INVESTMENT ADVISER
ASSOCIATION

April 12, 2011

VIA ELECTRONIC MAIL

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; SEC Rel. IA-3145; File No. S7-05-11

Dear Ms. Murphy:

The Investment Adviser Association[1] appreciates the opportunity to submit comments on the Securities and Exchange Commission's proposal to implement a reporting regime for SEC-registered investment advisers to private funds as required by Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2]

Section 404 of the Dodd-Frank Act directs the Commission to adopt rules requiring SEC-registered advisers to private funds to file reports containing information that the Commission deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk by the Financial Stability Oversight Council ("FSOC"). Proposed rule 204(b)-1 and Form PF under the Investment Advisers Act of 1940 ("Advisers Act") would implement these requirements. Form PF is intended to provide the FSOC with information related to the FSOC's systemic risk monitoring of nonbank financial companies and to help it in "obtaining a baseline picture of potential systemic risk across both the entire private fund industry and in particular kinds of private funds, such as hedge funds."[3]

[1] The Investment Adviser Association is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of more than 500 advisers that collectively manage in excess of $10 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

[2] *See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, SEC Rel. No. IA-3145 (Jan. 26, 2011) ("Proposal"), available at http://www.sec.gov/rules/proposed/2011/ia-3145.pdf. Form PF is jointly proposed with the Commodity Futures Trading Commission ("CFTC"). The proposed CFTC rule would require CFTC-registered CPOs and CTAs to satisfy CFTC filing requirements by filing Form PF with the Commission if the CPOs and CTAs are also registered with the Commission as investment advisers and advise one or more private funds.

[3] Proposal at 8, 63-64.

The Commission notes in the Proposal that systemic risk in the U.S. financial system may arise from a variety of sources, including interconnectedness and changes in market liquidity and market concentrations.[4]

We fully support the Commission's goal of enhancing transparency of private funds that may be deemed to present systemic risk to the U.S. financial markets. However, we are concerned that the current Proposal is too broad in scope and will unintentionally cover a large number of advisers and products that may not provide relevant information to achieve the Commission's goals. Accordingly, we request that the Commission amend several aspects of the Proposal that would not provide important systemic risk information but would likely result in unnecessary or unduly burdensome requirements for advisers. In particular, we recommend that the Commission: (1) modify the treatment of "parallel managed accounts;" (2) narrow the definition of "hedge fund;" (3) eliminate aggregation requirements for certain related persons for reporting threshold purposes; (4) exempt smaller private fund advisers; (5) permit flexibility in reporting data and methodologies; (6) require certain data proposed to be reported in Form ADV, Part 1 to be reported in Form PF instead; (7) reconsider the timeframes and frequency of filing Form PF; and (8) confirm treatment of non-U.S. funds under Form PF, among other changes.

1. The Commission Should Modify the Treatment of "Parallel Managed Accounts"

Form PF would require advisers to aggregate "parallel funds," "parallel managed accounts," and master-feeder funds for purposes of determining whether the adviser meets the Form's reporting thresholds, such as for a "large private fund adviser" ("LPFA") and for "qualifying hedge funds."[5] In addition, for questions that request information about individual funds, advisers would be required to report aggregate information for "parallel managed accounts" and master-feeder funds (but not parallel funds).[6] With respect to any private fund, a "parallel managed account" is defined to include "any managed account or other pool of assets" that the adviser advises and "that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified private fund."[7] Because the proposed aggregation rules would result in complex and extensive reporting requirements for parallel managed accounts without

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[4] Proposal at 79.

[5] Proposed Instruction 5. *See also* Proposed Glossary (generally defining LPFA as an adviser that manages $1 billion or more of three types of private fund assets (aggregated with parallel managed accounts) on any day during the reporting period). A "qualifying hedge fund" is any hedge fund that has a net asset value individually, or in combination with any parallel funds and/or parallel managed accounts, of at least $500 million as of the close of business on any day during the most recently completed calendar quarter.

[6] Proposed Instruction 5.

[7] Proposed Glossary of Terms.

achieving a compelling policy need, we recommend the Commission reconsider its approach as discussed below.

