April 13, 2007

Mr. Chairman, members of the Commission staff, you have lost your compass. You need to go back to your law books and re-educate yourself on what this country and the laws of this country are about.

At first I did not have much to say about the minimum net income requirements of a hedge fund. Wasn't my bailiwick so I left it alone. Unfortunately things have come to light over the recent times that made it my interest. Mr. Broussely is 100% correct; there should be no limits on who invests in a hedge fund. His rationalizations differ from mine but we are in agreement in principle.

The SEC has come to the belief that investors who put their savings into hedge funds must be wealthy due to the market risks that the hedge funds take. Investors must have the capacity to lose their investment should a hedge fund implode. These investors do not have to be sophisticated, just wealthy.

Ladies and gentlemen, such risks are not limited to hedge funds and thus, for the Commission to pass laws to protect investors from such risks would be the end of these capital markets. You may be restricting sophisticated individuals from investing in a hedge fund and yet a wealthy yet uneducated individual can be accepted.

So lets take a different tact.

Hedge Funds are now being investigated for their involvement in insider trading schemes. The options markets are exploding in front of M&A announcements as hedge funds trade on the information they have obtained (purchased) ahead of the news. The trading exercised by these funds impacts not only the investors of the fund, who benefit from this, but can have a negative impact on the individual investor excluded from the hedge fund investment.

- The individual investor took the loss by putting an investment risk into a market that was rigged against them.

Hedge Funds are being accused of disseminating false and misleading information into the markets in order to benefit from the professional's reaction to the misleading information. As the professional traders are being fed false information and responding to it, the individual investor sitting outside this information stream is being forced to react to external influences of unknown origin.

- While the hedge fund investors are taking profits from this scheme, individual investors excluded from the hedge fund investment are taking the losses.

Hedge Funds were the center to the late trading/market timing scheme as Wall Street operations provided the keys to the trading desk after hours and allowed the funds to trade and profit where the general population was excluded. The mutual funds, the investment vehicle the SEC chooses for the average investor, were being stripped of profits while the hedge funds and their investors made money hand over fist.

- Millions of individual investors lost income they will never see returned while those fortunate enough to have invested in a hedge fund profited handsomely.

The evidence before you is irrefutable.

The direction North, which leads to proper regulatory controls and proper investor protection does not come by way of limiting individual investors from investing in a risky hedge fund, it comes by way of making hedge funds less risky to the remaining investing public.

Investors want to invest in hedge funds because it is presented as the best opportunity for the biggest return on your investment. In that presentation the rewards a hedge fund brings is explained as being due to the risks taken and the complicated methods taken to get there. But if getting there fraud is a key component the data is skewed and the publicly is being improperly deceived.

The Commission must stop with the smoke and mirrors and focus on cleaning up the conflicts of interest that exist in these markets. Money can buy just about anything and on Wall Street it is clear that money has bought fraud and it has bought regulatory neglect. Address that concern and the hedge fund that everybody fancies may not be so appetizing after all.

In closing, I want to post transcripts taken by the SEC during a deposition of John Serubo during an Investigation into Stock Manipulation, Broker Kickbacks, and Money Laundering:

SEC Question: So Dorocki as an Executive Vice President at Salomon Smith Barney had no problem whatsoever dealing with mob people in his business.

Answer: No. He had no problem with dealing with - I only can tell you from my perspective he had no problem dealing with our firm or our deal.

Q: Okay, when Dorocki asked you to hold the stock price up, is that a form of market manipulation?

A: Absolutely.

Q: And your guy at Bank of New York knew that as far as volume goes that Bryn Mawr Investment Group was the holder of a significant number of shares and the remaining shares were restricted at Eagletech? Is that true?

A: Yes, not only did they know that. They also - when we told them sit on the bid at $12.00, a market maker is supposed to go into the market and if the next bidder was at eleven fifty he really should be, you know, a little above that instead of $12.00. But, you know, we told them $12.00. So, you know, they were - they were manipulating the stock as much as we were.

Q: When you were holding up the stock at 12, ten, and eight, who did those trades clear through?

A: Bank of New York. Their market maker actually sat on - you know, who ever they sold it to, Knight or whatever, sat on the bid for us on my end.

And the significance to this, Mr. Dorocki, Bank of New York, and Knight Securities were never charged for any wrongdoing although the SEC charged Mr. Serubo with fraud. Thousands of individual investors, not hedge fund investors, were cheated out of their investments by these capital markets. The losses were not due to risks associated with a hedge fund investment; they were losses due to the simple risk of investing in out markets at all.

I think that before the SEC shows concern over whether an individual with $1 Million of net worth is more at risk of personal financial woes vs. that of an individual with $2.5 million in net worth that the Commission should worry about those with far less net worth who merely trust our markets to be safe.

The SEC should explain why in the face of fraud, market manipulation, and money laundering for organized crime families the SEC failed to take the appropriate steps to insure that those Wall Street professionals involved with Mr. Dorocki were not permanently removed from the business to insure that these individuals would not hurt others.

The rest of the information pertaining to this transcript can be downloaded here;

http://www.mediafire.com/?0cvmzctjmyz

It is a lawsuit against Wall Street based on 50,000 pages of documents received from the SEC and documents that define enforcement cases and individuals the SEC walked away from allowing them to victimize more individual investors.

Dave Patch
www.investigatethesec.com