sifma
Invested in America
asset management group

INVESTMENT ADVISER ASSOCIATION

November 1, 2013

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: "Asset Management and Financial Stability" Study by the Office of Financial Research

Dear Sirs/Madams:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") and the Investment Adviser Association (the "**IAA**")[2] appreciate the opportunity to comment on the study entitled "Asset Management and Financial Stability" (the "**Study**") published by the Office of Financial Research of the Treasury Department ("**OFR**") and commissioned by the Financial Stability Oversight Council (the "**FSOC**"). We recognize the need for the FSOC and OFR to consider whether and to what extent threats to U.S. financial stability may arise from asset management and whether those threats can (and, if so, should appropriately) be addressed through prudential regulation, or some other regulatory scheme. Because we represent asset managers and our members are among the subjects of the Study, we have an interest in the FSOC's and OFR's research in this regard.

We believe that effective regulation can only be based on rigorous analysis. Unfortunately, the Study lacks evidence of rigorous analysis and, therefore, we believe that it does not reflect an accurate or effective understanding of the role of asset managers, the relationship between asset managers and the investment products they offer, and the factors that link asset managers and investment products to potential financial market distress. Accordingly,

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[1] The AMG's members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds.

[2] The IAA is a not-for-profit association that represents the interests of investment adviser firms registered with the SEC. Founded in 1937, the IAA's membership consists of more than 500 firms that collectively manage in excess of $11 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 www.investmentadviser.org.

the Study should not be relied on to inform policy discussions about the asset management industry, let alone to serve as the basis for regulatory action with respect to the entities, activities and markets that comprise the industry. In this regard, we strongly urge OFR to withdraw the Study.

We believe it is particularly important for asset managers to be involved meaningfully in the research and analysis OFR conducts, which has not happened to date, in spite of our efforts and the efforts of our members. We appreciate the initiative taken by the Securities and Exchange Commission (the "**SEC**"), our industry's primary regulator, to provide an opportunity for us to comment on the published report and look forward to collaborating with the SEC and our other regulators to correct the record established by the Study.

Our concerns about the Study fall into the following five categories which we consider in detail in Sections I through V of our letter:

- The Study does not provide an accurate or comprehensive description of the asset management industry.

- The Study contains a number of unsupported conclusions and overly broad assertions – including mischaracterization of the role of asset managers, exaggeration of the risks associated with asset manager failure and overstatement of the risk of widespread redemption – that lead to an inaccurate view of the industry and would not promote sound policy.

- The Study does not sufficiently account for existing regulation, including rules implemented since the financial crisis, that regulate investment advisers, funds and other investment vehicles, and the securities, derivatives and other investment instruments in which asset managers' clients invest.

- OFR appears to have used only a fraction of available data in its research and, consequently, additional analysis is necessary to provide the FSOC a comprehensive view of the industry and its relevance to the financial stability of the United States.

- The Study fails to address the fundamental questions a regulator must consider to (i) evaluate the asset management industry, the effectiveness of existing regulation, and the need for any additional regulation, if any, and (ii) design and implement any additional regulation to address possible sources of risk that may arise from the industry, and cannot serve as the foundation for informed policy discussions.

I. The Study does not provide an accurate or comprehensive description of the asset management industry.

To be useful to policymakers, any analysis of the asset management industry must be underpinned by a thorough and accurate understanding of the unique attributes of asset managers and their clients. We are concerned that the Study does not properly describe certain basic aspects of the asset management industry, including the relationship between asset managers and their clients. This section provides an overview of the asset management industry and highlights certain essential features of the industry that we think are misconstrued in the Study.

The asset management industry is made up of a large number of diverse firms that provide investment advice (whether on a discretionary or non-discretionary basis) to clients. As of April 12, 2013, 10,533 investment advisers were registered with the SEC and collectively managed $54.8 trillion in assets.[3] Asset managers offer a wide array of investment strategies across a broad range of asset classes. These investment strategies are available to clients in a variety of forms, including funds that are registered under the Investment Company Act of 1940 (the "**ICA**"), such as mutual funds, ETFs and closed-end funds, in which retail and institutional investors invest, private funds that are offered only to investors with substantial assets, and separately managed accounts with investment objectives and parameters established at the direction of single investors.

Notwithstanding the diversity of investment products, the basic characteristics of the relationship between an asset manager and its clients are uniform: asset managers provide advice to, and act as agents on behalf of, investors seeking exposure to certain investment strategies and their attendant investment results. As fiduciaries, asset managers must invest their clients' assets pursuant to investment mandates determined by their clients. In this fiduciary capacity, asset managers actively manage risks associated with the particular investment mandates of their clients and, therefore, function more as risk reducers than as risk takers. Managers apply their professional judgment to help their clients achieve their investment goals without taking on unnecessary risks. Additionally, assets of a fund or a separate account belong solely to the fund or separate account (and, indirectly, such fund's or separate account's investors) and never become the property of the asset manager.

Many retail investors that purchase investment products managed by investment advisers are advised by a professional investment adviser when selecting a specific investment strategy or product. Similarly, institutional clients may have their own internal investment and risk management staffs and often receive separate asset allocation and risk oversight advice from independent third party consultants when selecting managers. Unlike most retail clients, institutional clients typically designate the asset class or classes for which the asset manager is retained to provide day-to-day investment advice. In addition, institutional clients typically hire

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3 Investment Adviser Association and National Regulatory Services, "2013 Evolution Revolution Report," *available at* http://www.nrs-inc.com/About-Us/White-Papers/A_Profile_of_the_Investment_Adviser_Profession_Evolution_Revolution_2013/.

managers through a competitive bidding process and subject asset managers to active ongoing oversight, which often includes performance attribution and risk analysis.

Asset managers are highly substitutable. Third party custody arrangements and the ability to redeem managed assets in kind facilitate the substitution of asset managers. In the case of separate accounts, for example, clients may easily change asset managers in the event of unsatisfactory performance or in order to pursue different investment strategies simply by removing trading discretion from one manager and granting it to another. Indeed, in those cases assets may never move from an existing custody bank and there may be no immediate sales of assets in the market. Likewise, investors in registered funds and private funds may move their assets at any time from one fund to another fund or investment product, including a substitute fund or product sponsored by a different asset manager. This substitutability of investment products and managers contributes to the high level of competition in the industry.

Asset managers do not guarantee positive investment results and do not back-stop investment losses.[4] This is an important feature of the relationship between an asset manager and its clients, and is well understood by investors. Under the Investment Advisers Act of 1940 (the "**Advisers Act**"), asset managers are required to disclose to investors the risk of the particular investment strategies in which the investors' assets are being invested. Such risk disclosures typically include language that the investors may lose some or all of the value of their investments and that investment results are not guaranteed.

Although investors are subject to investment risk, existing regulation applicable to asset managers and their regulated products safeguards client assets from other losses. In particular, an asset manager is not permitted to commingle client assets with proprietary assets in an account held in the asset manager's name, and client assets typically are maintained with a separate custodian. Additionally, a manager's creditors do not have recourse to the assets of the manager's clients. Reciprocally, a manager's clients and investors in the products it manages do not have recourse to the manager's assets or to the assets in other funds managed by the asset manager in the event that an investment underperforms or falls in value.

Asset managers are highly regulated and generally have been subject to extensive public disclosure requirements. Furthermore, since the financial crisis, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and related rulemaking, the regulation of asset managers, the products they offer, and the instruments they invest in on behalf of their clients has expanded considerably, including registration and reporting requirements for almost all managers of private funds, separate accounts and other investment assets. Any useful study of the current asset management industry must account for the regulatory changes of the past several years, including the risk mitigating aspects of certain significant Dodd-Frank rulemaking, that are directed not only at funds and managers but also at the capital markets in which managers, banks, broker-dealers and other financial services firms operate. As we discuss throughout our letter, the Study does not take adequate account of a

4 We acknowledge that certain money market fund sponsors have chosen to support their funds' net asset values in the past. Even in those cases, however, sponsors were not required to do so.

significant body of regulation, and reporting and disclosure regimes applicable to asset managers and their investment activities and, consequently, mischaracterizes certain risks.

Any evaluation of the asset management industry and the effects of particular activities that is to provide a foundation for future regulation, whether by the FSOC or any other regulator, must consider the facts, relationships, regulations, and reporting and disclosure regimes noted above. Because OFR failed to take these factors into account sufficiently in the Study, the Study should not serve as a basis upon which the FSOC – or any regulator – determines whether additional regulatory action is required. We believe that the inaccuracies and flaws in the Study are so significant that rather than expend resources trying to correct it by way of supplement, OFR should withdraw the Study.

We emphatically believe that, in addressing deficiencies in the current version of the Study and before using the FSOC's authority to collect, or recommend the collection of, any additional information from industry participants, the FSOC and OFR should exhaust all available data that industry participants currently submit to regulators. We especially believe this to be true in light of the FSOC's broad responsibility to "facilitate interagency coordination by facilitating information sharing and coordination among its member agencies."[5] In particular, if any further steps are taken by the FSOC, it is important that the FSOC collaborate with the SEC and other regulators with relevant subject matter expertise to collect and understand available data about capital market and asset management industry risks. As our primary regulator, the SEC is in a particularly good position to assist fellow FSOC members in their efforts to understand the asset management industry. While the SEC should oversee any future data aggregation and analysis of the asset management industry, it should also involve other asset management and capital markets regulators in order to ensure that any future policy decisions capture the industry comprehensively. The complex nature of asset management businesses and the extent to which asset management regulatory issues overlap with capital markets and other financial regulatory issues make collaboration with multiple regulators crucially important to the FSOC's efforts to evaluate the asset management industry.

