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TCW

April 12, 2011

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

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

Dear Ms. Murphy:

The TCW Group, Inc. (the "*Firm*") respectfully submits this letter in response to the Commission's request for comments on the proposal to implement a reporting regime for investment advisers to private funds called for by Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("*Dodd -Frank Act*"). Section 404 of the Dodd-Frank Act directs the Commission to require private fund advisors to file reports containing information that the Commission deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. We believe the proposal, as drafted, appears to go well beyond what was intended.

As currently drafted, the proposal (i) calls for a vast amount of detail on a fund-by-fund basis that we believe will not be an effective tool for the Financial Stability Oversight Council in monitoring systemic risk; (ii) has overly broad definitions for *hedge funds* and *private equity funds* so that almost every private fund is considered a hedge fund or private equity fund requiring detailed reporting; and (iii) places an enormous burden on advisers, particularly those with a variety of strategies and funds, which burden is significantly underestimated in the draft proposal. We recommend that the Commission consider modifying the provisions in the proposal that will not provide meaningful data in assessing systemic risk and will result in unnecessary or unduly burdensome requirements for advisers to private funds.

Specifically, we request for consideration that the Commission:

- Narrow the definition of "*private fund*"
- Narrow the definition of "*hedge fund*"
- Narrow the definition of "*private equity fund*"
- Narrow *related person* reporting
- Exclude registered funds from the definition of *parallel managed accounts*

- Eliminate reporting of certain analytics (as opposed to data) that are extremely burdensome and not consistently determined or captured by private funds
- Make the effective date of the Rules at least 9 months following the date that final rules are published
- Extend the time frame for quarterly filings of Form PF
- Incorporate the balance of required CFTC reporting into the Form PF
- Limit an adviser's responsibility to those funds for which the adviser is the sponsor and responsible for books and records

Below we provide additional information and analysis on why we ask the Commission to consider the changes as well as specific changes we respectfully ask the Commission to consider.

Narrow the definition of "*private fund*"

Limit the definition of *private funds* to funds offered to investing clients. This would exclude from the definition of "*private funds*":

- employee compensation plans or funds for exclusive investment by the adviser's employees,
- start up seed funds that are not yet offered by the registered adviser to third party investors, and
- single client funds.

The objective of proposed Form PF disclosure is to detect systemic risk in the private fund industry. Given that objective, reporting on Form PF should be limited to funds offered to investing clients.

As currently proposed, a "*private fund*" is defined as any issuer that would be an investment company but for sections 3c1 or 3c7 under the Investment Company Act. Many advisory firms form special purpose funds to facilitate employee compensation arrangements or payment of carried interest/performance fees. This may include special purpose general partners or managing members that are associated with one or a small number of funds and that issue interests so that employees can participate in performance fees/carried interest. Those entities often rely on 3c1 or 3c7 exemptions. Form PF should be clarified so that those entities are not treated as reporting private funds just because they are issuers that rely on the 3c1/c7 exemptions.

The definition of *private fund* should also exclude single client funds. Some investor clients request that advisory firms form a special purpose entity or fund to manage their investments in a particular strategy as an alternative to a separate account arrangement. These single client funds are often structured for tax or reporting reasons (financial or regulatory) and should not be required to report as a separate *private fund* since it is not the type of fund that is offered as a private fund product to investing clients generally.

Eliminate separate reporting requirements for entities that are used to facilitate investments (*e.g.*, co-issuers and blocker entities).

In structuring many *private funds*, a number of separate entities, including co-issuers, may be formed to facilitate investments for tax or regulatory reasons. These entities that facilitate investments by funds offered to investors should not be considered separate reporting private funds even though technically those facilitating entities may rely on 3c1. It should suffice that the information for these entities is reported with their related private fund to the extent such related fund is otherwise required to separately report.

Eliminate from definition of *private funds* those funds with a portfolio that is 90% or more Section 13F securities (*i.e.*, voting equity securities or securities convertible into voting equity securities reported on Form 13F by the adviser).

