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Via e-mail to: rule-comments@sec.gov

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

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

Ladies and Gentlemen,

This letter is submitted on behalf of the Federal Regulation of Securities Committee, in conjunction with the Private Equity and Venture Capital Committee (together, the "Committees" or "we"), of the Business Law Section (the "Section") of the American Bar Association ("ABA"). This letter is in response to the request by the Securities and Exchange Commission (the "Commission") for comments in its January 26, 2011 proposing release referenced above (the "Release").

The comments expressed in this letter represent the views of the Committees only and have not been approved by the ABA's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this letter does not represent the official position of the Section.

I. <u>Introduction</u>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") established the Financial Stability Oversight Council ("FSOC"), which has been tasked with monitoring systemic risk in the U.S. financial system. The Dodd-Frank Act requires various agencies, including the Commission, to assist the FSOC with its monitoring responsibilities. The Commission, jointly with the Commodity Futures Trading Commission ("CFTC"), proposed Rule 204(b)-1 under the Investment Advisers Act of 1940 (the "Advisers Act"), which would require investment advisers registered with the Commission that advise private funds to file Form PF with the Commission. Form PF would be used primarily as a confidential systemic risk disclosure tool to assist the FSOC in monitoring and assessing systemic risk. The Release also notes that the Commission and the CFTC may use information gathered from Form PF to assist with examinations, investigations and investor protection efforts related to private fund advisers, including in enforcement actions.

II. Coordination with the Office of Financial Research and Foreign Regulators

A. The Office of Financial Research ("OFR")

The Release indicates the Commission Staff has consulted with the staff of FSOC. We are hopeful that this consultation also includes consultation with OFR which the Dodd-Frank Act established and tasked with supporting the FSOC by, among other things, coordinating and standardizing the data available to promote financial stability. This coordination and standardization is meant to both improve the data available for oversight and reduce costs for the Government agencies responsible for the review of the data and the financial institutions required to report the data. To achieve these goals, the Director (who we understand has not yet been appointed) of the OFR is to work closely with the Chairperson of the FSOC to promote financial stability and enhance market discipline. Given the mandate of the OFR, we believe that the Commission should consult and coordinate with OFR, as well as the staff of FSOC and the OFR to develop the data required by Form PF. We recognize staffing of OFR is not within your control, but believe that this is part of the coordination contemplated by the Dodd-Frank Act and it is an important step towards collecting data to assess systemic risk in an efficient and appropriate manner.

B. Foreign Regulators

As noted in the Release, hedge fund advisers based in the United States, the United Kingdom, and Hong Kong represent over 92% of global hedge fund assets. Since many hedge funds and other private funds operate globally, coordination among regulators in the United States and those in the United Kingdom and Hong Kong is important to fully assess the systemic risk associated with such funds. An attempt to standardize the regulatory framework across borders is, as the Release points out, consistent with recommendations by others, such as the Group of Thirty.[1] The Release notes that the Commission, in devising Form PF, consulted with Hong Kong's Securities and Futures Commission (the "SFC") and the United Kingdom's Financial Services Authority (the "FSA"), even basing parts of Form PF on the FSA's semi-annual survey of hedge funds. We believe that further coordination among the Commission, FSA, and SFC would be beneficial to fully be able to assess global systemic risk. Specially, we suggest that the three agencies coordinate requests for information to the specific managers within their respective jurisdictions and also that the requests ask for similar information.

Under the proposed rule, an adviser with a principal office and place of business outside the U.S. may exclude a private fund that was not, during the last year, itself a U.S. person (*e.g.*, formed under the laws of a U.S. jurisdiction) or offered to or beneficially owned by any U.S. person. We believe the “offered to or beneficially owned by any US person” adds a level of complexity to an already complex process. Moreover, this approach is distinguishable from the approach taken by the Commission with respect to the proposed private fund adviser exemption from registration as an investment adviser, under which a non-U.S. adviser is required only to

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[1] *See* Group of Thirty, *Financial Reform: A Framework For Financial Stability* (Jan. 15, 2009).

