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April 12, 2011

VIA E-MAIL

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

**Re: File Number S7-05-11 Reporting by Investment Advisers to Private Funds and
Certain Commodity Pool Operators and Commodity Trading Advisers on Form PF**

Dear Ms. Murphy:

We thank you for the opportunity to comment on the proposed rule (the "Proposed Rule") contained in SEC Release No. IA-3145 that would require investment advisers registered with the Securities and Exchange Commission (the "SEC"), as well as commodity pool operators and commodity trading advisers registered with the Commodity Futures Trading Commission (the "CFTC"), to report systemic risk information on the proposed Form PF (the "Form PF").

Our law firm has been representing registered and unregistered advisers to private investment funds for approximately 40 years and currently represents many of such advisers, both large and small, domestic and foreign. We believe that our collective experience and diverse client base has given us an understanding of the hedge fund industry and how it will be affected by the Proposed Rule.¹

Burden of the Initial Filing Timeline and Scope of Data

The SEC has proposed that large private fund advisers would make their initial Form PF filing by January 15, 2012, and other private fund advisers would make their initial annual Form PF filing by March 31, 2012.² We believe that the initial filing date does not provide advisers with sufficient time to develop proprietary systems and modify their current systems for collecting, coding and tracking all of the information requested in Form PF.

Based on our discussions with certain advisers, it is our understanding that many of the questions in Form PF require information to be treated/classified/recorded differently than how advisers (including those with the most robust operational and technology platforms in the industry) currently treat/classify/record such information

¹ Our comments contained herein reflect our firm's views, and not necessarily the views of any of our clients.

² Assuming the advisers' fiscal year ends on December 31st.

Elizabeth M. Murphy

April 12, 2011

Page 2

that track/classify/record investments or collateral into all of the categories and sub-categories provided in Items 19, 20, 23, 25, 27, 32, 33, 34 and 37). In addition, certain advisers have indicated to us that they do not track all of the requested information and all of the information is not necessarily stored in one central location or database. As a result, many advisers may be required to undergo the expensive process of modifying and/or creating proprietary systems that will be able to extract all data from multiple databases and systems. Additionally, many advisers may be required to make significant changes to their middle and back office procedures in order to capture all of this information in the format required by Form PF.

In modifying and/or developing proprietary systems to gather the data and preparing for their Form PF filings (e.g., interpreting questions, determining necessary assumptions), advisers' operations teams will need to work extensively with portfolio managers/traders, computer programmers, legal counsel and compliance professionals, and a project involving so many different parties will take a significant amount of time. In addition, some of our clients have indicated to us that they will have to hire additional middle office and/or back office employees and/or computer programmers to assist them in preparing their Form PF. The SEC states in the Proposed Rule that it anticipates that it will take large advisers and small advisers approximately 75 hours and 25 hours, respectively, to prepare their initial Form PF. The SEC further states in the Proposed Rule that it anticipates that it will cost large private fund advisers and small private fund advisers approximately \$23,300 and \$3,400, respectively, to prepare their initial Form PF. For the reasons outlined above, we think that the time and cost involved in preparing an initial Form PF will be substantially greater than the SEC's estimated time and cost. In fact, some of our clients have already spent well in excess of 75 hours on preparatory work in assessing how to complete Form PF and have incurred well in excess of \$23,300 in employee time in connection with such preparatory work. We anticipate that these numbers will be substantially exceeded when our clients take further steps to complete Form PF, including modifying and/or developing proprietary systems and hiring additional employees.

Additionally, we believe that in light of the foregoing (and the other reasons outlined in this letter), the SEC should re-examine the scope of the data requested in Form PF. Advisers have developed proprietary systems and middle and back office procedures that they believe work best for their risk management requirements and investor reporting purposes, and their systems and procedures should not have to be changed (especially since such changes would be costly and unnecessary to serve the adviser's clients) solely to track/record/classify data for purposes of preparing their Form PF. If the SEC and the CFTC reduce the scope and granularity of the data requested, then advisers may be able to provide the information without significantly altering their systems and procedures.