II. The Study contains a number of unsupported conclusions and overly broad assertions – including mischaracterization of the role of asset managers, exaggeration of the risks associated with asset manager failure and overstatement of the risk of widespread redemption – that lead to an inaccurate view of the industry and would not promote sound policy.

The Study presents an incomplete and inaccurate view of the industry and certain risks relevant to asset managers and their clients. Because the analysis set forth in the Study is based on a limited amount of data and a number of inaccurate and unfounded conclusions (which

[5] GAO, "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination," 21 (November 2011) (recommending, among other things, "that FSOC direct the Office of Financial Research to work with its members to identify and collect the data necessary to assess the impact of the Dodd-Frank Act regulations on, among other things, the stability, efficiency, and competitiveness of the U.S. financial markets"), and 12 U.S.C. § 5322(a)(2).

we discuss throughout this section of our letter) and ignores significant recent regulatory initiatives, the conclusions OFR draws in the Study are fundamentally flawed and result in mischaracterizations of the industry. As a result, the Study should not be relied on or used in evaluating the need for any additional regulation or data collection.

Inaccuracies and unfounded conclusions in the Study range from misstated facts about specific managers to fundamental misunderstandings about basic features of the relationship between asset managers and their clients. For example, the Study mischaracterizes the role of asset managers, understates the facility with which investors replace managers and move assets among investment products, and overstates the market reaction to such turnover and, more generally, the risk of widespread redemptions and asset manager failure. We find troubling that OFR did not provide data or empirical support for its observations of the industry. The Study's descriptions of certain factors that make the asset management industry vulnerable to shock do not indicate a complete understanding of risk mitigating regulation that is currently in place. In addition, we note that the Study contains a number of basic factual errors such as inaccurate statements of certain managers' assets under management, incorrect corporate names of certain managers and incorrect or incomplete descriptions of certain managers' business lines and products.

A. *The Study mischaracterizes the role of asset managers and the market risks associated with failure of an asset manager*.

Because the Study does not accurately describe the role of asset managers, it fails to explain whether, and how, they could be sources of widespread market risk. Different risk factors are relevant to asset managers and their products, and the legal separation between asset managers and their assets under management differentiates asset managers from other large financial institutions. The distinction between managers and their products is key to understanding how and where risk exists in the asset management industry. In spite of how important this distinction is to an understanding of the industry, OFR does not consistently or clearly differentiate asset management firms (*i.e.*, the manager that provides investment advice to and/or directs the investment activities of a fund or product it offers) from the products offered by asset management firms. The Study's aggregated treatment of asset managers and the products they offer undermines a clear view of potential risks that may result from collective investment activities. The analysis set forth in the Study, therefore, cannot serve as a foundation for policy discussions regarding the industry, let alone any consideration by the FSOC of whether any threats to the financial stability of the United States may arise from asset management.

The Study seems to suggest that the small size of an asset manager's balance sheet relative to its assets under management is a potential source of risk.[6] This suggestion lacks appreciation for the role of asset managers and the way in which the relationship between managers and the clients whose assets they manage distinguishes asset managers from other

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[6] OFR Study, pages 19-20.

types of financial institutions. As discussed in Section I, the role of an asset manager is to act as an adviser, on an agency basis, and to provide investment advice to clients in their quest for exposure to a particular strategy and its attendant investment results. Pursuant to applicable regulation, client assets are not commingled with proprietary assets held in the asset manager's name and are typically held by independent custodians. An asset manager's assets are relevant to its financial wherewithal and its ability to operate its business, but are irrelevant with respect to its clients' investment experiences, whether gains or losses, since asset managers do not guarantee client or investor losses. The ratio of a manager's book value to its assets under management is not a useful measure of risk because, in the event of investment losses, an asset manager's clients do not have recourse to the assets of the manager absent violation by the manager of a legal duty imposed by law or contract, and an asset manager's creditors do not have recourse to the assets of the manager's clients.

Although the Study claims to appreciate the fundamental differences between asset management activities and commercial banking and insurance activities,[7] its analysis of the risks associated with asset manager failures does not reflect an appreciation that asset manager failures and bank holding company failures have different consequences and implications. For example, the Study seems to imply that a problematic regulatory gap exists between asset managers that are affiliates of bank holding companies and asset managers that are independent entities because independent asset managers are not subject to capital requirements and other prudential standards.[8] We believe that the distinct regulatory requirements applicable to bank holding companies reflect the different business risks relevant to those entities. If a bank fails, depositors lose the value of their deposits that exceed insured amounts and borrowers lose access to a source of funds. Bank failures cause the amount of money and credit available in the market to decline and can create a systemic shock. Capital requirements applicable to large bank holding companies address balance sheet risk of the bank holding company to which creditors, borrowers and other counterparties of the bank are exposed. In contrast, capital requirements applicable to asset managers would not protect against investment losses experienced by clients or client counterparties. In fact, even the Dodd-Frank Act's definition of prudential standards reflects awareness that leverage limits are not appropriate for asset managers.[9]

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7 OFR Study, page 1.

8 The Study refers anecdotally to capital requirements applicable to bank holding companies that manage "money-like funds": "[t]he Federal Reserve's annual stress test requires the asset management divisions of large bank holding companies with money-like funds to set aside capital to cover the risk that they would have to support some of their funds during stress conditions." OFR Study, page 19. OFR also notes that "[s]everal large, complex financial institutions with asset management divisions suffered material distress during the recent crisis. Recent policy measures that seek to reduce these risks include heightened prudential standards for banks and designated nonbank financial companies and enhanced resolution authorities." OFR Study, page 19.

9 Under Section 165 of the Dodd-Frank Act risk-based capital requirements and leverage limits are a required prudential standard for designated financial institutions "unless the [Federal Reserve], in consultation with the [FSOC], determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment

The Study claims that "investors may believe that they can rely on sponsor support of [a] fund or product in a crisis, even in the absence of a legal or stated guarantee . . . because of the way a product was marketed or because such support has been granted in the past."[10] We disagree with the claim in the Study that investors in registered and private funds expect fund managers to back-stop losses in such funds,[11] and note that offering documents typically include prominent language that the investors may lose some or all of the value of their investments. We are troubled by the suggestion that managers should hold capital reserves to support funds if asset values decline and redemptions accelerate.[12]

Unlike the failure of a banking institution, which puts depositor funds at risk, the failure of an asset management firm does not put investors' assets at risk, even in instances where the manager has an affiliate that provides custodial services, because general creditors of the manager do not have recourse to the assets held in clients' names. Basic features of the asset management industry contradict the Study's suggestion that leverage limits and capital requirements might be appropriate risk mitigation tools with respect to asset managers. These features include the separation between a manager's assets and liabilities and the assets and liabilities of any fund or account it manages, the absence of any legal obligation for a manager to back-stop its investor's losses, and the impact of existing regulation that prohibits asset managers from commingling client assets with proprietary assets in the asset manager's name. We believe that by misconstruing these essential features of the industry, the Study creates a false picture of risks that may exist in the industry.

B. *The Study inaccurately evaluates and overstates potential contagion effects associated with fund redemptions and common investment behavior, such as reaching for yield.*

The Study over-estimates the potential for fund redemption risk and overstates the connections between funds and the risk that significant redemptions in one fund will cause other funds in the same complex to suffer significant redemptions. In several sections, the Study claims that concerns about significant redemptions in one fund could quickly spread to other funds, or could create a concern about the stability of an asset management firm. For example, the Study asserts that "[i]nvestors' concerns about the liquidity of one fund can quickly spread to similar or related funds, or to the sponsor of a fund complex."[13] We believe that these statements are overly broad and do not generally apply to managed funds. The assets of funds and accounts advised by the same manager are not commingled with each other and the assets of one client cannot be used by the manager to meet the obligations of another client of the manager. In the

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company activities or assets under management) or structure, in which case, the [Federal Reserve] shall apply other standards that result in similar stringent risk controls."

10 OFR Study, page 14.

11 *Ibid*.

12 OFR Study, page 19.

13 OFR Study, page 13.

case of funds registered under the ICA, funds are permitted to have only very limited business relationships with affiliated persons, including their manager and other funds managed by that manager.[14] In addition, registered funds are already subject to leverage limitations[15] and liquidity restrictions[16] designed to assure that they have adequate investments to meet their redemptions.

In proposing that the failure of one fund could have a contagion effect on other funds managed by the same asset manager, the Study ignores these regulations and regulatory restrictions, as well as the fact that different funds and products offered by an asset manager have different strategies. Losses in one fund do not necessarily lead to losses in another fund or product with likely different strategies and holdings. The suggestion of this contagion effect and the implication that it leads to a systemic shock is simply unfounded. There is no evidence cited in the Study – and our members are aware of none – that would suggest that during the financial crisis, or at other times, poor performance of one or more funds in a fund complex creates contagion leading to disproportionate redemptions, much less runs, for other funds in the complex.

The Study appears to focus on the investment activities of asset managers, on behalf of their clients and on a proprietary basis, and the effects that similar trading strategies could have on the market for a particular asset class. In particular, the Study identifies reaching for yield (*i.e.*, seeking higher returns by purchasing relatively riskier assets than they would otherwise for a particular investment strategy[17]) as an example of risk-creating investment behavior. The Study is highly critical of "reaching for yield" due to the impact it can have on the value of particular asset classes. The Study's criticism of "reaching for yield" undervalues different investor risk appetites and the fact that for every seller of a distressed asset at a loss,

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14 *See* Section 17 of the ICA.