count assets of its private fund clients managed from a U.S. place of business to determine whether it is eligible for the private fund adviser exemption. Proposed Form PF requires inclusion of a private fund based on the jurisdiction where it is offered and on its beneficial owners in addition to the jurisdiction of the adviser's principal place of business. We believe that the mere offer for sale of a private fund (that does not culminate in a sale) should not trigger a Form PF filing requirement. This requirement seems unnecessary not only because in many cases the determination of when and where an offer has taken place is factual and difficult to determine but also because an unaccepted offer in our view is not relevant to determining whether the private fund poses a risk to U.S. financial stability. We recommend the Commission consider modifying this approach so that systemic risk information be gathered by the regulator where the investment adviser has its principal place of business, and in connection therewith, that the Commission, FSA and SFC should coordinate their approaches to ensure that investment advisers are not subject to duplicative reporting requirements with respect to private funds they advise.[2]

III. Coordination of Form PF with Recordkeeping Rules

Recordkeeping rules for private funds with respect to their systemic risk information should also be coordinated among the Commission, FSA, and SFC. The Dodd-Frank Act directed the Commission, in addition to gathering systemic risk information, to also devise rules that private funds must follow with respect to their recordkeeping for information related to systemic risk assessment. The Commission has not yet promulgated such rules but intends to in the future. Although not the topic of the Release, we make several suggestions regarding these forthcoming rules. As an initial matter, we suggest that the recordkeeping rules be drafted to harmonize with the Form PF information requests so that investment advisers can develop coordinated systems to provide the required information with respect to Form PF and maintain the records required by any proposed recordkeeping rules, thereby decreasing the burden on funds by making information gathering and retention more efficient. Further, following on our suggestion that the Commission, FSA, and SFC coordinate on the timing and extent of their systemic risk information gathering, we also suggest that the recordkeeping requirements promulgated by the three regulators be coordinated to ensure that the same systems developed by the investment advisers can readily produce the information requested by the Commission, FSA or SFC.

IV. Frequency of Filings and Measurement Periods

A. Frequency of Filing

Under the proposed rule, all registered investment advisers would be required to file basic information about their private funds annually and "Large Private Fund Advisers" would be required to report additional information no later than 15 days after the end of each calendar quarter. The proposal is based on the Commission's understanding that most information

[2] Although we refer specifically in this letter to the FSA and SFC, we recommend that the longer term goal should be to include other foreign regulators, such as the European Securities and Markets Authority ("ESMA") in the coordination of requests for information and avoiding duplicative (as well as different) reporting requirements.

required on Form PF is already tracked by advisers to hedge funds and liquidity funds; however, the proposed timing requirements do not account for the various types of investments made by private funds (or the fact that private equity funds track information generally quarterly rather than monthly because their underlying portfolio companies report on a quarterly basis) or the time and effort required to produce accurate information. For instance, advisers to hedge funds that invest in certain derivatives and illiquid or esoteric financial instruments often have valuation policies and procedures that require the advisers to obtain information from third party sources that are not electronically transmitted on a daily basis and may take a number of days to acquire. While advisers to hedge funds generally provide investors with at least preliminary valuations within 15 days after month end, it may take more than 15 days just to finalize pricing information, without taking into account all of the other information required by proposed Form PF. Private equity funds may provide quarterly information to their investors, but time is needed to obtain and process the information from the underlying portfolio companies. Similarly, not all of the other required information will be reflected in the advisers' systems and may be subject to manual adjustment and calculation.

In considering the frequency with which Large Private Fund Advisers must file proposed Form PF, we believe that it is relevant to compare the filing frequency of Form N-SAR and Form N-Q filed by registered investment companies. Like proposed Form PF, Form N-SAR was intended to provide the Commission a means to collect comprehensive and current information on the registered investment company industry.[3] Both proposed Form PF and Form N-SAR require disclosure of detailed portfolio data, not all of which can be compiled electronically.[4] Form N-SAR is required to be filed semi-annually within 60 days after a fund's fiscal year end and fiscal half-year end. Similarly, Form N-Q must be filed within 60 days after the close of a registered investment company's first and third fiscal quarters. Unlike Form N-SAR, however, Form N-Q includes only an unaudited schedule of investments and not the detailed analysis of portfolio data required by Form N-SAR and proposed Form PF.

