC regulations that prohibit free and open communication about one's product or service, and prohibiting 95% of natural consumers from engaging in contracts to purchase the labor of the producer. Additionally, the producers are arbitrarily prohibited from utilizing performance based compensation with 95% of natural consumers.

Such actions are not the role of Government and are prohibited by the U.S. Constitution and Bill of Rights. These actions are regressive and harmful to the *Public Interest, Market Efficiency, Competition, and Capital Formation* – all of which are additional *required mandates of the SEC* (within the 1933 Act) that are in addition to the mandate of Investor Protection.

These errors spring from an isolated and warped interpretation of “Investor Protection”, whereby the SEC has stripped both individual consumers and producers in the financial arena of valid individual rights, and their valid role in free and open markets, under the guises of “protection.” Such logic and defense by the SEC for its actions is analogous to “burning down the village in order to protect it.” In this case the SEC is burning the buildings of Individual Rights in the financial arena, and in the process destroying the village of a Market-based Economy and replacing it with Central Planning by the SEC. It is a fundamental error to the public interest and should be recognized as such. Stripping consumers and producers of their valid rights actually cause “investor harm” and “producer harm” rather than protection by any valid form of logic, and such actions by the SEC contrary to the most important mandate of Government.

Fortunately for all U.S. citizens legal protections in the U.S. dictate that a U.S. Government official or “Regulator” cannot validly create law by arbitrary and subjective decree and declare that the individuals obey it.

The sole reason that this behavior cannot validly occur is because Individuals have valid Rights to certain freedoms and liberties that cannot be trampled on (by other individuals, which includes government). The rights of individuals are encompassed in the U.S. Constitution and Bill of Rights. In fact, the sole valid role of Government is to uphold and defend these inherent rights of individuals. Under the principle of Human Rights Government has no rights, only responsibilities and duties to uphold and defend the valid rights of all individuals in society.

Also, within the context of this relationship, all power and authority of the government is drawn FROM the people, and the only valid use of this power and authority is to uphold and defend the valid rights of the individuals. Government is “*the power of the people over themselves*.” Within this paradigm, government power and authority cannot validly be used to trample on the rights of those it has been created to protect.

The very basis of ones “right to restrict” the behavior of others is fundamentally based in the valid claim of harm by an individual that such behavior is harming. If no such harm can be identified, no valid right to restrict the behavior of others exists. “Identifiable harm to others” is the litmus test of the “Right to restrict the behavior of others” through the creation of a law that prohibits behavior beyond this boundary line.

The principle below bears repeating:

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” John Stuart Mill, in *On Liberty*.

This foundational principle of the Rights of Man set forth by Mill simply requires precise clarification of “harm” from a social perspective. Behavior of individuals that can be proven to be universally “socially harmful” to others is accurately defined as socially regressive (harmful) behavior. While the U.S. Constitution can easily be interpreted in ways that result in laws with perfect alignment the core principles and tenets of the U.S. Constitution, regulators such as those in the SEC often do not do this. Such error by lawmakers causes great harm to individuals and society. The author will leave it to others to judge the motivations of politicians and regulators in overlooking the importance of such alignment.

### **A Social Litmus Test**

Socially Regressive Behavior can accurately be identified by a conditional Litmus Test consisting of three key behavioral assessments. Collectively these three tests create a Proof of socially regressive behavior. All behavior (by individuals or Government) that meets the three behavioral tests below can validly be classified as Socially Regressive Behavior.

The Boundary-Line Litmus Test (the “BLLT”) of Socially Regressive Behavior is when:

1. the behavior can be identified as harmful to others
2. the behavior can be identified as mutually harmful to all individuals
3. it is mutually beneficial to all individuals if such harmful behavior is universally prohibited or restricted within society

The first step of the Boundary-Line Litmus Test ensures that individual freedoms and liberties are prohibited by society *only* when *identifiable harm* exists. Step two, tests for “mutual harm” in ensuring that the harm isolated is really a *mutual threat* (social threat) to all individuals in society. Step three tests for “*mutual benefit*” in ensuring that benefits will mutually accrue to all individuals in society if the *identifiable harmful behavior* is legally prohibited. Steps two and three together ensure “*equal and identical*” universal limits on the boundaries of permissible human behavior. *Equal boundaries ensure equal and identical individual Rights in society to: 1. opportunities to help oneself, and to 2. legal protection from socially harmful behavior of others.*

The Boundary-Line Litmus Test is a crucial *minimal means-ends test*. Such a test has great utility in ensuring that regulation (law) is rationally related to a legitimate public purpose. BLLT is an objective minimal means-ends test applicable to all compulsory laws in society *that restrict individual freedoms and liberties*.

