

15 September 2004

Mr Jonathan G Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street NW  
Washington DC 20549-0609  
USA

Dear Mr Katz

**SEC PROPOSED RULE: REGISTRATION UNDER THE ADVISERS ACT OF CERTAIN FUND ADVISERS – FILE NO S7-30-04**

As the representative body for the UK-based investment management industry we are grateful for the opportunity to comment on the Securities and Exchange Commission's proposed rules on registration of certain fund advisers under the Advisers Act.

IMA's members include independent fund managers, the investment arms of banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of about £2 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our IMA represent 99% of funds under management in UK-authorized investment funds (i.e. unit trusts and open-ended investment companies).

We focus our comments on the issues relating to the effect of the proposed rules on non-US advisers. We very much appreciate the way in which the proposed rules seek to provide exemptions for non-US advisers in order to limit the extra-territorial impact of the proposals or, to avoid conflicts of regulation.

We fully share the concerns of FEFSI, the European Fund and Asset Management Association, of which we are members, relating to the need to clarify the scope of the exemption for funds which are not considered to be private funds and therefore do not have to register with the SEC. We would, in particular, refer to use of the term "public investment company". While we understand that US mutual funds are

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organised as corporations, UK funds may take the form either of corporations (known either as open ended investment companies or investment companies with variable capital) or of unit trusts which are subject to trust law. Equally, elsewhere in Europe funds may be structured in the form of contractual funds which do not have a corporate structure. We believe that it would be helpful if the SEC were to clarify their intention of covering in the exemption all non-US regulated investment funds regardless of their legal structure.

We fully understand the aims of the Commission in seeking to ensure that fraud is deterred and discovered, that individuals within adviser firms are fit and proper, and that there are proper compliance controls. We would note that in a number of jurisdictions, including the UK, these are aspects which are dealt with through the regulation of the adviser regardless of the type of fund involved. Anyone managing investments in the UK, whether hedge funds, authorised funds, pension funds or offering asset management services to private investors, is required to be authorised by the Financial Services Authority. In order to be authorised, the firm must act in the best interests of its clients; individuals within the firm must be "fit and proper"; the firm must have appropriate systems and controls to ensure compliance with the rules, including record keeping; and the firm is subject to detailed rules, including on matters such as disclosure of conflicts of interest, best execution, placing and allocating trades, etc.

We would note, therefore, that it is not only advisers to the funds which the Commission proposes to exempt from the requirement to register which are subject to the sorts of controls sought by the Commission. We believe that it would be entirely consistent with the Commission's intentions if it were to extend the exemption from the requirement to register to advisers which are subject to appropriate regulation in their home jurisdiction. We fully accept that this may need to involve cooperation with the local regulatory authority.

In drawing up this response, we are acutely conscious that we are not experts on US securities law and equally that we are dealing with complex multi-jurisdictional issues. The comment period has been short, particularly given the fact that it has been over a holiday period. We appreciate the Commission's aim of looking after the interests of US investors while taking account of the international environment and believe that those aims can best be achieved by the SEC entering a dialogue with, in particular, the Financial Services Authority and the EU institutions (the EU Commission and the Committee of European Securities Regulators).

We would be very willing to answer any queries or make any further comments which may be considered appropriate.

Yours sincerely



Sheila A Nicoll  
Deputy Chief Executive