We believe that the Commission should consider holding private fund advisers to a reporting standard that is no more burdensome than the standards applied to registered investment companies by Form N-SAR and Form N-Q.[5] Registered investment companies are separately regulated and have developed reporting systems over time to comply with increasing disclosure requirements imposed by the Commission.[6] Private fund advisers, many of whom

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[3] Investment Company Act Release No. 14080, dated August 6, 1984.

[4] Form N-SAR requires disclosure of portfolio turnover, principal transactions with broker-dealers, monthly sales and repurchases of fund shares and certain other technical data, among other things.

[5] The worldwide market for registered investment companies may be as much as 14 times the size of the worldwide market for hedge funds as of the end of 2010, based on total assets under management for the hedge fund industry of $1.69 trillion (as reported by BarclayHedge) and mutual fund assets worldwide of $23.70 trillion (as reported by the Investment Company Institute).

[6] Form N-SAR was adopted in 1985 and replaced preceding disclosure documents that required only annual filings. The quarterly filings required by Form N-Q was not adopted until 2004.

will be registering for the first time as a result of the elimination of Section 203(b)(3) under the Advisers Act, may not have data gathering and reporting systems comparable to registered investment companies.

We request that the Commission, in conjunction with the FSOC, consider whether the FSOC will have the resources to analyze the large amounts of data it would receive on a quarterly basis. We propose that Form PF initially be required to be filed every six months, and that the Commission then evaluate whether more frequent reporting is required. Requiring proposed Form PF to be filed semi-annually within 60 days after a fund's fiscal and half-fiscal year end would be consistent with the standard applied to the most closely analogous disclosure form for registered investment companies and may strike an appropriate balance between the Commission's policy goals and the burden placed on private fund advisers. A semi-annual filing requirement also would be consistent with the FSA semi-annual survey discussed above.

If it is determined that the FSOC requires more frequent reporting, the frequency requirements can be adjusted in the future. Such a gradual approach will allow the OFR, which is still in its formation stages, to help ensure that the focus of Form PF is to collect the most relevant information.

B. Measurement Period

Proposed Form PF requires advisers to hedge funds and liquidity funds to determine whether they have crossed the $1 billion Large Private Fund Advisers threshold (as discussed in more detail below under "Potential Systemic Risk Posed by Private Funds—Large Private Fund Advisers") and the $500 million qualifying fund threshold on a daily basis. The Release suggests that the daily measurement period was selected based on the Commission's belief that hedge fund and liquidity fund advisers are aware of their assets under management on a daily basis. We agree that certain advisers track this data daily. However, advisers to private funds that invest in derivatives and illiquid or esoteric investments do not price all of their assets on a daily basis. Furthermore, the availability of data is not a necessarily a good justification for using it for this purpose. An adviser's assets under management may spike quite significantly for a few days in any quarter, and isolated spikes off of a relatively low base may not be a sufficient indicator of systemic risk to subject the adviser to the reporting required by Large Private Fund Advisers.

We propose that the reporting threshold for Large Private Fund Advisers be based on an average month end calculation. Thus, an adviser would be required to report as a Large Private Fund Adviser if its average month end calculations during a semi-annual period (or at a minimum, during a calendar quarter) exceed the specified thresholds. A month end measurement would track the reporting trigger dates for Schedule 13F and would be consistent with the current practice of a hedge fund managers, which typically provide reporting to their investors based on month end numbers.

V. <u>Potential Systemic Risk Posed by Private Funds</u>

Proposed Form PF seeks to collect data about private funds to analyze whether such funds pose systemic risk. While certain information sought by Form PF may serve as a useful tool for the FSOC, we believe the metrics for determining whether an adviser is required to file Form PF and the frequency and amount of information required by an adviser should be further examined by the Commission.

