Alternative Investment Management Association

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

Government Accountability Office
441 G St., NW
Washington, DC 20548
USA

Sent by email to: rule-comments@sec.gov and KeelerM@gao.gov

12 January 2011

Dear Sirs,

A self-regulatory organization for private funds

The Alternative Investment Management Association ('AIMA')[1] is aware that US Federal Agencies, including the Securities and Exchange Commission (the 'Commission') and the Government Accountability Office ('GAO'), are given responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the 'Dodd-Frank Act') for producing studies on using or establishing self-regulatory organizations ('SRO') to regulate or to oversee investment advisers registered under the Investment Advisers Act of 1940 (the 'Advisers Act').

The studies raise important questions about how hedge fund managers, registered as investment advisers in the United States, will be regulated, especially as the US is the largest jurisdiction for these financial institutions and currently a global leader in financial regulation. We wish to offer our assistance to the US Federal Agencies in producing their studies and to raise some of the issues that may arise as a result of the use of SROs for registered investment advisers.

AIMA's comments

The Toronto G20 summit identified (and the Seoul summit confirmed) effective supervision as one of the four pillars of the global financial reform agenda, recognising that "stronger rules must be complemented with more effective oversight and supervision" with the aim to "strengthen oversight and supervision, specifically relating to the mandate, capacity and resourcing of supervisors and specific powers which should be adopted to proactively identify and address risks, including early intervention"[2].

An effective regulatory system requires well-resourced and experienced supervisors. AIMA supports global efforts to strengthen national supervisory regimes and welcomes the repeated international commitment to more supervisory cooperation and convergence. We believe that these objectives can be best achieved if supervision and regulatory rulemaking powers are concentrated in relevant government agencies.

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[1] AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector – including hedge fund managers, fund of hedge funds managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,200 corporate bodies in 45 countries, with 11% based in the US and over 30% of AIMA members' total assets under management (AUM) managed by US investment advisers.

[2] The G20 Toronto Submit Declaration 26-27 June 2010, para 20 - http://www.g20.org/Documents/g20_declaration_en.pdf

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Section 416 of the Dodd-Frank Act requires the GAO to conduct a study of the feasibility of forming a SRO to oversee private funds[3]. A SRO could, it is envisaged, take over the roles of rule-making, examination and enforcement from the Commission but remain subject to the high-level direction of the Commission and its policy objectives. We understand that a SRO is being considered as it might be expected to alleviate resourcing pressures on the Commission and increase the frequency of examinations, whilst relieving budgetary pressures at the Commission by being industry-funded. Section 914 of the Dodd-Frank Act also requires the Commission to conduct a study to "review and analyze the need for enhanced examination and enforcement resources for investment advisers", including designating "one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment adviser[s]". Section 416 potentially proposes greater changes to the way in which private fund advisers are regulated in that to "oversee private funds" would include writing regulatory rules (with some oversight of this role being undertaken by the Commission), as compared with section 914, which focuses on enhancing examination and enforcement resources. However, we believe that similar arguments apply in both contexts, although section 416 would raise greater issues concerning the authority of the SRO and its relationship with the Commission.

SROs for investment advisers do not exist in any other major financial jurisdictions (at least, as far as AIMA is aware) and have been abandoned as a concept in a number of important hedge fund jurisdictions, including the United Kingdom. We believe that designating a SRO as responsible for oversight of investment advisers to private funds is unlikely to be desirable for a number of reasons, many of which we are aware have been brought to the attention of the Commission and the GAO by other industry bodies and which we support. Those reasons include:

- that the use of SROs may give rise to a public impression that the industry is not properly regulated or overseen, leading to a lack of confidence in investors as to availability of proper protection;
- additional, duplicative regulatory requirements, which may lead to confusion over which body has regulatory responsibility; and
- the disproportionate and unjustified cost placed on the industry by membership fees and additional compliance costs, which may ultimately be borne by investors.

We will not repeat arguments already made by others but will, instead, highlight some further concerns regarding how SROs may impact the international activities of registered investment advisers and the setting of desirable, internationally-coordinated regulatory policy for hedge funds and other private funds[4].