A. Exclude Parallel Managed Accounts

The Commission states that it is requiring aggregation and reporting of parallel managed accounts to prevent advisers from structuring their activities to avoid reporting requirements. We understand this concern. However, it is highly unlikely that advisers would liquidate funds and require investors to establish separate accounts or create registered investment companies simply to avoid Form PF reporting requirements. Most often, the client selects an adviser's strategy but tailors it to its own investment guidelines. In a typical separately managed account, advisers are granted investment discretion over a client's account pursuant to an investment management agreement whereby the adviser agrees to manage the securities and assets in accordance with the terms of the agreement and investment restrictions and guidelines of the particular client. These clients may include institutions, endowments, foundations, state and local pension plans, corporate pension plans, high net worth individuals, and other types of clients that are not pooled vehicles. The structure – an investment fund or advisory services for a separate account – is generally determined by the client's own preferences and specific investment guidelines rather than by the adviser.

Further, the inclusion of "parallel managed accounts" other than "private funds" in the reporting regime for the Form significantly expands the scope of Section 404 by capturing accounts that should not be viewed collectively with private funds for purposes of systemic risk analysis. We are concerned that this overbroad reporting will result in inconsistent and misleading data about an adviser's overall private fund business and potential impact on the market. For instance, combining parallel managed accounts up to a $1 billion threshold could result in an adviser with one small Section 3(c)(7) fund and many separate accounts that use a substantially similar strategy to make significantly more (and more frequent) disclosure than another adviser with more assets under management in an identical strategy with identical terms in separate accounts that is not required to report on Form PF. Accordingly, we request the Commission eliminate inclusion of parallel managed accounts in the Form PF private fund reporting regime.

B. Alternative Approaches

i. Narrow the Definition of Parallel Managed Account

If the Commission retains the proposed requirements for reporting parallel managed accounts, we request that it (i) narrow the definition of "parallel managed account" to provide clarity for advisers and more meaningful data for systemic risk analysis; and (ii) exclude investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") from the definition of "parallel managed account."

First, we are concerned that the term "substantially the same" with regard to an account or pool's investment objective and strategy or positions is not defined and will create uncertainty about the appropriate scope of other managed accounts or other pools of assets that should be captured in the definition of "parallel managed account." The Proposal does not make clear the extent to which a separate account's strategy and positions would need to be the same as a private fund's strategy and positions to constitute "substantially the same" and be included in the reporting. It is also not clear how an adviser would report data for the private fund and its parallel managed accounts if the data available differs. If the Commission broadly includes similar, but not the same, strategies and positions for non-pooled vehicle clients in the "parallel managed account" definition, the resulting reports will not provide meaningful information regarding the private fund industry as it relates to system risk, interconnectedness, or market liquidity and concentrations and will not produce comparable data. Accordingly, we request the Commission amend the definition of "parallel managed account" to require "the same investment objective and strategy" and the "same positions" as the identified private fund.[8]

Second, we do not believe the Commission should include registered investment companies in the definition of "parallel managed accounts." Registered investment companies are subject to extensive reporting requirements and portfolio composition restrictions under the Investment Company Act and inclusion in the parallel managed account definition would serve no meaningful purpose. If, however, the Commission chooses not to carve out all registered investment companies from the definition of parallel managed account, at a minimum, the Commission should eliminate the requirement to report all registered money market funds with liquidity funds on Form PF. Registered money market funds already report detailed portfolio information regularly on Form N-MFP.[9]

ii. Reduce the Questions for which Advisers Must Report on Parallel Managed Accounts

To the extent that the Commission determines not to amend the requirements for reporting of "parallel managed accounts," we recommend the Commission take an approach similar to the United Kingdom's Financial Services Authority ("FSA") in its periodic hedge fund survey and narrow the number of questions for which advisers must answer with respect

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[8] The Commission does not define the term "managed account." Presumably, at a minimum, the term would only include parallel managed accounts that would otherwise fall within the definition of "hedge fund" or other applicable fund, but for the non-private fund structure.

[9] Form PF proposes to capture very detailed information about "liquidity funds." The instructions would require private fund advisers to combine liquidity fund and registered money market fund assets for purposes of determining whether the adviser meets the threshold for more extensive reporting regarding its liquidity funds because the Commission states that an adviser's liquidity funds and registered money market funds "often pursue similar strategies and invest in the same securities" and thus are subject to many of the same risks. *See* Proposal at 33.

to the parallel managed accounts.[10] The FSA Hedge Fund Survey makes a distinction between "hedge fund assets" and "strategy assets." "Strategy assets" are defined as "all share classes in the fund and also separately managed accounts and other assets managed on the same or a very similar basis as the underlying fund."[11] Unlike the Commission's Proposal, the FSA seeks very limited information with respect to "strategy assets," including the net asset value, and market and product exposure. All other questions in the FSA Hedge Fund Survey pertain to hedge fund assets.