A. Large Private Fund Advisers

The Committees believe that the $1 billion reporting threshold (based on "regulatory assets") for reporting by hedge fund advisers may be inappropriately low. An adviser to long/short equity fund with $500 million in net assets that uses one times leverage would meet the test, but we believe it would not be large enough to affect the markets in ways that impose systemic risk. Likewise, private equity funds are typically not permitted by their investors to employ significant leverage at the fund level and, due to diversification limits on the amount of commitments to a fund that can be invested in any one company, the investments by an adviser to private equity funds with $1 billion in assets under management may be in comparatively small companies which may, or may not, have significant leverage. The use of a strict $1 billion asset threshold will not necessarily identify private funds and investment advisers that pose systemic risk. Long Term Capital Management, as cited in the Release, is a prime example of the heavy influence market positions and exposure have on a fund's potential systemic risk—assets under management did not serve as a key indicator of the risk posed in that case.

We recommend that the Commission consider whether a combination of metrics should be used as a better proxy for determining whether detailed reporting under Form PF is required by an adviser. For example, we recommend that in addition to gross assets, the Commission consider the degree of leverage being used, and (if thought relevant) gross and net notional exposures. In our judgment, such an approach would permit a higher threshold for gross assets, unless there were other metrics that suggested the adviser's assets under management posed a potential systemic risk.

We acknowledge that the Commission may develop significant information about the industry based on proposed Form PF. We understand that there is not a bright line separating industry information from information relevant for determining systemic risk issues. However, the articulated premise of the Proposing Release is to assist in monitoring systemic risk, and we believe that the threshold for completing Sections 2 and 4 of proposed Form PF should relate directly to the articulated premise, and that information about the industry that is of a census nature (unless it is confidential information) be addressed by Form ADV, which has been substantially revised to require such information, or through other initiatives. (See, <u>e.g</u>., Section VIII, infra).

Accordingly, we recommend that the Commission, at least initially, modify the test for Large Private Fund Advisers as suggested above and either substantially increase the threshold to focus on firms considerably larger than those proposed or more finely calibrate the test to incorporate other attributes more likely to present systemic risk issues. If it is later determined that the FSOC should collect data from a wider range of investment advisers, the threshold can be adjusted. As suggested above with respect to the frequency of reporting, a gradual approach will provide the OFR with time to weigh in on the information to be collected.

B. Reporting for Hedge Funds and Private Equity Funds

The Committees agree with the Commission's determination that different reporting metrics should apply to hedge funds and private equity funds. But we have concerns with the proposed manner of distinguishing between the two and suggest the following as an alternative approach. In lieu of the currently proposed "hard-and-fast" definitional distinction between hedge funds and private equity funds, which could have unintended consequences, the Committees believe that an adviser should be able to make its own good faith judgment as to whether a particular fund is a hedge fund or a private equity fund. That determination would be subject to guidance as to relevant fund characteristics to be provided in the form's instructions. In addition, the basis for a firm's determination as to each fund would be recorded in writing by the firm (as is already done with respect to, for example, materiality of certain disciplinary events for Form ADV purposes).

Examples of distinguishing characteristics that we find compelling include:

(i) Frequency of trading (with more frequent trading being a characteristic of hedge funds);

(ii) Characteristics of securities held (with a greater percentage of positions being secondary market purchases (as opposed to direct transactions with issuers) tending to be more characteristic of hedge funds);

(iii) Frequency of short sales and use of leverage at the portfolio level (with routine use of short sales and leverage tending to be more characteristic of hedge funds)

(iv) Frequency of offerings of the fund's shares (with single or a limited number of closings tending to be more characteristic of private equity funds);

(v) Frequency of redemptions of the fund's shares (with redemptions at the option of investors tending to be more characteristic of hedge funds);

(vi) Frequency and manner of valuation of the fund's shares (with more frequent valuations (such as monthly) intended to align the reported share value with the market value of underlying securities tending to be more characteristic of hedge funds);

(vii) Cash distribution model (with distributions to investors prompted by specific disposition of underlying securities tending to be more characteristic of private equity funds);

(viii) Performance compensation model (with performance compensation based on unrealized capital appreciation tending to be more characteristic of hedge funds);

(ix) Term of the fund (with a pre-set, limited life span tending to be more characteristic of private equity funds); and

(x) Description of the fund in its offering materials (many funds will self-characterize themselves as either a hedge fund or private equity fund).