15 Under Section 18 of the ICA, registered funds generally may not incur indebtedness or otherwise issue "senior securities" without having an asset coverage of at least 300 percent (including the amount borrowed). Registered closed-end funds also must comply with this asset coverage requirement with regard to issuances of debt securities and must have at least 200 percent asset coverage in the event of issuances of preferred stock (including the involuntary liquidation preference of such preferred stock). In addition, the SEC and its staff generally view any transaction that exposes a registered fund to a risk of loss greater than the amount of the investment as raising senior security concerns. *See* SEC, General Statement of Policy, "Securities Trading Practices of Registered Investment Companies," 44 Fed. Reg. 25,128 (April 27, 1979). Without resolving whether certain derivatives transactions that create leverage are senior securities, the SEC staff generally will not treat leveraged transactions as senior securities provided that a fund enters into a fully offsetting transaction (*e.g.*, owning a security that the fund has sold short) or by segregating or earmarking on its custodian's books liquid assets equal in value to the fund's potential exposure from the leveraged transaction.

16 The SEC has taken the position historically that a registered open end fund must limit its holdings of illiquid securities (that is, those that cannot be sold within seven days at current value) to no more than 15% of the fund's assets. *See* Revisions of Guidelines to Form N-1A, 57 Fed. Reg. 9828 (Mar. 20, 1992).

17 OFR Study, page 9.

there is a buyer with the potential to realize a gain, perhaps significant, over time once the value of such asset recovers.[18] Moreover, the Study ignores that in many instances asset managers are subject to client guidelines and oversight that monitors their *risk adjusted* returns, and that "reaching for yield" in fact can result in questions from a client or its consultants that could lead to termination of the asset manager's contract for operating outside of client guidelines.

C. *The Study's assertion that "herding" investment behavior may transmit or magnify financial shocks is not sufficiently supported.*

The Study claims that a tendency among "some asset managers" to "crowd or 'herd' into popular asset classes or securities regardless of the size or liquidity of those asset classes or securities" could contribute to increases in asset prices and could increase market volatility and distress in the event of a sudden market shock.[19] The Study does not specify the types of asset managers to which the statement may relate. For example, the Study presumably is not referring to mutual fund or money market fund managers since mutual funds must maintain at least 85% of their portfolios in liquid securities and money market funds must comply with weekly liquidity requirements. The vagueness of the statement is troubling because it creates the impression that asset managers are free to invest in whatever assets they choose and may pile their clients' assets into investments without reference to an investment mandate, and ignores the fact that asset managers are fiduciaries and must invest their clients' assets pursuant to investment parameters set by their clients.[20] In addition, the Study does not include any empirical data or economic analysis to show whether or how "herding" behavior contributes to changes in asset values or increases market volatility or distress.

Similarly, later in its discussion of herding investment behavior, the Study asserts that ETFs "may transmit or amplify financial shocks originating elsewhere." The Study goes on to explain that "[t]he effects on market liquidity of trading in ETFs are ambiguous" and "it will be critical to study how the ETFs' capital markets service providers and partners (authorized participants and market makers) cope with market stress and volatility."[21] The Study does not support its criticism of ETFs with any empirical data.

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[18] While we commend the Study for acknowledging the price stabilizing effect this behavior can have, we note that the link to asset managers with financial strength and liquidity as a basis for an asset manager's ability to engage in such price stabilizing activity is misguided and further evidences confusion as to the asset manager's role as an agent in investing its clients' assets. OFR Study, page 12 ("[A]sset managers with the financial strength and liquidity to buy assets trading significantly below their intrinsic values potentially could help to stabilize declines in prices.").

[19] OFR Study, page 9.

[20] *See* OFR Study, page 7: "a certain combination of fund- and firm-level activities within a large, complex firm, or engagement by a significant number of asset managers in riskier activities, could pose, amplify, or transmit a threat to the financial system."

[21] OFR Study, page 11 ("On one hand, trading in ETF shares could improve price discovery in relatively illiquid markets by providing a market price for a portfolio whose underlying holdings are thinly traded. On

Overall, the analysis of "herding" in the Study seems one-sided and appears not to be well reasoned. We think that the Study should have recognized that clients of asset managers provide liquidity in periods of market stress. For purposes of the FSOC's mission, although "herding" may demonstrate exposure to market risk, it does not provide a basis for the conclusion that asset managers' reaction to market stress (whether they buy or sell depreciating assets) could be a potential threat to the financial stability of the United States. Indeed, counter arguments can be made that professional asset management advice may lead to greater diversity of opinion in evaluating investments in particular assets or asset classes and in that sense may serve as a counter to herding behavior. For this reason, the Study's one-sided view of the effects of herding behavior is unfounded.

D. *The Study claims that certain risk-taking activity exists and could cause adverse market contagion without referring to any contemporary empirical data or research.*

The Study asserts that "managers who are lagging their peers toward year-end often take more risks than managers who are outperforming."[22] It claims that "managers may take risks that investors do not fully appreciate" and that, if the risks suddenly became apparent to investors, they could "spur redemptions and a flight to quality, which could in turn trigger adverse market contagion as managers sell assets to meet those redemptions."[23] This broad assertion – that managers may take undisclosed risks that, once disclosed, indirectly cause "adverse market contagion" – does not appear to be founded on any empirical research by OFR.[24] Instead, OFR makes a broad conclusion about investors' knowledge without a clear factual basis and without specifying which investment products and which investor classes may be susceptible to this dynamic. For example, the level of investors' ignorance assumed by OFR in this scenario seems to be at odds with the basic structure of separate accounts, which are typically held by sophisticated investors – often with their own in-house investment and risk

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the other hand, ETFs, like many pooled vehicles, could also potentially accelerate or amplify price movements in markets during market turbulence, thus reducing market liquidity.").

22 OFR Study, page 9, citing Chevalier, Judith, and Glenn Ellison. "Risk Taking by Mutual Funds as a Response to Incentives." *Journal of Political Economy* 105, no. 6 (1997): 1167-1200, and Brown, Keith C., W. V. Harlow, and Laura T. Starks. "Of Tournaments and Temptations: An Analysis of Managerial Incentives in the Mutual Fund Industry." *Journal of Finance* 51, no. 1 (1996): 85-110. We are concerned that, in this instance and elsewhere in the Study, OFR relies on dated information that does not reflect the post-financial crisis state of the industry.

23 OFR Study, pages 9-10.

24 We also note that the SEC's Division of Enforcement scrutinizes trading practices that may mislead investors to determine whether an investment adviser may have violated SEC antifraud rules and has brought enforcement actions against advisers that engage in trading that is inconsistent with the investment mandate they disclose to investors. *See* Richard H. Walker, "Investment Management in the 21st Century," (Oct. 18, 2000), *available at* http://www.sec.gov/news/speech/spch412.htm (An antifraud violation may occur when "an adviser replaces investments in otherwise permissible securities with investments in high performers just before the end of the reporting period to make it appear as though the adviser has a winning hand.").

staffs or who have engaged outside investment consultants – that generally require from their manager regular reports about portfolio composition and incremental investment strategies. The Study claims that separate accounts make up two-fifths or more of the total assets under management across U.S. asset managers.[25]

E. *The description of redemption risk in the Study is based on overly broad characterizations.*

On the second page of the Study, OFR states that its report "does not focus on particular risks posed by money market funds."[26] However, in several sections, the Study refers to money market fund and enhanced cash fund redemptions, and cites academic research concerning such redemptions,[27] to describe risks that it claims relate to all managed products. For example, OFR relies on an enhanced cash fund anecdote to conclude that redemption risk is relevant to "any collective investment vehicle offering unrestricted redemption rights."[28] We are concerned that the analysis of redemption risk in the Study is based on overly broad categorizations and that it mischaracterizes the risks associated with redemptions by investors of their interests in funds and other products. The Study points to fact patterns and market theories previously put forth in an effort to characterize one area of the asset management industry (money market funds) to support a conclusion that these fact patterns and market theories describe the entire asset management industry, without addressing the logic of that leap or, at a minimum, explaining why these patterns and theories have equal applicability in other contexts.

F. *The Study is not internally consistent in its statements about the degree to which asset managers are substitutable.*

The Study's analysis of firms as sources of risk undervalues the degree of competition in the asset management industry and the ease and frequency with which investors move their assets between managers and investment products.[29] Even if distress at a manager (such as financial distress, or news of a regulatory violation or significant compliance problem) did prompt investors to withdraw funds from a manager's various products, the Study does not provide sufficient evidence to support the following claim:

> material distress at the firm level, or firm failure, could increase the likelihood and magnitude of redemptions from a firm's

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25 OFR Study, page 2.

26 *Ibid*.

27 OFR Study, page 14, citing Brady, Steffanie, Ken Anadu, and Nathaniel Cooper, "The Stability of Prime Money Market Mutual Funds: Sponsor Support from 2007 to 2011." Working Paper RPA 12-3, Boston: Federal Reserve Bank of Boston (August 13, 2012).