Therefore, we respectfully request that the initial filing deadline be extended. In our opinion, advisers should have at least 12 months from the date that the final Form PF rule is published to modify and/or develop proprietary systems. We also respectfully request that the SEC and the CFTC reassess the time and cost burdens associated with advisers preparing their Form PF and modify the scope of Form PF to be consistent with their estimated time and cost burdens.

Semi-Annual Filings

We also request that Form PF be submitted by large private fund advisers on a semi-annual basis as opposed to a quarterly basis. We point to the U.K. Financial Services Authority's (the "FSA") Hedge Fund

Elizabeth M. Murphy

April 12, 2011

Page 3

Survey³, which is required to be submitted on a semi-annual basis. We understand that numerous advisers have not been able to provide information to the FSA on a timely basis and have had to file for extensions. We believe such difficulties will only be exacerbated in the United States if advisers are required to file Form PF on a quarterly basis.

Furthermore, given the volume of information reported in Form PF and the number of advisers that will be required to submit a Form PF, reporting on a semi-annual basis will give the SEC more time to thoroughly review and analyze the information therein, reduce the burden Form PF creates for large private fund advisers, and help reduce Form PF's unintended consequences (see "Scope and Consequences of Form PF" below).

Quarterly Reports

The Proposed Rule requires large private fund advisers to submit their Form PF within 15 days after each quarter end. We believe that the foregoing requirement will place a significant burden on advisers given the volume and scope of the requested data and the other reasons outlined in this letter. In addition, we believe that the SEC and the CFTC will not be provided with reliable data if large advisers are required to file Form PF in such a short period of time after the end of each quarter.

For comparison, we point to Form 13F filings, which must be submitted within 45 days after each quarter end. The scope of the information requested in Form PF is considerably greater than the scope of information reported in Form 13F filings, and thus, we think it is fair and appropriate to provide advisers with more, not less, time than is granted to file a Form 13F, or at a minimum, a similar time period. For further comparison, a public reporting company's Form 10-Q and 10-K is filed within 40-45 and 60-90 days, respectively, after the end of the applicable reporting period, and a bank holding company required to file the FR Y-12 reporting form must submit such form to the Federal Reserve within 45 days after the end of the applicable reporting period.

Certain advisers to private funds have indicated to us that they generally determine the estimated net asset value of their funds within 2-3 business days after each month end. However, Form PF requires advisers to determine gross assets of their funds, and in many cases, the gross assets are not finalized until approximately 60-75 days after each quarter end. These gross asset figures are required in order to determine "regulatory assets under management", "net assets under management" and responses to many questions in Form PF. We believe that a 15-day period to provide accurate responses is not feasible. If advisers are required to estimate figures in their Form PF (which they will have to do based on the proposed 15-day deadline), such estimates could materially differ from the figures ultimately reported on their funds' balance sheets. To the extent that the SEC and the CFTC require large advisers to file Form PF on a quarterly basis, we believe that such advisers should be provided with at least 60 days after the end of each quarter (or semi-annual period, as requested above) to make the filing. This amount of time may reduce the operational burden on advisers and should provide the SEC with more reliable data. Also, in light of the statement by the SEC and the CFTC that information reported in Form PF may be used for enforcement purposes, data in Form PF should be consistent with the interim unaudited financial statements or reports that are sent to investors in the reporting funds, and this may not be the case if advisers are required to estimate the value of the assets held by their funds in order to meet the Form PF filing deadline.

Furthermore, the same operations personnel that are responsible for closing the reporting funds' books each quarter will also have to prepare an adviser's Form PF. As a result, if the proposed 15-day deadline is

³ This survey asks 50 of the largest FSA-authorized advisers questions regarding the assets they manage (including numerous questions similar to those posed in Form PF, but in less detail and scope).

Elizabeth M. Murphy

April 12, 2011

Page 4

adopted, the closing of the funds' books will likely be delayed at the expense of investors and it may not be possible for investors to receive their quarterly statements as quickly. We believe that providing advisers with at least 60 days after each quarter end (or semi-annual period, as requested above) to submit Form PF will help ease this burden on advisers and ensure that investors are not adversely affected.