The four rules and laws in question all FAIL pass step number one of BBLT. No identifiable harm to others exists yet individual rights to fundamental freedoms and liberties are arbitrarily prohibited by the SEC. Individual Rights are violated by the SEC with no valid supporting basis.

The ranges of freedom and liberty that comprise ones inherent rights remain specifically unstated within the principle of Human Rights due to the fact that ranges of progressive behavior are nearly limitless. This puts the *burden of proof on Government to prove that a specific human behavior is socially regressive in order to validly legally prohibit it*.

What makes compulsory laws in society inherently progressive?

Accurately defining the boundary line between socially progressive behavior and socially regressive behavior is what makes compulsory laws in society progressive. Get this part of the equation wrong within a compulsory law that restricts the freedoms and liberties of individuals and such a law is inherently regressive to society. The SEC is guilty of getting this equation wrong (in four specific rules and laws) resulting in prohibitions on socially progressive freedoms and liberties of individuals that are legally protected Rights of these individuals. These SEC regulations illegally deprive individuals of their valid rights to help themselves, and consequently are socially regressive to society.

It is the duty of Government to use an objective and universal boundary-line solution as a litmus test to first identify regressive behavior, and then as a forge in the creation of the compulsory rules and laws to prohibit such behavior (the SEC is in violation of this duty and is instead forging laws based on arbitrary opinion that directly conflict

with the foundational principles of U.S. society). When the compulsory laws in society are forged in this way, compulsory laws become aligned with an accurate definition of progressive human behavior, and inherently Progressive Civilization springs forth. BLLT offers an accurate test of identifying socially regressive behavior. When properly used in forging the compulsory laws of society, the core tenet of this principle (eliminating socially harmful behavior) is analogous to the organizational forces of a seed crystal where all subsequent law and order springs from the universal laws contained within the seed. Previous intellectual giants have placed this seed in the foundational documents of the U.S. Constitution and Bill of Rights. This lofty principle (individual rights) will actually accomplish what it was intended to be, only when all compulsory laws of society fall into alignment with its core-tenet. It is not so much a question of “if”, but when. And it is the duty of all responsible individuals to nurture and accelerate this evolutionary growth. In the opinion of the author, the principle of Human Rights has developed critical mass, and it will ultimately become the center of gravity directly responsible for creating an inherently progressive civilized society. The time that it will take to execute this dream is directly related to the competence and cooperation of Government officials who hold the levers of lawmaking power.

A progressive civilized society cannot be created by well-intentioned Central Planners (such as the SEC) who seek to create such a society by usurping the rights of individuals under the guises of “protecting them.” Such behavior by government is highly regressive and should be recognized as such. True and lasting social progress, and organized civilized behavior, cannot be accomplished in any other way. Inherent individual Rights is the most valid premise known to mankind of creating a dynamic and inherently progressive self-organizing social structure. It is a social and legal structure based upon the fundamentally sound logic of accurately defining socially progressive behavior and legally setting it free.

It is important to understand that the SECs power and authority (as a Central Planner) is increased, in direct proportion that it is able to diminish the rights of producers and consumers in the financial sector. The SEC is currently guilty of the age-old tactic of usurping the rights of individuals under the guises of “protecting them.” The current proposals simply seek to increase the magnitude of the rights usurped. In doing so, consumers are deprived of their valid rights and liberties to act in their own best interest and their role as vitally important independent free-thinking resource allocators within a Market Economy free and open markets are diminished, competition between consumers is diminished, competition between producers is diminished, innovation is diminished, and the SEC simultaneously transforms itself into a Central Planner in directing the flow of resources. This is not the valid role of the SEC. Such actions are regressive to the creation of a civilized society based on the principles of individual rights and social justice. Such actions are also regressive to the formation of free and open capital markets based on the principles of a Market Economy.