28 OFR Study, page 14.

29 OFR Study, pages 18-20.

> managed assets, possibly aggravating market contagion or contributing to a broader loss of confidence in markets . . . . if an investment adviser managed a large amount of separate account assets with complex, highly-customized strategies, a new manager may not be willing or able to quickly replace an existing manager during a period of market turbulence, or clients may require managers to liquidate assets prior to a transfer contributing to market risk . . . [30]

We think that this statement underestimates the substitutability of asset managers, and the fact that, in the case of larger investment mandates, assets often are transferred in kind to a new manager rather than liquidated to cash through market transactions.

The ease of moving client assets among asset managers is facilitated by the role played by custodians. Assets are typically held away from asset managers in the safekeeping of a custodian bank. In the case of registered funds, assets generally must be held by a qualified custodian.[31] In the case of managed accounts, clients typically require assets to be held by a custodian for the specific purpose of allowing for prompt allocation and transfer of management responsibilities among multiple asset managers. In this regard, we note that OFR does not acknowledge that, in spite of significant investment losses and redemptions, and very weak market conditions, large asset managers generally weathered the financial crisis well and no diversified asset manager failed during the crisis. Moreover, we are not aware of any instances of market disruption caused by a fund replacing its manager and we note that, when managers are replaced, one firm's loss is another firm's gain.

G. *The Study's observation that risk management functions are not uniform across asset management companies does not lead to a clear conclusion.*

The Study claims that asset management firms do not have consistent risk management practices and asserts that not all asset managers have chief risk officers without explaining the significance of having, or not having, a chief risk officer.[32] In addition to not providing a basis for its claim, the Study also does not consider whether other risk management

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30 OFR Study, page 19.

31 Section 17(f) of the ICA.

32 We are concerned that, by focusing on the lack of uniform risk management staff among asset managers, OFR may be suggesting that it would be appropriate to inject a bank regulatory concept into the fund industry. We note that risk management is one of the prudential standards identified in Section 165. *See* Section 165(b)(1)(A)(iii). Risk management is an important part of asset management but an asset manager's risk management systems should not necessarily resemble a risk management system employed by a bank. An asset management firm, unlike a bank, focuses its risk management on its assets under management rather than on assets on the firm's balance sheet. The risk management function, including whether they appoint a chief risk officer, of an asset manager will depend on the nature and amount of assets under management, among many other factors.

functions are in place at asset management firms that have no chief risk officer that may serve a function similar to the function served by a chief risk officer. The Study does not cite a data source for its claim that not all asset managers have a chief risk officer and, based on the feedback from our members, OFR did not engage in extensive discussion with industry participants on this topic.

In any event, whether or not an asset management firm may have a chief risk officer to manage risk across its managed portfolios is not indicative of a firm's ability to manage its clients' risk. Many larger asset management firms have sophisticated investment risk and operational risk departments for this purpose. As asset management firms devote significant resources to managing risk in client portfolios, it seems inapposite to focus on whether or not a firm has a chief risk officer, akin to a head risk manager of a banking organization that invests its own balance sheet rather than as an agent on behalf of its clients.

III. The Study does not sufficiently account for existing regulation, including rules implemented since the financial crisis, that regulate investment advisers, funds and other investment vehicles, and the securities, derivatives and other investment instruments in which asset managers' clients invest.

We believe that the Study places too little emphasis on existing regulation that extensively regulates asset managers, the funds and other vehicles they advise and the trading activities in which they engage. We are concerned that the Study largely disregards existing risk regulation even in instances where the regulation was recently implemented under the Dodd-Frank Act to address systemic risk and threats to U.S. financial market stability. Perhaps because it gives too little weight to current regulatory initiatives, the Study is inconsistent with publications by other regulatory bodies that evaluate whether the asset management industry is a source of systemic risk. For example, the Committee on Economic and Monetary Affairs recently published a motion regarding a proposed recovery and resolution framework for non-bank institutions in which it explains "[t]he size and business model of the asset management sector does not typically present systemic risk" and observes that asset segregation and custodian arrangements are a "substantial safeguard" and that "an effective securities law regime could mitigate many of the issues involved in case of failure of a large crossborder asset manager."[33]

Existing regulation seeks to protect investors from fraud and creates a high degree of transparency in the industry – both for investors and for regulators. Asset managers are currently subject to extensive reporting requirements.[34] In addition to investor protection and transparency, existing regulation addresses market risk by monitoring and imposing restrictions and conditions on certain trading activities and investment contracts that could contribute to

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33 European Parliament Committee on Economic and Monetary Affairs, Motion for a European parliament resolution on recovery and resolution framework for non-bank institutions (Oct. 22, 2013).

34 Please see the list of reporting requirements and regulatory filings attached to this letter as Annex A and the discussion in Section IV.B.

financial instability. In particular, we believe that the regulations identified in the following paragraphs should have been given greater emphasis in the Study.

A. *Regulation of Asset Managers*

Asset managers are subject to regulation by multiple regulators under multiple regimes worldwide. In the United States, under the Advisers Act and related rules, a large majority of asset managers (and every firm named in the Study) must register with the SEC and comply with an extensive set of record keeping, disclosure, custody, reporting and other requirements. Registered investment advisers are subject to inspection and examination by the SEC for compliance with its rules. Registered investment advisers are required to file a report on Form ADV that describes their business activities, total assets under management, ownership, disciplinary history, and extensive private fund information, among other things. The filings are publicly available and a subpart of the form must be delivered to investors in a readable brochure format. Investment advisers to private funds with at least $150 million in assets under management must file Form PF with the SEC to provide the regulator detailed information about their geographic, market, credit and liquidity risk exposures. There is a strong likelihood that the data submitted on Form PF, along with other reporting requirements described herein and in Appendix A, will fill the gaps the Study claims exist. Asset managers that direct investments in listed equities and exchange-traded options over a certain threshold must register with the SEC as "large traders." Broker-dealers, in turn, must record trading information and report such information to the SEC upon request.

The Commodity Futures Trading Commission ("**CFTC**") also regulates asset managers that offer investment advice with respect to commodity interests such as futures, commodity options and swaps and/or sponsor collective investment vehicles that trade such instruments. Asset managers that direct investments in futures and options, and in swaps that reference physical commodities, above certain thresholds are subject to the CFTC's large trader reporting regimes and must report the positions that they take on behalf of their clients promptly upon demand. In addition, the CFTC and applicable exchanges maintain position limits and accountability levels that are designed to cap the size of the trading positions that asset managers and accounts deemed to be within their control can take in certain commodity futures contracts, on an aggregate basis, in order to curb any single trader's ability to influence or control a market.[35]

Rules promulgated by the CFTC also regulate asset managers and the investment activities of asset managers and the funds and accounts they manage if they trade more than a *de minimis* amount of commodity interests. More specifically, the CFTC rules impose registration, reporting, recordkeeping and disclosure requirements on certain managers and certain affiliated entities that fall within the definitions of commodity pool operator ("**CPO**") or commodity trading advisor ("**CTA**"). In 2012, the CFTC amended its exemptions for CPOs that must register with the CFTC. As a result of these changes, a substantial number of operators of both

35 *See* Section 737 of the Dodd-Frank Act. It is currently expected that the CFTC will re-propose a rule to expand the scope of these limits.

private funds and registered funds, including asset managers, have been required to register with the CFTC. Because the exemptions from CTA registration with the CFTC on which asset managers relied were directly tied to the amended CPO exemptions and swaps were included within the CFTC's jurisdiction, a substantial number of asset managers have had to register with the CFTC as CTAs. Significant periodic reporting requirements are imposed on CPOs and CTAs in Form CPO-PQR and Form CTA-PR, respectively, which require CPOs and CTAs to provide detailed schedules of their investments and other information to the CFTC. Importantly, the CTA registration determination requires an asset manager to assess the derivatives holdings and other investments in the separate accounts it manages. Moreover, the reporting obligations for CTA registrants require disclosure relating to separate accounts managed by registered CTAs.

Additionally, the U.S. Department of Labor oversees the fiduciary requirements imposed by the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") on those employee pension and welfare benefit plans subject to ERISA (such as corporate pension plans). Any investment adviser that serves as a "fiduciary" to an ERISA plan (by managing plan assets or rendering investment advice for a fee with respect to an ERISA plan) is subject to ERISA's stringent fiduciary standards. ERISA plans typically are invested in unleveraged, long-only, highly stable assets. Furthermore, these assets must be held in safekeeping in a trust in the custody of a trustee, typically a bank or other prudentially regulated entity. ERISA plans report their assets and financial position annually in filings with the Department of Labor and the Internal Revenue Service. Finally, banks, bank holding companies and their subsidiaries and affiliates are subject to extensive regulatory oversight, regular examination and supervision. In particular, the Office of the Comptroller of the Currency ("**OCC**") regulates the investment management activities of national banks under its fiduciary rules. Under the OCC fiduciary rules, a national bank is authorized to act as an investment adviser, and is subject to fiduciary requirements, including adopting policies and procedures, recordkeeping, asset segregation and participating in annual investment reviews, among other things, in connection with such activities.

B. *Regulation of Funds and Other Investment Vehicles*

Registered funds are subject to extensive regulation under the ICA and related rules. As described throughout our letter, under the ICA, registered funds must comply with asset safekeeping and custody requirements, leverage restrictions, restrictions on transactions with affiliated persons, conflicts of interest rules, diversification and liquidity requirements, among other things.