We recognize certain funds combine hedge fund and private equity features (*i.e.*, funds with significant side pockets, hybrid funds and funds with fast pay/slow pay redemption terms). In such cases, we suggest that if the fund generally has the characteristics of a hedge fund as described above, then the presumption would be that the fund is a hedge fund, although the adviser may rebut that presumption.

VI. <u>Filing Form PF</u>

A. Certification

Proposed Form PF is required to be signed by an individual who must certify that all information in the form is true and correct, under penalty of perjury. Given the extensive detailed information that is required by the form, the number of sources from which inputs are required, and the short time frames to calculate such unaudited information, we believe it would be appropriate to modify the certification so that the form is simply signed on behalf of the registrant similar to Form N-SAR (which we believe implies a good faith determination) or the certification should explicitly include a statement that it is based on good faith estimates along with a knowledge qualifier. A knowledge qualifier is consistent with the certifications required by Form N-Q and Schedules 13D and 13G.

B. Monthly Performance Reports

Section 1b of Form PF requires monthly reporting of fund performance. Monthly reporting would be unduly burdensome for certain funds that invest primarily in illiquid assets. It is common practice for managers to value private equity fund investments no more often than quarterly and for some funds only annually in connection with preparing the annual financial statements. We acknowledge that the proposal suggests that this data will track patterns of fund performance under different scenarios at sufficient granularity. However, considering that valuations of illiquid assets are time consuming and contain subjective elements in its calculation, we do not believe such frequent reporting produces any benefit in monitoring systemic risk. We recommend that the Commission consider monthly performance reports be optional for select funds (*i.e.* private equity funds.)

In addition, Section 1b requires reporting of performance as a function of changes in net asset value. This may not be a useful metric for all private funds. Private equity funds, for example, do not typically measure performance by changes in net asset value because returns to investors and performance compensation to the fund sponsor typically take the form of distributions of proceeds from the liquidation of portfolio company investments. Private equity funds do not generally permit investors to redeem their interests and so there is no potential systemic threat of large redemptions in the event of a decline in net asset value. Moreover, the net asset value at any particular point in time may not be indicative of the ultimate performance of the private equity fund. We request that the Commission consider alternative metrics for reporting performance of private funds and whether periodic reporting of performance of private equity funds is germane to systemic risk.

Within Form PF, Items 23, 24, and 27 require reporting of exposure and turnover data as of the last day of each month in the quarter. Many advisers do not already collect and calculate most of this information on a monthly basis, and we suggest the Commission review whether the usefulness of reporting such data as of each monthly end is worth the cost involved. We propose these Items require data only as of the end of each quarter in the six-month period, rather than each month.

C. Data Collected by the Form

The Committees are not in the position to evaluate each of the data points requested in Section 2 and Section 4 of Form PF. However, the data points requested are numerous and should be evaluated in the context of balancing their relevance to determining systemic risk, and the cost associated with providing and reviewing the data. We recommend as part of the comment process, that the Commission seek additional input from industry participants and associations, such as the MFA, to understand the specific types of data that advisers already gather and the probable costs of developing the systems that will be needed to compile any additional data required on Form PF.

We also suggest that the Commission consider how the data gathered from hedge fund advisers can be tailored to harmonize with and complement data gathered from broker-dealers and banks, so that all such data can be analyzed synergistically and in context. To effectively assess systemic risk, data should be compiled and analyzed in a coordinated way from the various participants in the system. We assume this will be an evolving process which is one of the reasons we suggest that the initial reporting threshold for Form PF be raised and, if deemed necessary, reduced if experience indicates it should be.