2. The Commission Should Narrow the Definition of "Hedge Fund"

Proposed Form PF defines "hedge fund" as any "private fund that: (a) has a performance fee or allocation calculated by taking into account unrealized gains; (b) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) may sell securities or other assets short."[12] As the Commission notes, there is no customary definition of "hedge fund." By comparison, "hedge fund" is defined in the FSA Hedge Fund Survey to mean a fund that meets a number of specified criteria for investment management techniques and other characteristics.[13] We are concerned that the Commission has defined "hedge fund" too broadly for purposes of Form PF, and we

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[10] *See* U.K. Financial Services Authority, Hedge Fund Survey (Sept. 2010) ("FSA Hedge Fund Survey"). This approach could address the potentially misleading effect of requiring advisers to treat the assets of a parallel managed account as assets of the largest private fund to which it relates. As noted above, management of a private fund, no matter how small, could effectively become the trigger for much broader reporting because there is no criterion with respect to the relative size of the actual private fund(s) managed by a registered adviser and any parallel managed accounts.

[11] *See* FSA Hedge Fund Survey, Questions 14 and 22.

[12] Proposed Glossary; *see also Rules Implementing Amendments to the Investment Advisers Act of 1940*; SEC Rel. No. IA-3110; File No. S7-36-10 (Nov. 19, 2010) ("Form ADV Part 1 Proposal"), available at http://www.sec.gov/rules/proposed/2010/ia-3110.pdf (Proposed Instruction 6a of Form ADV Part 1 Proposal). The IAA filed an extensive comment letter on the Commission's proposed amendments to Part 1 of Form ADV, including on proposed Item 7B relating to private fund disclosure. *See* Letter from Valerie M. Baruch, Associate General Counsel, IAA to Elizabeth Murphy, Secretary, Securities and Exchange Commission re: Proposed Amendments to Part 1 of Form ADV (Jan. 24, 2011), available on our website under Comments & Statements.

[13] *See,* FSA Hedge Fund Survey, Annex 1, Definitions (stating "such funds share a number of similar characteristics," and setting out investment techniques and characteristics such as short selling, derivatives for investment purposes, and economic (debt) leverage as well as leveraged embedded in financial instruments such as derivatives, as well as listing other characteristics); *see also* U.K. Financial Services Authority, *Assessing possible sources of systemic risk from hedge funds, A report on the findings of the Hedge Fund Survey and Hedge Fund as Counterparty Survey* (July 2010) at 1, available at http://www.fsa.gov.uk/pubs/other/hf_report.pdf ("FSA Hedge Fund Report") (survey aims to help FSA better understand the use of leverage (through borrowing or derivatives), "footprints" in various asset classes, the scale of any asset/liability mismatch and credit counterparty risks); *see also* FSA Hedge Fund Report (Feb. 2011), available at http://www.fsa.gov.uk/pubs/other/hf_survey.pdf.

recommend that it be tailored to more appropriately capture investment pools that would be more likely to assist the FSOC's systemic risk evaluation.[14] Accordingly, we recommend the following changes to the Commission's proposed definition.

First, we request confirmation that section (a) of the "hedge fund" definition applies only where a performance fee calculated by taking into account unrealized gains is taken directly from fund assets. For example, although an adviser may not offer a performance fee in a particular fund (*i.e.,* as a fee charged through the net asset value of the fund), some clients that are also investors in the fund require a performance fee to be assessed to the client directly under a separate management agreement between the client and the adviser. Such performance fee is not part of the agreement between the adviser and the fund. The use of a performance fee in this circumstance has little or no bearing on whether a private fund is a hedge fund.

Second, we believe the criteria in sections (b) and (c) are over-inclusive. Many funds with traditional investment approaches use strategies that might involve short positions for hedging purposes or in limited amounts. At a minimum, we believe it would be appropriate for the definition to refer to actual investment practices, rather than practices in which a fund "may" engage. Sections (b) and (c) should require that a fund actually use leverage or engage in short sales above a *de minimis* amount before being deemed a hedge fund (*i.e.*, mere authority to use leverage and engage in short sales is not sufficient if it is never exercised). A private fund that has not used these practices should not be considered a hedge fund unless and until it begins to do so, other than on a limited basis. The FSA's definition of a hedge fund is less prescriptive, leaving advisers with more flexibility to carve out products that may, for example, short on a limited basis primarily for hedging purposes, but are not considered hedge funds in the traditional sense of the term.