Additionally, the Dodd-Frank Act created a new category of registrant called major swap participants and major security-based swap participants (collectively, "**MSPs**"). The category of MSPs is in addition to the category of dealers which captures traditional entities that make a market in swaps and security-based swaps. As stated in the final rules defining MSPs, the category of MSPs was itself created to address concerns that certain nondealer market participants can create a high level of risk that could significantly impact the U.S. financial markets if left unregulated.[36] Congress tasked the CFTC and the SEC with further defining key concepts in the definition of MSP used in the Dodd-Frank Act. The final rule release indicates that the CFTC and SEC determined that it would not be appropriate to regulate fund asset managers or investment advisers as MSPs since no risk associated with swap positions is attributable to them. Instead, the CFTC and SEC clarified that the MSP test should be performed on a fund-by-fund basis.[37] The final rules provide numeric tests regarding whether an entity exceeds certain thresholds in its amount of swap exposure to determine whether these entities should be regulated as MSPs by the CFTC and/or the SEC. In the final rules defining MSP, the CFTC and the SEC stated that they chose certain thresholds to capture an entity before it reaches a level of risk that could be deemed systemic.[38] These rules would apply to funds that create excessive amounts of swap exposure by requiring them to post additional margin and hold additional capital, as well as to make additional reporting and take other measures to mitigate risk.

C. *Regulation of Market Activity*

The CFTC and SEC have proposed and implemented a number of rules pursuant to Title VII that are transforming certain aspects of trading in derivatives. In its discussion of leverage embedded in derivative contracts as a factor that makes the industry vulnerable to financial shocks, the Study does not mention the regulatory initiatives pursuant to Title VII of the Dodd-Frank Act that have profoundly changed the risk profile of derivatives since the financial crisis.[39] This omission, in our view, challenges the credibility of the Study's analysis of derivatives as a source of risk. The Title VII regulations are designed to address risks, including systemic risks associated with excessive leverage at certain financial institutions and the lack of transparency in derivatives trading, that played a role in the financial crisis. The new initiatives include:

(a) mandatory clearing and execution on new trading platforms of certain swaps designed to increase transparency and limit counterparty risk in standardized contracts,[40]

(b) margin requirements for both uncleared and cleared swaps designed to limit counterparty risk in derivative contracts and limit the amount of leverage created by these instruments,[41]

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36 SEC and CFTC, Joint Final Rule, "Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant,'" 77 Fed. Reg. 30,596 (May 23, 2012) (the "MSP Release").

37 MSP Release at 30,689-30,690.

38 MSP Release at 30,666.

39 *See* OFR Study, pages 17-18.

40 *See* Sections 723 and 763(a) and (c) of the Dodd-Frank Act.

(c) capital requirements for swap dealers and MSPs to reduce the likelihood of insolvency,[42] and

(d) new data reporting and recordkeeping requirements to give the CFTC and SEC a greater overview of trading in derivatives and improve their ability to monitor trading activity.[43]

Each of these measures is intended to reduce leverage, increase transparency, aid in monitoring trading activity, and mitigate risk in derivatives transactions and each measure addresses a potential source of risk to the financial markets and its participants. Investors in funds and accounts that engage in derivatives transactions will benefit from these new regulations as will the financial system. The final rules regarding swap data repositories also provide that the FSOC is entitled to request and receive, on a confidential basis, all data obtained by the swap data repository.[44] Therefore, the FSOC will have access to the data that is presently being gathered by swap data repositories.

Although it does not mention the CFTC rules that will influence how asset managers and the vehicles they advise use derivatives, the Study does acknowledge the SEC's review of the use of derivatives by investment companies. The SEC, in a 2011 Concept Release, indicated that it is studying the use of derivatives by registered investment companies to determine whether regulatory initiatives or guidance are needed to improve the current regulatory regime for registered funds and, if so, the nature of any such initiatives or guidance.[45] We think that the SEC is well-positioned to make a determination about any additional regulation that may be necessary regarding the use of derivatives by registered investment funds.

In addition to CFTC and SEC derivatives regulation, other efforts are underway to mitigate the market risks that arose during the financial crisis. For example, the Treasury Market Practices Group ("**TMPG**") of the Federal Reserve Bank of New York ("**FRBNY**") recently implemented revised settlement guidelines to support more timely trade confirmations in the tri-party repurchase agreement market. Further reforms required by FRBNY will mitigate intraday credit risks, enhance transparency and mitigate risks related to defaulted securities.[46] Similar to

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41 *See* Sections 731 and 764(a) of the Dodd-Frank Act.

42 *See* Sections 731 and 764(a) of the Dodd-Frank Act.

43 *See* Sections 728, 763(i) and 766 of the Dodd-Frank Act.

44 CFTC, Final Rulemaking, "Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps," 77 Fed. Reg. 35,200, 35202 (June 12, 2012).

45 Concept Release, SEC, "Use of Derivatives by Investment Companies under the Investment Company Act of 1940," 76 Fed. Reg. 55,237 (Sept. 7, 2011).

46 TMPG, "TMPG Announces Market Practice Recommendations to Support More Timely Trade Confirmation in the Tri-Party Repo Market" (May 23, 2013).

the margin requirements for swaps, TMPG also has required margining for forward-settling mortgage-backed securities, which will mitigate risk inherent in these instruments and limit any leveraging effect of investments in securities that settle at a later date.

Several provisions of the Dodd-Frank Act seek to address risks inherent in securitization of assets, including mortgages, and to minimize the risks and consequences of default on the underlying obligations. Specifically, new conflicts of interest rules, disclosure requirements, issuer representations, asset review and evaluation obligations, and risk retention requirements that require securitizers to retain an economic interest in the credit risk of their securitizations all address risks in the asset-backed securities market that contributed to the financial crisis.[47] These new rules impact asset managers that manage securitization vehicles and provide additional protections for investors in these securities, which often include managed funds and accounts. Additionally, market regulators have recently proposed rules that would increase the transparency of "dark pools" (*i.e.*, private trading markets) and it is expected that further changes will follow.[48] Finally, the Dodd-Frank Act governs proprietary trading of bank holding companies and relationships with hedge funds and private equity funds under the so-called "Volcker Rule."

Additionally, the Study does not recognize the role played by other regulated financial institutions with respect to certain investment related activities, such as securities lending. We believe that the description of securities lending in the Study misrepresents the level of risk in the activity that is relevant to asset managers and their clients. The Study does not sufficiently acknowledge that other participants in securities lending transactions, including brokers and lending agents, are currently highly regulated. In addition, in the case of separate account mandates and regulated funds, the decision to lend securities is made by the client and fund board, respectively, not the asset manager.

Because the Study does not fully account for the foregoing regulatory initiatives, most of which have been implemented since the financial crisis, we think that it mischaracterizes certain aspects of the asset management industry and the degree to which data about the industry are available to regulators and investors. Any thoughtful and informed policy discussion concerning the industry should fully consider the regulatory frameworks in which asset managers operate.

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[47] Sections 621 and 941-945 of the Dodd-Frank Act.

[48] Financial Industry Regulatory Authority, Proposed Rule (Sept. 30, 2013), *available at* http://www.finra.org/industry/regulation/rulefilings/2013/p354142.

IV. OFR appears to have used only a fraction of available data in its research and, consequently, additional analysis is necessary to provide the FSOC a comprehensive view of the industry and its relevance to the financial stability of the United States.

A. *OFR did not sufficiently involve industry participants in its research.*

OFR sought very little input from industry participants to conduct its research and prepare its report. Based on our members' experience, we understand that OFR staff participated in only a handful of meetings with a select number of asset managers during the eighteen months it spent producing the Study. We and our members attempted on numerous occasions to engage meaningfully with OFR because we (i) are sensitive to some FSOC members not being as familiar with existing asset management regulation as the SEC, our primary regulator, (ii) believe that deep knowledge of the current business and regulatory landscape is important to any analysis of the industry and the FSOC's mission, and (iii) are concerned that lack of familiarity with the industry and its current regulatory scheme could lead to poorly designed regulations or bad policy decisions. During our limited engagements with OFR, it was our sense that, in contrast to other government research organizations we have worked with on comparable research initiatives, OFR had neither a consistent and systematic approach to interviews nor a rigorous and transparent research methodology.

We note that our concerns regarding the OFR research process and lack of industry involvement in drafting the Study are shared by others. The Government Accountability Office ("**GAO**") published a report in September 2012 recommending that both the FSOC and OFR "enhance their accountability mechanisms and level of transparency."[49] The GAO noted that public information about the FSOC's and OFR's activities is limited and recommended that "both entities develop a communication strategy to improve communications with the public."[50] The GAO advised that "more needs to be done to promote collaboration – both among FSOC members and between FSOC and external stakeholders" and noted that "[e]ffective collaboration could eliminate unnecessary duplication for both the industry and regulators."[51] In light of the GAO's report, we believe that OFR should have conducted its research with greater industry participation and a rigorous well-conceived methodology, and published the Study for public comment.[52]

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49 GAO, "New Council and Research Office Should Strengthen the Accountability and Transparency of Their Decisions", 11 (September 2012) ("[C]ontinued efforts to improve the entities' accountability, transparency, and collaboration are needed . . . . Continued efforts to increase transparency will allow the public and Congress to better understand FSOC's and OFR's decision making, activities, and progress.").