Our specific comments and concerns are as follows:

- the G20 leaders in their April 2009 communiqué specifically sought to bring regulatory oversight to the hedge fund industry – a move AIMA continues to support[5];
- the current trend globally in implementing new regulatory regimes appear to be moving away from reliance on third parties (such as SROs) and away from delegating important responsibilities to non-governmental bodies[6];
- the Commission is a leading voice within international discussions on desirable coordinated international regulatory policy (such as in the committees of the International Organization of Securities Commissions or 'IOSCO'), or on coordinated assessment of systemic risks (such as at the Financial Stability Board or 'FSB')

[3] We understand the term 'private funds' here to mean the investment advisers to these private funds regulated under the Advisers Act and not the fund vehicles, which are often domiciled off-shore and are not required to be registered under US law.

[4] AIMA is happy to provide a fuller explanation of our views on the consequences of having an SRO for private funds advisers if the Commission or GAO would find this useful.

[5] AIMA's February 2009 Policy Platform expresses our "support for a global manager-authorisation and supervision template based on the UK's FSA model" - http://www.aima.org/en/media_centre/press-releases.cfm/id/56CD27DD-6B18-4648-BC5D4CA784ED55B1

[6] For example, the Financial Stability Board stated in its November 2008 report that "any reliance on or use of the work of, third parties must be viewed with some scepticism" - http://www.financialstabilityboard.org/publications/r_101101.pdf?frames=0

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and we believe it is desirable that use of the Commission's internal expertise and experience be continued in the regulation of investment advisors and elsewhere[7];

- delegation of oversight or enforcement functions to a SRO could impact the ability of US investment advisers to access European markets and to use the management "passport" as provided to third country managers under (provisionally numbered) article 37 of the European Union's Alternative Investment Fund Managers Directive ('AIFMD')[8],[9] ;
- a SRO may not be able to take a role in colleges of supervisors set up to monitor internationally active firms, or in groups established to deal with cross-border crisis management; and
- it is uncertain whether a SRO could conduct inspections of registered investment advisers which are based outside the US (for example, those with US investors), as SROs are not currently subject to memoranda of understanding ('MOUs') with foreign market regulators; there is no certainty that such MOUs would be agreed with overseas regulators if the SROs assumed regulatory responsibilities, so that they may not have authority to operate outside the US.

For the reasons given, we do not believe that the use of existing SROs, or establishing new SROs, to undertake any of the regulatory roles provided to the Commission under the Dodd-Frank Act and the Advisers Act would be desirable. Whilst we understand that using a SRO to assist the Commission in its examination and enforcement resources could increase the frequency of examinations, we believe this is the wrong ultimate objective and the Commission should, instead, focus on its staff conducting thorough, high-quality and informed oversight and/or inspections and examinations of investment advisers.

AIMA supports full and proper regulation and oversight of investment advisers by the Commission and believes the Commission should be given adequate resources to fulfil its objectives of protecting investors, maintaining fair, orderly, and efficient markets and facilitating capital formation. We believe that the Commission should not consider using SROs to oversee investment advisers but should instead seek all necessary funding from Congress to continue to perform its regulatory role and responsibilities, as envisaged in the Advisers Act and the Dodd-Frank Act.

We hope that you find our comments useful and we are, of course, very happy to discuss with you in greater detail any of our comments.

Yours sincerely,

Mary Richardson
Director of Regulatory & Tax Department

[7] We are aware that IOSCO membership, for example, only permits one full voting member per country, which may be an SRO only if the country does not have a governmental securities regulator. An SRO responsible for regulating the industry could, therefore, only participate in discussions on setting international regulatory policy if the Commission were to relinquish its role as an IOSCO member.

[8] See Article 37(7)(g) of the AIFMD text dated 27 October 2010, as passed in the European Parliament on 11 November 2010, which references "limitations in the supervisory and investigatory powers of the third country supervisory authorities". Additionally, see Article 63(bis)(2)(b)(v) which includes the criteria that the European Securities Markets Authority (ESMA) will consider when deciding to grant a management passport to a third country manager, including "any features of a third country regulatory and supervisory framework which might prevent the effective exercise by the competent authorities of the European Union of their supervisory functions under this Directive".

[9] AIMA understands that there may be consequences for the ability for US investment advisers to access other global markets too, for example, India.

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