Third, the Commission should narrow section (c) to avoid capturing funds that are not truly long/short funds, market neutral funds or other types of funds that engage in significant short positions of individual issuers. For example, the Commission could require that short selling be a principal investment strategy, as in the Form N-1A context for registered investment companies. Otherwise, many "long only" or traditional bond funds would be classified as hedge funds due to interest rate or other hedging activities not related to speculation or other positions that are unlikely to give rise to systemic risks. Under the Form PF definition, registered investment company strategies that comply with the restrictions of the Investment Company Act would nonetheless be considered hedge fund strategies if used in a private fund (and, as discussed in Section 1 above, these registered investment companies could be considered "parallel managed accounts.")

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[14] While we understand that the Commission is using the same definition of hedge fund as it proposed for Form ADV Part 1, the purpose of Form PF is different, focusing on systemic risk, and requests much more extensive information.

Finally, we believe that section (b) of the hedge fund definition would appropriately capture private funds that make use of significant synthetic short positions. Accordingly, we suggest qualifying section (c) by adding, "provided, however, that the use of short derivative positions will not cause a private fund to be considered a hedge fund unless the resulting notional exposures would cause it to be a hedge fund under section (b)."

3. The Commission Should Not Aggregate Assets Managed by Related Persons That Do Not Share Information About Investment Decisions

Form PF would require a private fund adviser to treat any private fund or parallel managed account advised by *any* of the adviser's related persons as though it were advised by the adviser for purposes of various reporting thresholds in the Form (*i.e.*, LPFA and qualifying hedge funds).[15] In addition, the adviser would be permitted, but not required, to file one consolidated Form PF for itself and its related persons, including affiliates.[16]

We do not agree that advisers should be required to aggregate the assets of private funds or parallel managed accounts managed by *any* related person. Many larger advisers are structured such that affiliates and related persons operate independently and have no involvement in each other's portfolio management, trading, operations, or internal management activities. Often, these investment advisers and their related persons will make separately regulatory filings (*e.g.*, Section 13F filings for beneficial ownership). Although these entities may be under common control with a parent company, requiring aggregation of assets with related persons will result in a misleading view of which entities are LPFAs and may provide information about advisers that will not aid the FSOC's systemic risk analysis. While we understand the Commission's goal of preventing advisers from organizing entities to avoid application of the reporting requirements, we believe the Commission should instead focus on whether calculating the threshold in this manner produces meaningful reporting.

We submit that the Commission should require aggregation of assets only of related persons that share investment discretion or coordinate trading decisions, which more appropriately captures the concept of investing "side by side." This proposed amendment is also more appropriately tailored to the goal of capturing information regarding large market participants that may to some degree pursue the same strategies in a unified fashion. In contrast, by pulling in the positions of affiliated but independently operating advisers, the proposed requirement would potentially provide inaccurate information to the Commission and ultimately to the FSOC.

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[15] Proposed Instruction 3 and 5; Proposal at 35, n.92 (a "related person" is defined as: (1) all of an adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; and (3) all of the adviser's employees (other than employees performing only clerical, administrative, support, or similar functions)).

[16] Proposal at 35, n.92.

4. The Commission Should Exempt Advisers with Less Than $150 Million in Private Fund Assets

The Commission should exempt SEC-registered advisers that manage less than $150 million in private fund assets from the Form PF filing requirements. Under the Proposal, exempt reporting advisers that *solely* advise private funds with less than $150 million in assets are not required to file Form PF. However, SEC-registered advisers that manage *any* private fund assets are required to file Form PF. There is no compelling policy reason to require such advisers to do so. Like the mid-sized private fund advisers, SEC-registered advisers with less than $150 million in private fund assets will provide extensive census-type information on Form ADV, Part 1 regarding their private funds.

Congress apparently made the determination that advisers that manage less than $150 million in private fund assets do not pose sufficient systemic risks such that registration under the Advisers Act is required. SEC-registered advisers that manage a small amount of private fund assets are even less likely to pose systemic risk because they are already registered under the Advisers Act and are subject to substantial Commission regulation and oversight. The Commission states that it is appropriate to require such advisers to complete Section 1 of Form PF because of the "limited burden" of basic reporting.[17] As discussed below, however, we believe the Commission has underestimated the burdens for filing even Section 1 of Form PF, and therefore, such advisers should be exempt from filing.

