CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Ms. Murphy:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing over three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC appreciates the opportunity to provide input to the Securities and Exchange Commission (the "SEC" or the "Commission") on its joint proposal with the Commodity Futures Trading Commission on reporting by investment advisers to private funds and certain commodity pool operators and commodity trading advisors published on February 11, 2011.

The CCMC supports the Financial Stability Oversight Council's (the "Council") efforts to monitor systemic risk and believes that greater access to comprehensive market and industry information will assist the Council in identifying emerging threats to the stability of the U.S. financial system. However, we have significant concerns with various aspects of the Commission's proposal to require reporting by investment advisers.

- The proposal sets too low a threshold to differentiate small private fund advisers from large private fund advisers that will be subject to enhanced reporting.

- The proposal uses an inappropriate metric to differentiate between small and large private fund advisers. At-risk assets are a better measure of an investment firm's potential impact on the financial system and should be used to determine reporting requirements.

- The large private fund advisers' quarterly filing requirement within a 15 day timeframe is impracticable. The filing frequency is too often, and the time period to file is too short—particularly for funds hard to value assets where there is no readily available market with current pricing information. Additionally, all fund advisers should be given ample time to prepare for the initial filing.

- Required certification by private fund advisers is unreasonable given the frequency of reporting, the short window to file, and the nature and complexity of some information included in Form PF.

Threshold for "Large" Private Fund Advisers is Too Low

Pursuant to the proposed rule, investment advisers to hedge funds and other private funds would be required to periodically report information on the new Form PF. The filing frequency and quantity of information in the report is determined by the size of the private fund adviser and specifically, whether it is classified as a "large private fund adviser" or a "small private fund adviser."

The proposal defines large private fund advisers as any adviser with $1 billion or more in hedge fund, liquidity fund, or private equity fund assets under management. Any fund adviser outside this definition is a small fund adviser that would only be required to report basic information regarding their operations and would only file Form PF annually within 90 days of the end of the adviser's fiscal year. In contrast, large private fund advisers would be required not only to file Form PF quarterly within 15 days after the end of a quarter, but also to include substantially more information in the report, such as separate reports for each "qualifying hedge fund" that has net assets, together with any parallel funds or separate accounts, of at least $500 million.

The proposed definitional threshold for large private fund advisers is set at $1 billion. Because private fund advisers that fall into this category face significantly increased reporting costs and burdens, the CCMC contends that a $1 billion threshold is too low and proposes that the Commission adopt a $5 billion threshold to define both large private fund advisers and qualifying funds. With a $5 billion threshold, a large number of private fund advisers and hedge funds will still be captured under the more frequent filing regime,[1] while providing regulators with a comprehensive view of private fund industry activities. Hedge funds with portfolios of $5 billion or more control seventy two percent of all funds managed by firms with at least $1 billion in assets[2] and may also have more capability and better economies of scale to prepare and provide periodic reports than smaller private fund advisers. Accordingly, the Council will still receive substantial data from the most systemically relevant firms.

Assets Under Management is an Inappropriate Threshold Metric

The CMCC believes that assets under management is not the appropriate threshold metric that should be used to identify more frequent reporting by private investment advisers. Because the information provided in Form PF will be used to monitor emerging threats to the financial stability of the United States, we believe that the more appropriate metric is total consolidated assets less assets under management. This treatment would recognize the important distinction between proprietary at-risk assets, on the one hand, and assets under management and other similar assets, on the other, even in circumstances when both may be consolidated for accounting purposes. Under Generally Accepted Accounting Principles ("GAAP"), as currently in effect, certain investment firms are required to consolidate their affiliated funds if the limited partners of those funds do not have the right to remove the funds' general partner(s) without cause by a vote of a majority in interest (or less). This accounting treatment, which is currently under review and may be changed in the near future, may result in firms reporting significant "total consolidated assets" under GAAP, although the vast majority of such consolidated assets are, in actuality, managed fund assets.

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[1] There are 77 hedge funds that manage more than five billion dollars in assets (see: http://www.absolutereturn-alpha.com/Article/2775999/Billion-dollar-club.html).

[2] http://www.absolutereturn-alpha.com/Article/2775999/Billion-dollar-club.html.

Using an investment firm's total consolidated assets without an exclusion for assets that are managed rather than owned would provide a misleading view of the size and inter-connectedness of investment firms that consolidate managed fund assets with proprietary assets under GAAP. An investment firm's managed assets stand in stark contrast to typical consolidated, on-balance-sheet assets, which are owned by a company and can be acquired, sold, otherwise financed, or disposed of in any manner the management of the company sees fit. Confusing on-balance-sheet, at-risk assets with assets under management in differentiating between large and small private fund advisers would mask these real differences, result in credit exposure reports and other reports that may be misleading to regulators, and further result in varying treatment for otherwise similarly situated asset managers. The CCMC believes that the proper metric for measuring the size of an investment firm is its risk assets.