The individuals at the SEC who are making these proposals may be well-intentioned individuals who actually believe that they are creating Investor Protections as they state, Yet in reality, this is not what the SEC is actually doing. Any fundamental examination reveals that what the SEC is actually doing is creating laws that legally

prohibit very specific human behaviors (liberties) in the marketplace – by decree. The problem is that the SEC is doing this without any valid litmus test or foundational basis to accurately delineate whether the specific behaviors that they are prohibiting are in fact regressive (socially harmful), or instead actually progressive (socially beneficial). Without a foundational definition of what constitutes regressive behavior, how can the SEC validly claim that the behavior their regulations currently prohibit are in fact regressive? Their current answer is “because they arbitrarily decree it so”, which is not a valid answer. The same is true for progressive behavior. If the SEC cannot foundationally define progressive behavior, by what method does the SEC determine that it is not actually legally prohibiting progressive behavior?

### **The SEC should be required to responsibly address and answer the most important Fundamental Questions**

The author is requesting the SEC answer the following questions:

1. Does the SEC have an objective and clear standard to use in ascertaining whether SEC rules and laws uphold and defend the rights of individuals in the financial arena? If so, what is it? If not, why not?
2. Is the SEC using any foundational basis, principle, or bright line litmus test to delineate between regressive behavior and progressive behavior in the financial industry? If so, what is it? If not, why not?
3. Is the SEC using any form of analysis or litmus test to assess whether the individual behaviors that it is currently prohibiting within the regulations contained in these proposals, are constitutionally protected rights of individuals? If so what is it? If not, why not?
4. Does the SEC believe that it has a responsibility and duty to uphold and defend the valid rights and liberties of individuals in the financial arena? If not, why not? If so, please define these rights and liberties of individuals. Please define how the SEC defines regressive behavior (harmful behavior) in the financial industry? Is any such SEC definition different from the definition of regressive and illegal behavior as outlined in the U.S. Constitution, the Bill of Rights, and the principles of Human Rights? If so how, and what is the reason for any inconsistencies?
5. What does the SEC believe is its most important responsibility and duty? Is this SEC responsibility and duty consistent, and in alignment with the core responsibility and duty of Government as set forth in the U.S. Constitution and the Bill of Rights? Is the SEC upholding its most important responsibility and duty within the regulations contained in these proposals? By what method is this determined?

The SEC responses to these questions, if forthcoming, should make it clear (to any non-believers) that the SEC is not using any valid foundational basis or premise to delineate between progressive and regressive behavior in the financial arena.

Without any such valid basis or foundational logic, the SEC can only rule by arbitrary decree. There is no other way. It matters not that there might be consensus opinion used to arrive at facts, figures, and terminology, or that there are arbitrary “reasons” given. Isolated reasons that are not in alignment with a universal basis or premise are by definition arbitrary, and such behavior is fundamentally ruling by decree. A careful examination the SEC regulations contained in this proposal reveal there is no center of gravity from which SEC logic and wisdom flows. In the final analysis the SEC is Ruling by arbitrary Decree. The numbers, figures, and terms (net worth, number of investors, size of offering, private, public, solicitation, etc) used by the SEC to define and prohibit certain behavior as illegal, are not the natural boundaries of violations (of socially regressive behavior) as determined and delineated by any universally guiding principle, instead these are arbitrary numbers, figures, definitions, and terminology that are pulled out of a hat. These regulations have no valid underlying basis, premise, or universally applicable principle. The categories on which behavior is arbitrarily restricted are not grounded in “harmful behavior”. The regulations are simply the harmful authoritarian decrees of a rogue government agency that is lost and confused.

The error exists because the SEC has seized on the term “Investor Protection” and then run out to “find it”. This error of the SEC is of using inappropriate objectives (first) for the task at hand, and then seeking to create laws around it – rather than seeking to create rules and laws that *ban socially regressive behavior* (which is valid foundational objective that needs to be defined first). The problem is that the SEC has failed to accurately and universally define the boundary between regressive and progressive human behavior first. If the SEC had done so, they would not be in the perplexing position of seeking to find it later (based on arbitrary objectives that forge an inappropriate paradigm for the core task at hand). Such error puts the SEC into a hunt to prohibit behaviors, without the core-knowledge of what they should fundamentally be seeking? Such behavior is fundamental error and should be recognized as such. The SEC has lost its way.