The Committees also have specific comments about some of the reporting requirements for Form PF, as follows:

1. Rounding of Data. The instructions require that information expressed as a percentage be rounded to the nearest basis point (0.01%). We believe that is a very low threshold for error, and recommend that information should be rounded to the nearest percentage (1.0%).

2. Definition of Fund of Funds. We suggest that the term "fund of funds" be modified to include private funds that invest substantially all of their investable assets in private funds, excluding cash reserves, investments in cash equivalents and securities held as a result of an investment in a private fund (e.g., securities acquired as a result of an in-kind distribution). In

addition, the Committees believe that requiring fund of funds to fill out Section 1(b) does not further the goal of assessing systemic risk since data about the funds in which fund of funds invest generally will be provided separately to the Commission. Accordingly, we believe Form PF should not require data about fund of funds.

3. Definition of Financial Institution. We suggest that the term "financial institution" as used in Items 23 and 27 be defined by reference to specific industry codes. Advisers and custodians could then build those codes into their portfolio reporting software, to make it easier to report equity and equity derivatives positions that are related to financial institutions separately from those that are not.

4. Definition of Investment Grade. We believe that the definition of "investment grade" security as a security that is "sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk" is too vague. The proposed definition requires advisers to make their own judgments about liquidity and credit risk, which are some of the very aspects of "systemic risk" that Form PF is intended to monitor. Allowing these judgments to be embedded in the data would make the data less useful and potentially misleading. Although we agree that it may be helpful to obtain data separately for investment grade and non-investment grade bonds, the definition of "investment grade" needs to be sufficiently clear and objective to ensure that the data from the advisers that apply this definition is meaningful. We suggest that the Commission permit a respondent to rely on ratings provided by credit rating agencies if the respondent generally relies on the ratings provided by such agencies for its recordkeeping purposes.

5. Bond Durations. We suggest that the bond durations required to be reported in Items 23 and 27 be classified in terms of ranges of weighted average maturities, such as "less than two years," "two to ten years," etc. Advisers would report which range the bonds fall in, rather than the specific weighted average maturity. This would somewhat streamline the advisers' reporting and, we expect, produce data that can be more readily analyzed by the Commission.

6. Turnover Rate. We believe that the turnover rate for the aggregate portfolio of hedge funds the adviser advises (Item 24) is not a meaningful statistic if the adviser's hedge funds are managed using different strategies. For example, an adviser that manages both a fund that holds mainly long-term equity positions and a fund that trades fixed-income securities would report an aggregate turnover rate that does not reflect the turnover rate of either portfolio. We suggest that turnover rate should be reported, if at all, separately by asset class.

7. Geographic Breakdowns. We believe that further consideration should be given to the geographic breakdowns required in Item 25. We believe the majority of advisers do not track this data already, and this item will impose additional burdens on advisers. This makes it especially important that the industry understand the reasons such data is being requested. For example, why are derivatives to be grouped according to the jurisdiction where the counterparty is organized, even if the underlying investment may be unrelated to that jurisdiction? What is the relevance of the jurisdiction of organization? If geographic information is deemed necessary,

we believe reference by the respondents to geographic determinations made by their service providers should be sufficient for reporting purposes.

8. Financing Liquidity. Item 39 instructs an adviser to include borrowings in the "1 day or less category" if "a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral." Many credit arrangements entered into by hedge funds provide a great deal of leeway in favor of the creditor to unilaterally vary the terms and seek more collateral. These provisions are sometimes referred to as adequate assurances clauses or insecurity clauses. We suggest that the Commission clarify whether it is the Commission's intention for respondents to include financing arrangements with such clauses in the 1 day or less category or whether financing arrangements will be deemed uncommitted financing only if the creditor has the right to vary terms beyond usual and customary loan provisions such as insecurity clauses or adequate assurance clauses.