Moreover, as discussed below, Form PF could be leaked and disseminated, and any dissemination of sensitive portfolio level information could have a material adverse effect on an adviser's business and its clients. However, if Form PF is filed within 60 days (or more) after each quarter end (or semi-annual period, as requested above), disclosure is less likely to have a material adverse effect on the adviser and its clients because trades, exposures, strategies, etc. more remote in time are less likely to be replicated by competitors or used to competitors' advantage.

Therefore, we respectfully request that large private fund advisers be granted at least 60 days after the end of the relevant reporting period (each quarter or semi-annual period (as requested above)) to submit Form PF, and believe that the SEC should still be able to effectively monitor emerging risks if this modification is permitted.

Penalties; Certifications

Form PF has a warning that "false statements or omissions may result in revocation of your registration or criminal prosecution". Given the unprecedented amount of detailed information being requested from advisers, the short time frame during which Form PF must be submitted and the number of assumptions that an adviser will need to make in answering many of the questions, we think that the SEC should impose penalties only in cases where material false statements are intentionally made or material information is intentionally omitted. At the very least, the standard for imposing liability or sanctions should be recklessness. We do not believe that an adviser (or its related persons) should suffer criminal prosecution or regulatory consequences if it answers Form PF's questions in good faith, especially since Form PF contains many ambiguities and advisers may inadvertently omit an assumption from Item 5 (since such adviser might be relying on numerous assumptions until the SEC gives more guidance on how certain questions should be answered).

Furthermore, Item 2 requires an adviser and its related persons to certify, under penalty of perjury, that the information and statements in Form PF are "true and correct". For the reasons described in the paragraph above, we believe that this certification should be modified. We point to a fund's certified annual financial statements, which require an auditor only to certify that "the statements present fairly, in all material respects, the financial position of the fund," and auditors spend months (as opposed to 15 days) preparing such statements. Thus, we think it is both fair and appropriate to add that the adviser "believes in good faith" that the information and statements made in Form PF are "true and correct in all material respects".

Confidentiality Concerns

Although the SEC is required to keep confidential information that it collects from advisers regarding the private funds that they manage and is exempt from being compelled under the Freedom of Information Act to disclose such information (in each case, including the information contained in Form PF), the SEC is not prohibited from sharing such information with other federal departments and agencies, self-regulatory agencies and Congress (collectively, the "Applicable Parties").

However, some of the Applicable Parties may not have necessary safeguards in place to ensure confidentiality, and even if they do have such safeguards, confidential information is more likely to be leaked

Elizabeth M. Murphy

April 12, 2011

Page 5

when a greater number of parties have access to such information. In particular, numerous confidential government documents have been leaked over the past few years to Wikileaks and posted on the internet, and it is impossible to ensure that Form PF and the information therein will not be leaked and disseminated.

We therefore request that questions in Form PF that elicit sensitive, portfolio level information be eliminated because of confidentiality concerns. For example, Item 31 requests information regarding open positions representing 5% or more of a reporting fund's net asset value. The disclosure of such types of portfolio level information could have a material adverse effect on an adviser's reporting funds and their investors (e.g., other advisers could replicate such adviser's investment strategy or otherwise use the information to their advantage and the adviser's and its clients' disadvantage).⁴

We also suggest that the SEC implement procedures that would help preserve confidentiality in the event that a Form PF was ultimately leaked and disseminated. For example, instead of requiring advisers to list their firm's name in Form PF, the SEC could utilize a coding system and assign each adviser a different numerical code each quarter (or year in the case of small advisers), which would then be listed on each such adviser's Form PF.⁵ If the SEC needed to know the actual name of a particular adviser in connection with its review of such adviser's Form PF, then the SEC could obtain such adviser's name from the coding database. If such system was implemented, any disclosure of an adviser's Form PF would be less detrimental to such adviser's business⁶ and would be less sensational to the press. We do not believe that this system would be burdensome to implement and we believe that the benefits far outweigh any administrative inconvenience.