50 GAO, "New Council and Research Office Should Strengthen the Accountability and Transparency of Their Decisions", 2.

51 GAO, "New Council and Research Office Should Strengthen the Accountability and Transparency of Their Decisions", 52.

52 Although OFR was not required to seek public comments on the Study, regulatory analysis guidelines and best practices commonly include notice and comment periods because they promote public participation in

We are particularly frustrated by the opaque process OFR employed to conduct its study because we are sensitive to systemic risk, such as the "threat to the financial stability of the United States" referred to in Section 113 of the Dodd-Frank Act, not being easily defined or measured. Failure to define systemic risk succinctly and apply clear quantitative thresholds to any measurement of systemic risk could undermine the assessment of possible regulatory initiatives to mitigate such risk.[53] Lars Peter Hansen, an economist and Nobel laureate, in his study of systemic risk measurement and regulation, observed:

> The need to implement new laws with expanded regulation and oversight puts pressure on public sector research groups to develop quick ways to provide useful measurements of systemic risk. This requires shortcuts, and it also can proliferate superficial answers . . . . Stopping with short term or quick answers can lead to bad policy advice and should be avoided.[54]

We are concerned that the Study proffers superficial statements about risk in the asset management industry and believe that OFR could have produced a more informed, higher quality report that would have been more helpful to the FSOC had it been receptive to further involving industry participants in its research, published the Study for public comment, and, generally, been more transparent in its approach.

B. *The Study is based on incomplete data and the statements included in the Study were made without the benefit of the extensive set of data currently provided by asset managers and other industry participants to regulators.*

As we describe in Section II, without providing more than anecdotal evidence drawn from a limited set of data, the Study describes ways in which activities of asset management firms and the funds they manage could transmit or amplify market shocks and identifies certain risk factors associated with asset managers, their investment activities and their products. In the Study, OFR concedes that its analysis is based on incomplete data.[55] It is unclear whether OFR analyzed the extensive set of data that is filed with the SEC, CFTC and

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the rulemaking process and help regulators anticipate and evaluate the consequences of their regulations. We believe these principles should apply, even at the study level. GAO, "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination," 7-8 (November 2011)

53 *See* Lars Peter Hansen, "Challenges in Identifying and Measuring Systemic Risk" (Feb. 11, 2013), *available at* http://www.nber.org/chapters/c12507.pdf.

54 Hansen, page 2.

55 OFR Study, pages 24-26. In the last section of the Study, OFR identifies what it believes are "significant data gaps" that "block regulators' and supervisors' view of risk-taking, leverage, and liquidity transformation across financial markets" and "hinder their ability to fully analyze the nature and extent of financial stability risks relating to the asset management industry." The identified data gaps relate to separate accounts, securities lending and repo markets and private asset managers.

other regulators and made available to the public. OFR also appears not to have reviewed the extensive set of data made available to regulators by industry participants on a confidential basis, including data provided by asset managers to regulators for the specific purpose of facilitating the measurement and evaluation of systemic risk.[56]

Asset management companies are required to submit a significant number of reports to regulators and, in some cases, are subject to extensive public disclosure requirements. We have attached a list of representative reports and regulatory filings to this letter as Annex A to illustrate the steep reporting burden currently imposed on asset managers and outline the tremendous volume of information available to the FSOC and OFR. To the extent OFR did not consider the data collected on these forms, we believe that its analysis is incomplete. We are struck, for example, by the very short treatment of Form PF in the Study given that the SEC and CFTC explain, in the adopting release implementing Form PF, that "[t]he information contained in Form PF is designed, among other things, to assist the [FSOC] in its assessment of systemic risk in the U.S. financial system" and "help establish a baseline picture of potential systemic risk in the private fund industry."[57] Similarly, even though Form CPO-PQR and Form CTA-PR provide information that is intended to help the CFTC evaluate and monitor systemic risk, these forms and the significant amount of information that they provide to the CFTC were not mentioned or acknowledged in the Study.

C. *After collecting and analyzing all of the information currently reported to financial regulators by participants in the asset management industry, the FSOC should perform a thorough cost-benefit analysis before deeming any future data request necessary to evaluate risk in the industry, and should collaborate with other regulators if it believes that any further regulatory action is necessary.*

In its current form, the analysis of the asset management industry in the Study contains too many gaps, inconsistencies and inaccuracies to provide a foundation for any informed policy discussion or regulatory action by the FSOC or any other regulator. Additional consideration of a more extensive set of available data would be required to produce a meaningful and comprehensive analysis of the asset management industry. Nonetheless, given the availability of extensive additional data, including reports designed to provide regulators information about systemic risk referenced in the previous sub-section, we believe any immediate call for additional data or further research to support such analysis would be premature and unwarranted.

Rather, before using its authority to collect, or recommend the collection of, any additional information from industry participants, the FSOC should exhaust all available data

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56 For example, OFR explains that "[a]dditional analysis will be conducted in conjunction with further analysis of data that [private] funds have begun to file on Form PF." OFR Study, page 2.

57 SEC and CFTC, Joint Final Rules, "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF," 76 Fed. Reg. 71,128 (Nov. 16, 2011).

that industry participants currently submit to regulators if they believe more analysis is necessary. Only after it has reviewed all available information and identified any specific remaining gaps should the FSOC approach industry participants for additional data if needed to determine what risks, if any, the asset management industry may pose to US financial stability, whether they require a regulatory response and, if so, what the appropriate response is.

Also, if, after collecting and analyzing all of the information currently reported to financial regulators by participants in the asset management industry, the FSOC develops a compelling analysis of risk relevant to its Title I mandate and determines that it needs more information to evaluate the industry, we believe that it should conduct a thorough cost-benefit analysis prior to collecting any additional information from industry participants.[58] Responding to new requests for information from regulators imposes significant burdens on asset management companies. Companies must invest personnel, time and money into compiling data and interpreting each request. Any broad request for more information without analyzing the data already being provided would be unduly burdensome and costly.[59]

Any attempt by the FSOC to regulate the asset management industry by designating individual asset managers or funds for prudential regulation by the Federal Reserve under Section 113 or recommending additional regulation to a primary regulator without clear evidence of threats to the financial stability of the United States posed by asset management firms would compromise the independence, and challenge the jurisdiction, of the industry's primary regulators. Although the FSOC has the power to make a recommendation with respect to an activity engaged in by firms across the asset management industry under Section 120, it must satisfy a high statutory threshold in order to exercise its authority. The FSOC has not published guidelines to explain how it interprets its authority under Section 120, but we note that the text of the statute suggests that the standard will be comparable to that in Section 113. Prior to making any decision as to whether regulatory action is warranted, the FSOC should engage

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58 We recognize that the FSOC is not required to conduct a cost-benefit analysis, but nonetheless believe that full consideration of costs is called for in this case. The GAO has recommended that federal financial regulators take steps to better ensure that the specific practices in the Office of Management and Budget's regulatory analysis guidance, including an evaluation of the benefits and costs of the proposed action and the main alternatives, are more fully incorporated into their Dodd-Frank Act rulemaking: "By taking steps to more fully incorporate OMB's guidelines in their rulemaking policies and procedures, federal financial regulators could enhance the rigor and transparency of their regulatory analyses. By taking such action, regulators could demonstrate the rationale behind their regulatory decisions and ensure that the alternatives they have chosen are in fact the most cost-beneficial options." We see no reason why the FSOC, or OFR as its agent, should be excepted from the guidance relevant to its members. GAO, "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination," 14 (November 2011). *See, e.g.* Federal Reserve Board, Statement of Policy Regarding Expanded Rulemaking Procedures, 44 Fed. Reg. 3,957 (Jan. 19, 1979).

59 Furthermore, if the FSOC and OFR determine that they require additional information about any particular investment activity (*e.g.*, securities lending), we believe that they should request information from all capital markets participants engaged in such activity and not from just a select subset. Collecting information from a select number of managers will yield an incomplete view of the activity and any related consequences or risks.

other regulators with subject matter expertise in the asset management industry to jointly consider the merits of further regulation.

We are not the first persons to acknowledge the potential that the FSOC could impede the independence of other regulatory agencies. In a letter to the FSOC prompted by its proposed recommendations to the SEC regarding money market fund regulation, a group of former SEC Chairmen, Commissioners and Senior Staff observed that "certain aspects of the powers and operation of the [FSOC] can compromise the independence of financial services regulatory agencies in which Congress has historically vested authority over particular markets" and urged the FSOC to "respect the jurisdiction, independence, subject-matter expertise, and regulatory processes of independent agencies."[60] We agree that the FSOC should not exercise its authority in ways that would undermine the independence of other regulatory agencies like the SEC.

V. The Study fails to address the fundamental questions a regulator must consider to (i) evaluate the asset management industry, the effectiveness of existing regulation, and the need for any additional regulation, if any, and (ii) design and implement any additional regulation to address possible sources of risk that may arise from the industry, and cannot serve as the foundation for informed policy discussions.

Under Section 113 of the Dodd-Frank Act, the FSOC has authority to subject a nonbank financial company to heightened regulatory requirements. The FSOC's designation authority seeks to address risk factors relevant to large, leveraged and interconnected financial institutions, such as the use of excessive leverage, maturity mismatches and major off-balance-sheet exposure, that contributed to the financial crisis.[61] Specifically, under Section 113, the FSOC may determine that a nonbank financial company will be supervised by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**") and be subject to enumerated prudential standards if either (i) material financial distress at the nonbank financial company, or (ii) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company, "*could pose a threat to the financial stability of the United States*."[62] The FSOC will consider a "threat to the financial stability of the United States" to exist for purposes of Section 113 if "there would be an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy."[63] The threshold for designation, therefore, is extremely high.