9. Definition of Controlled Portfolio Company. Under the proposal, much of the reporting by private equity fund advisers relates to controlled portfolio companies, which are defined with reference to the definition of control in Form ADV. The Form ADV definition includes certain presumptions of control relating to 25% of equity even if equity is not voting. In order to report, private equity fund advisers will need to obtain information from their underlying portfolio company investments. We would encourage the Commission to consider a standard of majority voting control. Unless a private equity fund has such control of a portfolio company it may not have the ability to influence the preparation of the detailed information required by Section 4. In addition, consideration should be given to when reporting is required with respect to recently acquired portfolio companies.

10. Information required about Non-Controlled Portfolio Companies. We believe that further consideration should be given to requiring information regarding portfolio companies that are not controlled, e.g. Item 66, which requires disclosure for any investment in financial industry portfolio companies and Item 64 which requires disclosure as to whether any portfolio company has experienced an event of default. We ask the Commission to consider whether information regarding less than controlling positions in portfolio companies, or in portfolio companies below a certain size, is likely to be relevant to systemic risk. We would propose that at the least both Items 64 and 66 be restricted to controlled portfolio companies. Further consideration also should be given to the trigger for reporting regarding events of default. Events of default may occur for any number of technical reasons and may have no material impact on the solvency of the portfolio company. We believe that consideration should be given to a standard of materiality and a requirement that the fund has been notified of the event of default. Finally, consideration should be given to whether information about the ownership and leverage of financial industry portfolio companies might be more efficiently obtained by the regulators of the financial industry portfolio companies rather than collected piecemeal from private equity funds that have investments in these companies.

11. Definitions of other terms used in Section 4. In order to promote comparability of the data reported by different funds, we suggest that the Commission work with

the industry to develop specific definitions for key terms used in this Section that are not currently defined, including the term bridge loan, club, and consortium and to indicate what should be included in the calculation of debt-to-equity ratios.

12. Minimum Fund and/or Portfolio Company Size. We believe that the Commission should consider establishing minimum fund sizes and minimum portfolio company sizes for reporting by private equity fund advisers under Section 4. Small to midsized funds and small to midsized portfolio companies would seem unlikely to pose systemic risk, even if in the aggregate assets under management of the private equity fund adviser exceeds the overall reporting threshold. Consideration should also be given to whether portfolio companies that have no publicly traded securities are likely to pose systemic risk and to limiting the Section 4 reporting to portfolio companies over a certain size that do have publicly traded securities.

VII. Confidentiality

Concern about confidentiality of the information to be reported under proposed Form PF appears to be one of the most significant concerns among industry participants. In what has come to be called the "WikiLeaks scenario," the uncontrolled release of confidential and highly sensitive information is especially feared. We recognize the Commission is aware of the need, and will take action, to protect the confidentiality of information offered through Form PF. Our suggestions, noted below, are to assist the Commission in developing its approach and are made with an awareness of the limited financial resources available to it for developing systems.

Our recommendations are that the Commission consider:

(i) Coding. A coding system would help protect privacy so that possession of a data set does not, without also having access to the corresponding firm naming codes, automatically result in a link between the data set and an individual firm.

(ii) Protocols for transfer of data. Appropriate protocols would limit transfers of data to email accounts, laptops, mobile devices, discs, flash-drives and the like.

(iii) Need to know limitations on access. Limiting personnel that have access to this information, especially in its unfiltered state, should reduce the likelihood of its accidental release or misuse.

We understand the Commission must balance the implementation of these recommendations with its ability to perform the Commission's responsibilities, especially within the context of examinations. We believe this is not an uncomplicated matter and offer our suggestions to be of assistance.

VIII. Large Trader Reporting System

In Release No. 34-61908, the Commission proposed new Rule 13h-1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934. We recommend that the

Commission consider whether, if adopted, the information collected by proposed Form 13H would be duplicative of, or supersede the need for, data points in proposed Form PF.

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The Committees appreciate the opportunity to comment on the Release and respectfully requests that the Commission consider the comments and recommendations set forth above. Members of the Committees are available to discuss these comments should the Commission or the staff so desire.

Very truly yours,

/s/ Jeffrey W. Rubin
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