Format of the Filing

Advisers will likely create a document on their own document management systems mirroring Form PF since (among other reasons) such form will require input from numerous employees and have to be continually revised based on the finalization of numbers and discussions with portfolio managers/traders, legal counsel and compliance professionals. Inputting all of the information from such document onto the electronic system designated by the SEC manually on a question-by-question basis will be a significant administrative burden and increase the prospects for error. Therefore, we request that advisers be able to upload their Form PF to such electronic system using a text-searchable Adobe Portable Document Format (similar to how advisers currently upload their Form ADV Part 2 Brochures) or some other format conducive to uploading information in bulk.

Scope and Consequences of Form PF

Form PF requests an unprecedented amount of information from advisers with an unprecedented degree of granularity. We are concerned that some may view this aggregation of information as a first step in regulating the types of trading activities in which private funds may engage. We believe that this regulatory step, together with the amount of time and cost involved in developing proprietary systems (as discussed above) to file Form PF, could have severe unintended consequences. Such unintended consequences may include; (i) reducing the

⁴ We recognize that portfolio level information may not be readily ascertainable solely by reviewing an adviser's Form PF, however, combining the data in such adviser's Form PF with other information that is publicly available (Form 13G, 13D, and 13F filings, newspaper articles, etc.) will make it significantly easier for other market participants and counterparties to deduce such adviser's strategies, positions, exposures, etc.

⁵ Clearly, the certification page would have to be filed separately since the signatory on such page would reveal the name of the adviser.

⁶ A competitor would be less likely to replicate the strategy of an adviser whose Form PF was disclosed if it does not know the name of such adviser, and thus, the reputation and performance history of such adviser.

Elizabeth M. Murphy

April 12, 2011

Page 6

liquidity of the securities markets; (ii) reducing the ability of advisers to manage risk; and (iii) erecting barriers to entry to the private fund business and causing consolidation of smaller advisers into larger advisers that have the resources required to deal with Form PF and anticipated future regulatory requirements. Additionally, such consequences may result in a fewer number of larger advisers, offering fewer choices of advisers to investors and providing less liquidity and efficiency in the markets, thereby potentially increasing systemic risk.

The private fund industry has traditionally been entrepreneurial. Advisers have been able to enter the private fund industry with only a limited number of employees, and without the need for large amounts of capital outlay. Some of the most successful advisers over the last 40 years have launched a private fund business in this manner, and the private funds managed by such advisers (together with many smaller and new advisers that are continually launching funds) today play a significant role in making markets more efficient and liquid. These success stories will likely not be possible in the future if Form PF and other steps to regulate the trading activities of private funds are advanced by the SEC and other regulatory bodies. We view this as particularly troublesome since private funds were not the cause of the 2008 financial crisis and have been widely acknowledged as not being systemically important.

Given the burden caused by Form PF and the potential unintended consequences, we request that the SEC re-examine the questions in Form PF and include only those questions that it believes will elicit the most meaningful data to analyze systemic risk.

In addition, many questions in Form PF are ambiguous and require advisers to rely on many assumptions in answering such questions. Such assumptions will likely result in inconsistent assumptions and reporting by advisers. As a result, it may be exceedingly difficult for regulators to compare advisers and their private funds. We believe that this could ultimately result in an inconsistent application of existing and future regulations to similarly situated advisers since regulators could classify advisers differently based on their assumptions in Form PF. Thus, we request that the questions in Form PF be carefully clarified to eliminate such ambiguities.

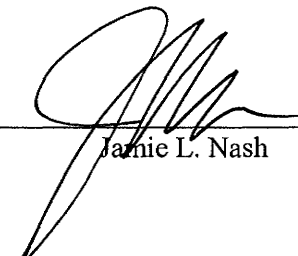
We respectfully request that the Proposed Rule be modified in the manner described in this letter.

Please do not hesitate to contact Jamie L. Nash (at jnash@kkwc.com or 212-880-9823) if you have any questions regarding our proposal.

Very truly yours,

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.

By: _____


Jamie L. Nash