5. The Commission Should Permit More Flexibility in Reporting Data and Methodologies

A number of Form PF items require certain methodologies or risk management techniques. Private fund advisers, however, do not uniformly use the same calculations and metrics. Thus, we are concerned that advisers will have to generate data and engage in risk management practices specifically to comply with Form requirements. For example, an adviser may not use the same definition of a particular asset class, and duration measurement will likely vary from the Form's stated measurement in some cases. Also, the Form states that investment grade is not based on credit ratings, but on liquidity and a determination of "moderate credit risk," which is not a universally defined or understood term in the asset management industry. Most advisers do not have such a designation and would likely use a traditional definition of "investment grade." Advisers will need to hire additional staff and deploy new systems to convert data into the requisite categories. In addition, even calculations and methodologies that may today be widespread industry practices will likely evolve over time. Advisers will need to continually provide significant resources to make

[17] Proposal at 38.

system changes as the Form necessarily changes. Accordingly, the Commission should permit more flexibility in reporting data and methodologies.[18]

In addition, we are concerned that the value at risk ("VaR") and risk metric questions (section 2b, questions 35 and 36) may result in requiring advisers to use specific risk techniques they may or may not currently use to avoid any implication that they are not following proper risk practices (such as by stating that a particular risk is not relevant). Conversely, requiring detailed reporting on these risk metrics may discourage use of such techniques. The Commission should not make implicit judgments about risk management techniques through a reporting requirement. For example, there is some dispute as to how effective the use of VaR has been.

We recommend removing question 36 which requires advisers to report the potential impact on a fund's portfolio from specified changes to certain market factors, if regularly considered in the fund's risk management. The Commission states that this information "is designed to allow the FSOC to track basic sensitivities of the hedge fund to common market sensitivities, correlations in those factor sensitivities, and trends" among funds.[19] The Commission notes that the fund may consider these factors in its risk assessment without performing "stress testing,"[20] but the Form does not provide any means to respond to the question in that case. The potential answers – state that the factor is not relevant or provide specific data that would be generated by stress testing – push advisers toward the type of stress testing required of banking entities and risk transforming Form PF into an implicit substantive requirement as to advisers' internal risk systems rather than a data gathering requirement. In any case, this type of stress testing may not provide meaningful data on a comparable basis for various funds.

We also recommend adjusting the requirements in Section 4 for private equity funds and private equity fund of funds to report certain data. Private equity fund advisers may not have access to the data requested for "controlled portfolio companies," even if the fund owns 50% or more of such portfolio company (*e.g.*, question 62 regarding maturity of debt). In addition, private equity fund advisers may not have access to certain data relating to "financial industry portfolio companies" where the company is a non-U.S. entity. Accordingly, we recommend applying a "reasonable best efforts" standard to obtain and report the information.

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[18] To accommodate the various business models and data collection methods across the industry, the Commission could broaden its approach in Section 1a, Item C1 ("You may use the space below to explain any assumptions that you made in responding to any question in this Form PF. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Form PF. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose").

[19] Proposal at 51.

[20] Proposal at 51, n.127.

We also recommend a *de minimis* investment threshold in a "financial industry portfolio company" before the reporting requirements are triggered.

6. The Commission Should Require Certain Data Proposed to be Reported in Form ADV, Part 1 to be Reported in Form PF Instead

The Commission requests comment on whether certain disclosure requirements in the proposed amendments to Form ADV Part 1 should instead be reported through Form PF.[21] As we stated in our comments on the Part 1 proposal, the Commission should limit the public availability of private fund information provided on Part 1 of Form ADV. Treating the private fund information as confidential would enable the Commission to collect the information deemed necessary while protecting its proprietary nature. Form PF could serve as an appropriate vehicle for such confidential disclosure. Much of the detailed sensitive information requested in Schedule D, Section 7.B.1 could be reported on Form PF in order to avoid unduly focusing retail clients on privately offered funds for sophisticated investors. At a minimum, the ownership information requested in proposed Part 1 (if not amended as we requested) could expose sensitive or confidential information and should be reported on Form PF. Further, certain service provider information could be reported on Form PF instead of Part 1 to assist the FSOC in determining whether there are concentrated assets at particular service providers, for example. In addition, advisers should not be required to report duplicative information (such as net asset values) on Form ADV Part 1 and Form PF.