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[60] Letter to the FSOC, dated February 20, 2013, from Former Chairmen, Commissioners and Senior Staff of the SEC, re: Jurisdiction of Independent Financial Services Regulatory Agencies.

[61] 156 Cong Rec S 5902-5903 (July 15, 2010).

[62] Section 113 of the Dodd-Frank Act (emphasis added). The prudential standards for enhanced regulation under Section 113 are set forth in Section 165 of the Dodd-Frank Act.

[63] Final rule and interpretive guidance, FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21,637 (April 11, 2012) ("FSOC Final Rules Release").

Congress intended the FSOC to use its authority on a targeted basis to identify and regulate uniquely positioned entities whose failure or activities would have an unusually widespread market impact – comparable in scale and severity to the high-profile financial institution failures that the federal government intervened to prevent in 2008.[64] Senator Dodd acknowledged that the FSOC's designation authority is narrow and may not apply to asset managers when he asserted that "only a limited number of high-risk, nonbank financial companies would join large bank holding companies in being regulated and supervised by the Federal Reserve" and affirmed that "large companies providing financial services that are in fact traditionally low-risk businesses, such as mutual funds and mutual fund advisers," are not expected to be among the companies supervised by the Federal Reserve under Section 113.[65] The legislative history of Section 113 makes clear that the FSOC should not use its designation authority to impose additional regulation on specific entities if the high statutory threshold for designation is not met or to address general market risks that are better reached through means other than prudential regulation of select entities.

The FSOC has incorporated the statutory considerations in Section 113(a)(2)[66] into a six-part analytic framework that it will use to evaluate whether a nonbank financial company could pose a threat to the financial stability of the United States for purposes of Section 113.[67] The FSOC has explained that it intends to use the six-category framework "to evaluate

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64 The FSOC acknowledged the motivation for its mandate in its designation authority final rules release: "In the recent financial crisis, financial distress at certain nonbank financial companies contributed to a broad seizing up of financial markets, stress at other financial firms, and a deep global recession with a considerable drop in employment, the classic symptoms of financial instability. These nonbank financial companies were not subject to the type of regulation and consolidated supervision applied to bank holding companies, nor were there effective mechanisms in place to resolve the largest and most interconnected of these nonbank financial companies without causing further instability. To address any potential risks posed to U.S. financial stability by these companies, the Dodd-Frank Act authorizes the Council to determine that certain nonbank financial companies will be subject to supervision by the Board of Governors and prudential standards." FSOC Final Rules Release. *See also* 156 Cong Rec S 5903 (July 15, 2010).

65 156 Cong Rec S 5903 (July 15, 2010).

66 Section 113(a)(2) of the Dodd-Frank Act identifies ten considerations that the FSOC must take into account, in addition to other factors it may deem relevant, in exercising its designation authority with respect to any financial institution. The considerations are: (i) the extent of leverage of the company, (ii) the extent and nature of off-balance sheet exposures of the company, (iii) the extent and nature of transactions and relationships with other significant nonbank financial companies and bank holding companies, (iv) importance of the company as a source of credit for households, businesses and state and local governments and as a source of liquidity for the U.S. financial system, (v) importance of the company as a source of credit in low-income, minority or underserved communities, (vi) extent to which assets are managed rather than owned by the company and whether ownership of managed assets is diffuse, (vii) nature, scope, size, scale, concentration, interconnectedness and mix of activities of the company, (viii) the degree to which the company is already regulated by one or more primary financial regulatory agencies, (ix) amount and nature of financial assets, and (x) amount and nature of liabilities. *See* Section 113(a)(2) of the Dodd-Frank Act.

67 The six categories in the FSOC framework are (i) size, (ii) interconnectedness, (iii) substitutability, (iv) leverage, (v) liquidity risk and maturity mismatch, and (vi) existing regulatory scrutiny. FSOC Final Rules Release at 21,657-21,660.

nonbank financial companies under each of the 10 statutory considerations."[68] We believe that existing regulations address each of the six categories identified by the FSOC and have provided a chart (attached to this letter as Annex B) that maps current regulation to each factor. Future analysis of the asset management industry for purposes of Section 113 must balance the effects of existing regulation against the effects of any risk factors.

Although a fulsome analysis of individual asset managers or funds under the considerations set forth in Section 113 is outside of the scope of this letter, we note that even cursory consideration of the ten statutory considerations and six categories identified by the FSOC suggests that asset managers and funds are not entities suitable for designation. For example, neither asset managers nor, outside of certain specialized investment vehicles, the products they offer provide an important source of credit to consumers. The focus on provision of credit, balance sheet risk and leverage are important bank risk factors, but are less relevant to an evaluation of asset management companies. We believe that measures used to regulate systemically important banks, including prudential oversight, and financial market concerns that underpin bank regulation, do not translate meaningfully to the asset management industry. We are concerned that the Study's insensitivity to the unique position asset managers occupy in financial markets may reflect an inappropriate "one size fits all" approach to risk regulation.

The Study does not sufficiently emphasize that asset managers generally do not own the assets they manage, and that ownership of such assets by clients of asset managers is generally quite diffuse. The Study does not acknowledge that, because asset managers generally do not own the assets they manage, they have very little balance sheet risk relative to other large financial institutions, such as banks and insurance companies, and are in a better position to tolerate market stress and volatility than entities with direct balance sheet exposure to market risk. We are concerned that the Study either misconstrues or does not evaluate certain features of asset management firms and the asset management industry that are salient to the FSOC's evaluation of asset managers, the funds they manage and their activities under Section 113.

In the Study, OFR describes risks it believes are relevant to industry-wide investment activities. The Study does not draw a clear picture of how each risk it describes might concentrate at a single entity or might transcend asset management and apply to the capital markets generally. For example, the Study includes a relatively extended discussion of leverage as a risk factor, but does not clearly distinguish leverage at the asset manager level from leverage at the client or product level. This gap in the Study's analysis limits its usefulness to the FSOC.

Even if an investment activity may be a source of market risk, in order for the risk inherent in the activity to call for any intervention by the FSOC into the regulation of asset managers under Section 113, a clear causal link must exist to connect such activity to a particular asset management company. Unless such a link exists, risk inherent in an investment activity is best understood as an industry- or capital markets-level risk, not an entity-level risk, and is not an appropriate risk to address through designation of an individual firm under Section 113. If a link

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[68] FSOC Final Rules Release at 21,656.

exists between an investment activity and a particular manager or fund, the magnitude of such risk must be sufficiently high so as to "*pose a threat to the financial stability of the United States*" in order for the risk to justify designation under Section 113. The Study does not differentiate risk factors that could pose a threat to the financial stability of the United States from risk factors that may have market effects but that would not reach the high standard set in Section 113.

Because it inaccurately describes the industry and does not address questions that the FSOC would have to answer to evaluate asset managers under Section 113, the Study does not provide the FSOC a useful resource to assist its consideration of nonbank financial companies under Section 113. We believe that prudential standards, which would be applicable to, and would attempt to mitigate risks concentrated at, a small number of large firms, are not suitable regulatory tools to address risks associated with certain industry-wide investment activities. We also note that OFR does not consider whether prudential regulation, or some other mechanism, could mitigate such risk factors.

We believe that examples of concentrated risk at large institutions are less prominent in the asset management industry than in other sectors. Because risks are more closely linked to specific investment activities and specific types of investment instruments than to particular entities, the asset management industry is best regulated on an activity basis, without heightened regulation imposed on a subset of the largest firms. Existing regulation of asset managers, funds and investment activities is generally composed of industry-wide and activity- and investment product-focused requirements – an approach that is responsive to the diffuse nature of risk in the asset management industry.

VI. Conclusion

We applaud the FSOC and OFR for seeking to better understand the asset management industry. Unfortunately, the Study does not advance that effort. The flaws and inaccuracies in the Study reflect an incomplete research process and a failure by OFR to engage subject matter experts in its research and analysis. The Study fails to provide the rigorous and complete analysis that would enable the FSOC to determine whether any threats to U.S. financial stability arise from the asset management industry. It also fails, therefore, to enable the FSOC or anyone else to consider whether any such threats require a regulatory response, let alone the appropriate form of such a response. Any FSOC action is intended, by definition, to impact the U.S. financial system. Given the significant consequences of any FSOC action, the FSOC should have a sound basis for acting. The Study provides no such basis with respect to the asset management industry so we request that it be withdrawn.

We believe that the SEC, as the FSOC member with the most expertise in asset management and jurisdiction over a significant portion of our industry, is in the best position among the asset management industry's several regulators to lead any future effort to work with other FSOC members and external parties to determine how best to achieve those goals. We thank the SEC for providing the public an opportunity to comment on and identify the flaws in the Study. We believe that consideration of all available data will contribute to a clearer picture of the industry, its participants and their activities and will establish a more solid foundation for any future regulatory initiative or recommendation. We believe that our interests are aligned with the FSOC in creating a more resilient, stable financial system and, that by working together, we can help achieve that goal.

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We appreciate the opportunity to comment afforded to us by the SEC, and stand ready to provide any additional information or assistance that the SEC or FSOC members might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 212-313-1389, Matt Nevins at 212-313-1176 or David Tittsworth at 202-293-4222.