Preventing individuals from harming the valid rights and liberties of others through laws that prohibit socially regressive behavior must not be confused with harm caused by “inherent risks” that one must ultimately assume in the actions of self-improvement. Harms from this type of risks exist in the use of knives, electricity, automobiles, airplanes, firearms, ski’s, parachutes, surgery, legal contracts, commerce, investments, etc. Ones ability to satisfy their desires in life involves risk-taking and ones individual preferences in levels of aggressiveness varies significantly from individual to individual. The risks inherent in seeking to satisfy ones desires, or in the opportunities to help oneself (as exists in all investments) is not a valid reason for Government to arbitrarily create different classes of consumers and different classes of producers through arbitrarily stripping some adult individuals of their rightful freedoms and liberties (and to also arbitrarily isolate only the *financial arena* to impose this lost and confused logic).

The SEC is sticking a cog between the progressive gears of society with misaligned regulations that do not conform to its most fundamental responsibility and duty. Nowhere in the 67 page SEC proposal are actual valid reasons given for the existence the four rules and laws that restrict—individual liberties in these arbitrary ways.

Zero analysis is performed to identify or isolate an actual “harm” that is being prevented by restricting individual freedoms and liberties in the way. Preventing harm to the valid rights of others is NOT given as reason by the SEC for the existence of these rules and laws. A common sense examination reveals the fact that these SEC regulations ONLY restrict the personal freedoms and liberties of individuals. They DO NOT protect the Rights of anyone.

Who’s individual Rights are upheld and protected by regulations that prohibit 95% of adult consumers from evaluating all the legitimate options in the marketplace and acting in their own best interest? No one. Yet, it is easy to see who’s Rights and liberties are being usurped (both consumers and producers in the financial arena who could benefit by acting in their self-interest). Where is the *identifiable harm to others* that the SEC is using as a conditional basis to restrict the liberty of individuals? There is none. No behavioral harm is being prevented. Such restrictions fail the conditional boundary-line litmus test identifiable harm to others, yet under the rallying cry of “investor protection” the SEC is arbitrarily restricting the personal freedoms and liberties of individuals based on their arbitrary opinion and decree.

Who’s individual Rights are upheld and protected by regulations that prohibit producers (hedge fund managers) from freely and openly communicating their product or service to consumers? No one. Yet, it is easy to see who’s Rights and liberties are being usurped (both consumers and producers in the financial arena who could benefit by acting in their self-interest). Where is the *identifiable harm to others* that the SEC is using as a conditional basis to restrict the liberty of individuals? There is none. No behavioral harm is being prevented. Such restrictions fail the conditional boundary-line litmus test of identifiable harm to others, yet under the rallying cry of “investor protection” the SEC is arbitrarily restricting the personal freedoms and liberties of individuals based on their opinion and decree.

Who’s individual Rights are upheld and protected by regulations that arbitrarily limit the number of adult consumers that producers (hedge fund managers) can sell their product or service to? No one. Yet, it is easy to see who’s Rights and liberties are being usurped (both consumers and producers in the financial arena who could benefit by acting in their self-interest). Where is the *identifiable harm to others* that the SEC is using as a conditional basis to restrict this liberty of individuals? There is none. No behavioral harm is being prevented. Such restrictions fail the conditional boundary-line litmus test of identifiable harm to others, yet under the rallying cry of “investor protection” the SEC is arbitrarily restricting the personal freedoms and liberties of individuals based on their opinion and decree. It is also easy to see who is being anointed with additional “legal privileges” that accrue at the direct expense of those who have had their valid rights usurped (the other producers of financial services that compete against hedge fund managers).

Who’s individual Rights are upheld and protected by regulations that arbitrarily prohibit producers (investment managers) and consumers from engaging in mutually agreeable performance based compensation? No one. Yet, it is easy to see who’s Rights and liberties are being—usurped (both consumers and producers in

the financial arena).