7. The Commission Should Reconsider the Timing and Frequency of Filings

A. <u>The Commission Should Evaluate the Information It Receives Initially From Private Fund Advisers</u>

The Dodd-Frank Act does not set out the frequency with which the Commission and the CFTC must require reporting by private fund advisers. However, the Commission states that it has designed the specific reporting frequency and data time period measurements (annually and quarterly filings; monthly valuations and performance data) based on when it understands advisers to private funds are already collecting the relevant data.[22] The Commission also states that it based certain more specific reporting items on information that it understands large hedge fund advisers frequently collect for purposes of reporting to investors in funds.

Although LPFAs typically collect and report significant amounts of data to fund investors, the nature of the information is different because fund investors are focused on specific characteristics of their investment, and not on possible systemic effects of the

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[21] Proposal at 54.

[22] Proposal at 65.

adviser's investment strategies. In addition, the depth and volume of data requested by the Form PF are much more significant than many advisers currently collect and report, and the information is proposed to be provided in shorter timeframes. The Commission emphasizes that the Form will provide "more reliable data collected through Form PF [that] would assist FSOC in identifying and addressing risks to US financial stability, potentially protecting investors and other market participants from significant losses."[23] However, we expect the reliability of the data collected by the Form may be impacted by unrealistic filing deadlines.

In addition, certain of the requested data ultimately may prove to be of little value to the Commission's understanding of the significance of a particular group of private funds or their advisers. Thus, we respectfully suggest that the Commission require an initial reporting on Form PF by private fund advisers to permit it to evaluate the significant volume of data it will collect. The Commission could then better assess the appropriate frequency of reporting as well as which types of data about which types and sizes of funds would best serve to implement the FSOC's goals of determining the likelihood that certain private funds may pose systemic risk to the U.S. financial system. For example, after reviewing the initial data, the Commission may determine that it is sufficient for systemic risk purposes to require LPFAs to file updates every six months, as does the FSA, instead of each quarter. Similarly, if the Commission does not change the treatment of parallel managed accounts or the definition of hedge fund, we believe that the $1 billion reporting threshold for LPFAs will prove too low to implicate systemic risk concerns. The Commission, in consultation with the FSOC, may even determine instead that it does not in fact need to receive the proposed data from every private fund adviser annually, particularly with the information the Commission will receive annually from advisers on newly-amended Form ADV. Such an approach that requires only an initial filing first would permit a more informed evaluation of the anticipated benefits from receiving the information in light of the significant costs and resources involved for advisers.

B. The Commission Should Extend the Requirement to File After Quarter End to 90 Days

Proposed Form PF would require a LPFA to file a quarterly update for all items in Form PF within 15 calendar days after quarter-end. The 15-day requirement is too short a deadline for filing quarterly Form PF reports, especially given the magnitude of data that is required. Advisers would need significantly more time to collect the data, assess the integrity of the data, and complete the filing of the data on a quarterly basis. It is critical that advisers have adequate time to submit accurate data for quality control purposes, particularly with respect to the valuation and performance information.

We note that the FSA Hedge Fund Survey is much simpler than Form PF (overall and in particular for LPFA items), but the FSA permitted advisers significantly more time to respond to the survey. The need for accurate information outweighs the need for receiving

[23] Proposal at 79.

the information quickly. Therefore, we request that the Commission provide at least 90 days for LPFAs to provide quarterly (and year-end) updates in order to allow enough time for the necessary auditing to be completed.

C. The Commission Should Adjust Unrealistic Daily and Monthly Measurement Periods

Under the Proposal, advisers would be required to measure whether the applicable $1 billion asset thresholds have been crossed *daily* for hedge funds and liquidity funds in order to assess whether they are LPFAs. A daily assessment of the Form's reporting threshold is impractical. For example, large advisers with many funds and "parallel managed accounts" would have to expend significant effort and expense to monitor on a daily basis which funds or accounts are within the scope of the definitions, what their aggregate assets are, and whether they have met the triggering threshold. We therefore request the Commission implement a measurement period such as average assets over a quarter rather than a daily measurement period.