Sincerely,

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Daniel M. Gallagher, Commissioner, Securities and Exchange Commission
Kara M. Stein, Commissioner, Securities and Exchange Commission
Michael S. Piwowar, Commissioner, Securities and Exchange Commission
Norm Champ, Director of the Division of Investment Management, Securities and Exchange Commission
Mary Miller, Undersecretary for Domestic Finance, Department of the Treasury

Annex A

List of Select Reports and Regulatory Filings Currently Filed by Asset Managers with Primary Regulators

Form/Filing	Title/Description	Agency
Form PF	Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors	SEC / CFTC
Form 13H	Large Trader Registration	SEC
Section 16 reporting requirements on Forms 3, 4 and 5	Beneficial Ownership Reports	SEC
Schedule 13D and Schedule 13G	Beneficial Ownership Reports	SEC
Form 13F	Information Required on Institutional Investment Managers	SEC
Form ADV	Uniform Application for Investment Adviser Registration and Report Form by Exempt Reporting Advisers	SEC
Form N-CSR	Certified Shareholder Report of Registered Management Investment Companies	SEC
Form N-SAR	Semi-Annual Report for Registered Investment Companies – filing of certain financial and investment information with the SEC	SEC

Form N-Q	Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company	SEC
Form N-1A	Registration Statement of Open-End Management Investment Companies	SEC
Form N-2	Registration Statement for Closed-End Management Investment Companies	SEC
Form N-54A	Notification of Election to be subject to Sections 55-65 of the ICA	SEC
Form N-PX	Annual Report of Proxy Voting Record of Registered Management Investment Company	SEC
Form 24f-2	Annual Notice of Securities Sold Pursuant to Rule 24f-2	SEC
Form TA-1	Registration as a Transfer Agent and Amendment to Registration	SEC
Rule 17ad-13 Report	Report Prepared by an Independent Accountant Concerning the Transfer Agent's System of Internal Accounting Control and Related Procedures for the Transfer of Record Ownership and the Safeguarding of Related Securities and Funds	SEC
Form N-MFP	Monthly Schedule of Portfolio Holdings on Money Market Funds	SEC
Form 40	Statement of Reporting Trader	CFTC/NFA
Form 40S	Statement of Reporting Trader for paired swaps	CFTC

Form 102	Identification of Special Accounts	CFTC/NFA
Form 102S	Physical Commodity Swaps Large Trader Reporting	CFTC
Form CTA-PR	Program Reports for Commodity Trading Advisors	CFTC/NFA
Form CPO-PQR	Periodic Reports for Commodity Pool Operators	CFTC/NFA
Order Audit Trail System (OATS) Reporting	All trades on NASDAQ and NMS	FINRA
TRACE Reporting	All trades covered in fixed income securities	FINRA
RTRS Reporting	All trades covered in municipal securities	FINRA/MSRB
Annual Audited Financial Statements	For Registered Investment Companies and Commodity Pools	SEC / CFTC
Schedule of Short-Term Investment Funds (STIF) disclosures	Must disclose information about the fund and its portfolio holdings	OCC
TIC Form SLT	Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents	Treasury
TIC Forms SHC and SHCA	Report of U.S. Ownership of Foreign Securities, including Selected Money Market Instruments	Treasury
TIC Form S	Purchases and Sales of Long-Term Securities by Foreigners	Treasury
Form 5500	Report of employee benefit plans.	Department of Labor
BE-185 Survey	Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons	Bureau of Economic Analysis

Annex B

Current Regulation that addresses each Factor the FSOC identifies in its "Guidance for Nonbank Financial Company Designation"

FSOC Factor	Regulator	Authority / Requirement
Interconnectedness *Interconnectedness captures direct or indirect linkages between financial companies that may be conduits for the transmission of the effects resulting from a nonbank financial company's material financial distress or activities. Interconnectedness depends not only on the number of counterparties that a nonbank financial company has, but also on the importance of that nonbank financial company to its counterparties and the extent to which the counterparties are interconnected with other financial firms, the financial system and the broader economy.*	CFTC SEC FRBNY	Dodd-Frank Act Title VII regulatory initiatives: • mandatory clearing and trade execution of swaps; • margin requirements for OTC swaps; • customer protections of collateral for cleared swaps; • position limits; • capital requirements for swap dealers and major swap participants; and • data reporting requirements Section 12(d) of the ICA and related rules regarding limitations on a fund's investments in other funds, insurance companies and securities related issuers Section 17(f) of the ICA relating to custody of assets of registered investment companies Rule 206(4)-2 under the Advisers Act regarding custody of managed assets TMPG settlement guidelines for tri-party repo TMPG margin requirements for forward-settling mortgage-backed securities Section 17 of the ICA and related rules regarding prohibitions on certain principal and joint transactions between a registered fund and its affiliates (including its manager and affiliated funds) ERISA Prohibited Transaction rules that prohibit transactions between employee benefit plans and any plan fiduciary or party in interest to the plan
Substitutability *Substitutability captures the extent to which other firms could provide similar financial*	SEC	Section 15(a) of the ICA and Rule 15a-4 thereunder facilitate replacement of a mutual fund's adviser Section 15(a)(3) of the ICA and SEC staff position

FSOC Factor	Regulator	Authority / Requirement
services in a timely manner at a similar price and quantity if a nonbank financial company withdraws from a particular market, and situations in which a nonbank financial company is the primary or dominant provider of services in a market that is essential to U.S. financial stability. Assessment of substitutability must also include assessments of the ability of the nonbank financial company's competitors to expand to meet market needs; the costs that market participants would incur if forced to switch providers; the timeframe within which a disruption in the provision of the product or service would materially affect market participants or market functioning; and the economic implications of such a disruption.		that pre-paid fees or early termination penalties in an advisory contract implicate the anti-fraud provisions of the Advisers Act Section 17(f) of the ICA relating to custody of assets of registered investment companies Rule 206(4)-2 under the Advisers Act regarding custody of managed assets
Size *The FSOC defines size as the amount of financial services or financial intermediation that a nonbank financial company provides. Size also may affect the extent to which the effects of a nonbank financial company's financial distress are transmitted to other firms in the financial system. In addition to the assets, liabilities, and capital of the firm, the FSOC also intends to take into account off-balance sheet assets and liabilities and assets under management in a manner that recognizes the unique and distinct nature of these classes. Other measures of size, such as numbers of customers and counterparties, may also be relevant.*	SEC CFTC	Position and accountability limits Several disclosure requirements help regulators evaluate size: • Form PF • Form ADV • Forms CPO-PQR and CTA-PR • NMS Securities Large Trader Reporting (Exchange Act Rule 13h-1 and Form 13H) • Physical Commodity Swaps Large Trader Reporting (CFTC Rule 20.5 and Form 102S) • Forms 3, 4 and 5 • Schedule 13G equity security ownership reporting requirements (Section 13(g) of Exchange Act) • Form 13F Reports by Institutional Investment Managers (Section 13(f) of Exchange Act) • Form 40 Statement of Reporting Trader (CFTC Rule 18.04) • Form 40S (CFTC Rule 20.5(b)) • Form 102S Identification of Special Accounts (Rule 17.01)

FSOC Factor	Regulator	Authority / Requirement
Leverage *Leverage captures a company's exposure or risk in relation to its equity capital. Leverage can be measured by the ratio of assets to capital, but it can also be defined in terms of risk, as a measure of economic risk relative to capital. The latter measurement can better capture the effect of derivatives and other products with embedded leverage on the risk undertaken by a nonbank financial company.*	SEC CFTC FRBNY	Leverage limits and asset coverage ratios apply to all registered funds (Section 18 of the ICA) Capital requirements for swap dealers and major swap participants under Section 721 of Dodd-Frank Act CFTC and SEC rules imposing clearing and margin requirements for swaps SEC Concept Release regarding registered investment companies' use of derivatives CFTC and SEC rules designating "major swap participant" and "major security-based participant" as a new category of registrant Reg T margin requirements governing extensions of credit TMPG margin requirements for forward-settling mortgage-backed securities
Liquidity Risk and Maturity Mismatch *Liquidity risk refers to the risk that a company may not have sufficient funding to satisfy its short-term needs. Maturity mismatch refers to the difference between the maturities of a company's assets and liabilities.*	SEC CFTC FRBNY	Various reporting requirements provide regulators information about liquidity risks and maturity mismatches relevant to asset managers and the products they offer, including Form PF, Form CPO-PQR, Form CTA-PR, and large trader reporting. Mutual fund portfolio liquidity and redemption requirements (Section 22(e) of the ICA) 85% liquidity requirement in the SEC Guidelines to Form N-1A Liquidity requirements under Rule 2a-7 of the ICA Tri-party repo market reforms
Existing Regulatory Scrutiny *The FSOC states that it will consider the extent to which nonbank financial companies are already subject to regulation, including the consistency of that regulation across nonbank financial companies within a sector, across different sectors, and providing similar services, and the statutory authority of those regulators. It will also consider whether existing regulators have the ability to impose detailed and timely reporting obligations,*	SEC CFTC OCC DOL	SEC registration of Investment Advisers CFTC registration of CPOs and CTAs Under the ICA, registered funds must comply with numerous requirements, including: • asset safekeeping and custody requirements; • leverage restrictions; • restrictions on transactions with affiliated

FSOC Factor	Regulator	Authority / Requirement
whether and how non-regulated entities and groups within a nonbank financial company are supervised on a group-wide basis, and home country regulation of foreign nonbank financial companies.		persons; • anti-pyramiding restrictions and other restrictions on investments; • conflicts of interest rules; • diversification and liquidity requirements; and • record keeping and reporting requirements OCC fiduciary rules and requirements pertaining to the investment advisory activities of national banks DOL and IRS regulations pertaining to ERISA plan fiduciaries