The Proposed Filing Deadlines are Impracticable

The new Form PF would require all private fund advisers to disclose their assets under management and other fund-specific data. However, large private fund advisers face more onerous reporting requirements to comply with the new rule. In addition to information that funds often maintain in the ordinary course of business, large private fund advisers will be required to report additional detailed information, the substance of which depends on the type of fund advised. Reporting burdens for each type of large fund are detailed as follows:

- Hedge fund advisers would be required to report information related to exposures by asset class, geographical concentration, and turnover. For hedge funds with a net asset value of at least $500 million, advisers must report information on the value of such funds' investments, leverage, risk profiles, and liquidity.

- Liquidity funds would report information on the assets and value of fund portfolios, their risk profile and the extent to which the fund has a policy complying with certain provisions of the Investment Company Act of 1940.

- Private equity funds would report information relating to leverage incurred by portfolio companies, the use of bridge financing, and investments in the financial industry.

Generally, hedge funds and private equity funds invest in unique, illiquid assets including distressed debt and equity stakes of private companies for which there is no readily available market to provide pricing information. In many cases, valuation experts are required to assess the value of an asset, or advisers base the valuation on a market transaction of that asset that may not occur for extended periods of time. Therefore, valuing these private assets on a frequent basis is a costly, complex, and often speculative process that may produce ambiguous data despite an adviser's best efforts.

Another procedural challenge of assessing and valuing the required information is the frequency in which the reporting must occur. Large private fund advisers will be required to report certain technical information on a quarterly basis. This short timeframe between reporting periods is particularly burdensome and costly in light of the aforementioned complexity and difficulties in valuation. It may require many fund advisers to develop new mechanisms or to modify existing systems in order to provide the requisite information within such a short timeframe. Moreover, this does not include the numerous man hours it would take to report and manage this process. As such, we believe that a semi-annual reporting requirement would be more appropriate in lieu of a quarterly requirement.

Compounding the problems created by quarterly deadlines is the fact that large private fund advisers have only 15 days from quarter-end to file reports. This time period is too short, particularly for funds with a portfolio of hard to value assets where no readily available market to provide current pricing information exists. A more appropriate reporting window is 120 days for all private fund advisers to prepare and report the required information. This timeframe is consistent with the SEC's custody rule that allows 120 days from fiscal year end for private fund advisers to provide audited financial statements to fund investors. This longer grace period is more reasonable given the significant volume of information required, the complexity of valuing assets held by private funds, and the required certification of accurate information on Form PF.

The proposal also provides for an initial filing deadline of January 15, 2012 for large private fund advisers and March 31, 2012 for small private fund advisers, regardless of the effective date of final rules. The CCMC believes that all private funds should be given a minimum of 270 days from the effective date of new rules for the initial filing. While we appreciate that small advisers have fewer resources and face greater burdens in complying with the new reporting requirements, larger advisers also are confronted with a greater and potentially more complex portfolio of investments for which valuation may be difficult. Regardless, both small and large advisers will need to implement new and accelerated reporting processes, as well as corresponding modifications to existing systems. These processes and modifications will take time to implement, and investment firms will not be able to assess all required changes until final rules are issued. Therefore, we recommend that instead of setting a hard date for compliance, the Commission should allow all private fund advisers at least 270 days from effective date of rule to file their initial report.

Challenges in Valuing Private Assets without Sufficient Time Creates Certification Problems

Form PF also requires private fund advisers to certify that all information and statements contained in each filing, whether annually or quarterly, is true and correct, similar to a certification that chief financial officers of publicly traded companies are required to make for annual reports to shareholders. However, publicly traded companies have as long as 90 days from year-end to ascertain the accuracy of information reported with the assistance of public accounting firms. In contrast, the proposal only grants private fund advisers 15 days from period end to value assets and certify that the information is accurate. While all private fund advisers will make every effort to ensure that assets are valued properly and information is accurate, they will not have sufficient time to allow independent auditors to verify information. It is problematic for them to certify—under penalty of perjury—that all information is true and correct given the complexity and nature of the information reported and the truncated timeframe in which the advisers have to file Form PF. Thus, we reiterate the need to extend the timeframe for reporting to 120 days, and urge the Commission to reevaluate the certification requirement. Given that the purpose of the Form PF is for systemic risk assessment rather than investor protection, the Commission should consider waiving certification requirements for periodic filings. However, if the certification requirement is maintained, CCMC recommends that sanctions should only be imposed if the private fund adviser knowingly filed material, false information.

Conclusion

The CCMC supports efforts to provide the Council with pertinent information to assess systemic risk. However, assessments of systemic risk can only be as reliable as the data upon which they are based and the onerous reporting requirements and accelerated timing of the current proposal may have the unintended consequence of producing imprecise data and conclusions. The proposal can therefore benefit from a number of changes in order to ensure the quality and reliability of data provided to the Council. In its current form, the rule is unworkable for many large private fund advisers who will have difficulty compiling the high volume of information required due to inherent complexities in certain valuations required for the report. The CCMC encourages the Commission to raise the definitional threshold of "large private fund advisers" to include funds with at least $5 billion in assets and to develop a workable reporting schedule that allows for semi-annual reporting with a 120 day grace period for filing. Moreover, we recommend that the Commission eliminate the certification requirement, particularly if the recommended changes are not implemented. We would be happy to discuss these issues further with you or the appropriate SEC staff.

Sincerely,

David Hirschmann

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