In addition, Section 1b, question 14 requires *monthly* valuations and performance for all private funds. Private equity funds in particular do not value their illiquid fund holdings on a monthly basis but rather on a quarterly basis. To respond to this item, private equity fund advisers would be forced to restructure their systems and controls at potentially great expense with little added benefit to the Commission or the FSOC. Therefore, we suggest with respect to private equity funds that the Form provide for quarterly valuations.

8. The Commission Should Confirm the Treatment of Certain Non-U.S. Funds under Form PF

We request confirmation that advisers need not report information about certain non-U.S. funds on Form PF because (i) such funds are not "private funds" within the definition in proposed Form PF, and (ii) such funds are not "likely to implicate U.S. regulatory interests."[24] The term "private fund," as used in Form PF, is defined as any issuer that would be an investment company as defined in Section 3 of the Investment Company Act but for Sections 3(c)(1) or 3(c)(7) of that Act. Non-U.S. funds (investment companies organized under the laws of a jurisdiction other than the U.S.) that do not make use of U.S. jurisdictional means to offer securities are generally not within the territorial reach of the U.S., and therefore, do not need to rely on Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. Accordingly, such non-U.S. funds would not be "private funds" regardless of the location of the fund adviser. Consistent with this approach, the Commission has stated that a securities offering by a non-U.S. fund should not trigger regulation or registration of the fund under the

[24] Proposal at 36.

Investment Company Act if the non-U.S. fund implements measures reasonably designed to guard against sales to U.S. persons.[25]

We are concerned, however, that proposed Instruction 1 implies otherwise. The Instruction states, "[i]f your principal office and place of business is outside the United States, for purposes of this Form PF you may disregard any *private fund* that during your last fiscal year was neither a United States person nor offered to, or beneficially owned by, any United States person." (emphasis added). As discussed above, non-U.S. funds that are not offered or sold to U.S. persons or beneficially owned by U.S. persons are not relying on Section 3(c)(1) or Section (c)(7), and are not private funds. Thus, the Instruction should be removed.[26] If the Commission does not clarify this point, it will be unclear whether SEC-registered advisers to non-U.S. funds that have been relying on the Commission's territorial approach would need to include these non-U.S. funds on Form PF, even if the non-U.S. fund was neither a U.S. person nor offered to, or beneficially owned by, any U.S. person.[27]

If the Commission disagrees, it should exempt non-U.S. funds from reporting requirements under Form PF if the fund is not offered to or beneficially owned by any U.S. person.[28] In addition, we request an exemption for reporting non-U.S. funds that may receive "seed" capital from a U.S. entity to launch but is not otherwise offered to or beneficially owned by any U.S. person. Such funds do not implicate U.S. investor protection or other U.S. regulatory interests.

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[25] *See, e.g.,* Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Securities Act Rel. No. 7516 (Mar. 23, 1998), available at http://www.sec.gov/rules/interp/33-7516.htm. *See also* Goodwin, Procter & Hoar (pub. avail. Feb. 28, 1997); Touche Remnant & Co. (pub. avail. Aug. 27, 1984).

[26] Similarly, we request the Commission to take the same approach in Form ADV Part 1, and amend its language in that release which states that a non-U.S. adviser may "omit a Schedule D for a *private fund* that is not organized in the U.S. and that is not offered to, or owned by, 'United States persons.'" Form ADV Part 1 Proposal at 50; *see also,* Form ADV Part 1 Proposal at 51 (the Commission asks whether it should require advisers to report information about other pooled investment vehicles advisers may advise, such as non-U.S. funds not offered to U.S. persons. We believe that the Commission's approach to limit the "burden imposed on foreign advisers with respect to funds in which U.S. investors have no direct interest" by relieving them of having to file a Schedule D for those funds should also apply to U.S. advisers with respect to non-U.S. funds they advise in which U.S. investors have no direct interest because such funds are not "private funds" relying on Sections 3(c)(1) or 3(c)(7)).

[27] For example, advisers that sponsor Undertakings for Collective Investment in Transferable Securities ("UCITS") or other regulated funds offered solely in non-U.S. jurisdictions would be subject to a materially increased burden of completing Form PF with little apparent benefit.

[28] We also request confirmation that a person that is in the U.S. may be treated as not being in the U.S. if such person was not in the U.S. at the time the investor acquired the securities issued by the fund. *See e.g., Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers*; SEC Rel. No. IA-3111; File No. S7-37-10 (Nov. 19, 2010), at 82-83 (discussing proposed rule 202(a)(30)-1, at note to paragraph (c)(2)(i)), available at http://www.sec.gov/rules/proposed/2010/ia-3111.pdf.