Such an elementary analysis makes it easy to see that these SEC regulations are NOT based on the universal premise of “protecting” the valid Rights and Liberties of individuals (through prohibiting harmful socially regressive behavior of individuals that would violate equal and identical rights of others). If the SEC is not using this paradigm, why not? Is the SEC aware of a more valid premise for restricting the freedoms and liberties of individuals? And in a startling error of omission, the SEC has not performed any analysis, or provided any disclosure of whether SEC regulations or proposals might violate the fundamental rights of individuals in the financial arena? The SEC is blind to this monumental error because they do not even see their role in this paradigm. The current paradigm of the SEC is that of authoritarian “regulator-ruler” empowered to make rules and law by arbitrary objectives (such as Investor Protection), and then create arbitrary laws that restrict liberties based on their arbitrary opinions and interpretations of what this objective means. The SEC has lost its way because its rules and laws are not based on any valid underlying principle of restricting liberties of individuals in ways that can accurately be described as socially regressive.

Regulation is not a question of over-regulation or under-regulation. The magnitude of regulation is a false paradigm that has little utility in any valid analysis of whether the laws created by regulation are progressive or regressive. Regulation is fundamentally *the creation of compulsory rules and laws* that set limits on the boundaries of acceptable human behavior. In order for regulation (the rules and laws of society) to be progressive its laws must be *aligned* with progressive principles and tenets that create a progressive society. Regulation is fundamentally a question of both *alignment* and *hierarchy* to progressive principles and tenets, and these are the only valid paradigms in which to view regulation from the perspective of utility. All progressive regulation has perfect alignment with progressive principles and tenets. Regressive regulation is that which is simply out of alignment, is contradictory, and consequently harmful to the public interest.

It is worthy to note that within the 67 page SEC proposal that the SEC invokes the phrase “Investor Protection” 32 times. The rights of Investors as it relates to these regulations and proposals, is addressed and evaluated zero times by the SEC. The rights of Producers in the financial arena is addressed and stated zero times. The alignment and conformance of these proposals with the principles of a Market Economy is addressed and evaluated by the SEC zero times. Alignment and conformance with the principles of Central Planning is addressed and evaluated on zero occasions. Could these significant omissions within the proposals actually be the result of simple oversight by a naive SEC?

In light of the startling number of omissions in the proposals, a few more obvious questions come to mind. Is the 67 page SEC report on these proposals actually addressing the most important material issues? Is the report fair and balanced? Is it comprehensive? Does the SEC proposal meet the minimum standards of full disclosure of all material information required by government agencies on the important issue of restricting freedoms and liberties of individuals? Is the SEC in any way exempt from the same high standards imposed on Investment Advisors on the issue of full disclosure of all material issues? If so, why? Is the SEC willing to concede that

this report has significant material omissions and fails to meet high standards of full disclosure of all material information?

## CONCLUSION

In closing, perhaps the most relevant question is: Can the existing violations of individual rights by SEC Rules and U.S. Laws withstand scrutiny and challenge in a court of law?

Aggressive and abusive behavior of usurping rights was taken by the SEC years ago when these foundational laws contained in these proposals were created. This aggressive behavior of the SEC went unopposed at the time. Such lack of response has proven to be a significant mistake and has only emboldened the SEC to be even more aggressive in usurping the valid rights of individuals. Based on the history of this type of behavior by the SEC and the general unwillingness for government officials to willingly return the rights of individuals once they have been usurped, the author is not optimistic about the rights being returned without a legal battle.

Fortunately, based on the magnitude of the SEC violations involved, and the arbitrary logic upon which these rules and laws are supported, it appears that a battle in court can be won.

The author is requesting that the SEC reevaluate the foundational premises of these four rules and laws with the objective of identifying whether these compulsory laws uphold and defend the valid rights of individuals as set forth in the U.S. Constitution and Bill of Rights. An evaluation should also be made as to whether these rules and laws conform to the valid limits of government as set forth in the U.S. Constitution and Bill of Rights. The author is officially notifying the SEC that it appears that these four existing rules and laws (addressed in this response) are in meaningful violation of the U.S. Constitution and Bill of Rights. These violations need to be responsibly addressed and rectified. If the SEC cannot see fit to accomplish this itself, through the creation of new proposals that rectify the existing constitutional violations of individual rights, then these constitutional violations may need to be rectified by other government officials within a court of law.

Respectfully submitted,

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