9. Additional Comments

A. Limit Beneficial Owner Data to Available Information

The Form requires advisers to specify the "total number of beneficial owners of the reporting fund's equity interests." It further specifies that if an adviser is aggregating any "parallel managed accounts" with the reporting fund in accordance with Instruction 5, the adviser must treat the account owners as beneficial owners of the reporting fund. In addition, it requires advisers to specify the percentage of the reporting fund (and parallel managed accounts) that is "beneficially owned by the five beneficial owners having the largest equity interests in the reporting fund."

This type of beneficial ownership information is not always known or available. For example, if the investor is a fund of funds or charitable trust, advisers may not have access to information about the beneficial owners. Thus, we believe that beneficial owner information should be limited to information about the limited partner, managing member, or equivalent investor of record. Further, information about owners of parallel managed accounts may produce distorted information (*e.g.*, cases in which a single large parallel separate account dwarfs a small private fund) or may be unavailable or impractical to obtain (*e.g.*, mutual fund shareholders).

B. Reconsider the Underestimated Burden of Filing Form PF

The Commission estimates that smaller private fund advisers would require an average of only 10 hours to compile, review, and electronically file the required information in Section 1 of Form PF for the initial filing and an average of 3 hours for subsequent filings, and that LPFAs would require an average of 25 to 75 hours for an initial filing and an average of 12 to 35 hours for quarterly filings.[29] We do not necessarily agree that such burden estimates are realistic or even knowable at this point, and we believe the cost estimates are understated. Certainly, the type and breadth of data requested to be reported in a specific format (not yet determined) will be very significant for all private fund advisers. The true burden and amount of resources necessary for advisers to comply with this level and frequency of reporting will not be fully understood until the industry as a whole has spent time on implementation of the reporting requirements. This lack of burden information supports our suggestion to require an initial filing, followed by an assessment by the Commission and the FSOC of the appropriate scope and frequency of further reporting.

[29] Proposal at 67-70.

C. Extend Compliance Date and Permit Additional Comment Period on Proposed Filing Format

The Commission anticipates that the proposed rules requiring filing of Form PF would have a compliance date of December 15, 2011, at which time LPFAs would begin filing 15 days after the end of each quarter (*i.e.*, LPFAs would need to make their initial Form PF filing by January 15, 2012). The Commission states that this timing would give the Commission sufficient time, after adopting the final rule, to create and program a system to accept filings of Form PF and should be sufficient for LPFAs to develop systems for collecting the information required on Form PF and prepare the filing.

We respectfully disagree that a December 15, 2011 compliance date timeline is workable or realistic. Advisers will be required to expend significant resources to implement this voluminous reporting requirement. The Commission should also consider the cumulative effect on advisers of other significant rulemakings under the Dodd-Frank Act. We therefore urge that the Commission adopt a compliance date for the initial filing of at least nine months after the rule's effective date.

The need for additional time is amplified by the fact that Commission still needs to propose a filing system for the Form.[30] The Commission requests comment on whether it should require that Form PF filings be submitted in XML, XBRL, or another format. Advisers are unable to fully assess the implications of the Proposal, including the appropriate format and likely costs and resource requirements that will be incurred until the scope and extent of the reporting requirements on Form PF are finalized. Accordingly, we request the Commission to provide another opportunity for notice and comment on the potential selection of the filing system for Form PF once the Form's content and filing frequency have been established.

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[30] The Commission states it will work closely with the company it selects to create and program a system for Form PF filings and will monitor whether the company could create and program such system within the stated timeframe. Proposal at 42, n.108.

We appreciate the Commission's consideration of our comments on proposed Form PF to implement the reporting requirements for SEC-registered advisers to private funds under Sections 404 and 406 of the Dodd-Frank Act. Please do not hesitate to contact Karen L. Barr, IAA General Counsel, or the undersigned at (202) 293-4222 if we may provide any additional information regarding our comments or any other matters.

Sincerely,

/s/Monique S. Botkin

Monique S. Botkin
IAA Assistant General Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

Eileen Rominger, Director, Division of Investment Management
Robert Plaze, Associate Director, Division of Investment Management
David Vaughan, Attorney Fellow, Division of Investment Management