A number of funds are formed as *private funds* to invest in securities of the type found in typical separate account equity strategies or mutual funds. The marketable equity securities that these funds invest in are already reported to the Commission by advisers on a quarterly basis on Form 13 F. Since advisers already report holdings of long only marketable equity strategies in their private funds, it would be duplicative to report on these funds again on Form PF.

Eliminate from the definition of *private funds*, those funds that were established as an alternative to an otherwise predominantly separate managed account strategy. If the Commission decides not to eliminate these funds from the definition of *private funds*, then the assets of the separate managed accounts should not be added to the assets of these separate account alternative funds to cause the adviser to have to report as a *large private fund adviser.*

The reporting on Form PF is directed at the private fund industry and not at advisory firms' separate account business. Strategies that are primarily set up for separate account mandates should not have to submit a report on a single fund set up to accommodate those clients who cannot meet the separate account minimums.

Advisory firms typically set up a separate account advisory agreement when a client has a sizable amount to invest in a particular strategy. For those clients who do not wish to invest the amount required to meet the separate account minimum, advisory firms may offer a co-mingled private fund vehicle to invest on a side-by-side basis with the otherwise separate account strategy.

An example would be as follows: Say an investment manager manages separate accounts in a fixed income strategy having $8 billion in AUM with minimum separate account size of $10 million in that strategy. Under the rules applicable today, there is no specific reporting required for the fixed income assets. If the adviser decides to make available a co-mingled fund vehicle for smaller high net worth clients and establishes a fund with $25 million invested in that small fund, the *entire* fixed income portfolio of $8.025 billion will become reportable under PF. Prior to the formation of the co-mingled vehicle, the $8 billion in MBS separate accounts would not get reported on Form PF since there was no private fund in the strategy. Once the $25 million private fund is formed, the otherwise unreported strategy will be required to report. Since the proposal is directed at the private fund industry, a primarily separate account strategy should not be required to report.

If the Commission decides to include those funds formed as an alternative to otherwise predominately separate account strategies in its definition of *private funds*, then we suggest that the Commission not use the AUM of *parallel managed accounts* in the determination of whether the adviser is considered a *large private fund adviser*. As the example above demonstrates, an adviser could have a very small *private fund* of $25 million in a strategy that is otherwise entirely separate accounts of $8 billion in AUM and that one small *private fund* could then be used to cause the firm to be considered a *large private fund adviser* with $8.25 billion in AUM. This would significantly expand such adviser's reporting burden.

Narrow the definition of "*hedge fund*"

As proposed, the definition of *hedge fund* is overly broad and picks up many long only funds, unlevered funds and structured funds that should not be reported on as *hedge funds*.

The definition of *hedge fund* should be revamped to focus on the strategy that is being used by the fund and to pick up only those funds that present the types of risks found in levered funds or funds that engage in significant short selling as a core part of their strategy. The proposed definition of *hedge fund* should be clear that long only funds, unlevered funds and structured funds are not to be reported as *hedge funds* under Form PF.

As <u>currently</u> drafted, the definition of *hedge fund* has three elements:

- it has a performance fee or allocation calculated by <u>taking into account</u> unrealized gains (the "*Performance Fee Test*"); <u>*or*</u>
- it <u>may</u> borrow an amount in excess of one-half of its net asset value (including committed capital) or may have gross notional exposure in excess of twice it net asset value (including committed capital (the "*Borrowing Test*"); <u>*or*</u>
- it <u>may</u> sell securities or other assets short (the "*Shorting Test*")

Performance Fee Test: Eliminate the *performance fee test* from the definition of a *hedge fund* since the *performance fee test* is common to most funds that have a performance fee and it is not a unique characteristic of a *hedge fund*.

What constitutes a "*hedge fund*" should be directed to the fund strategy and not how performance fees are calculated. We feel that the strategy is more of an indicator of potential systemic risk, rather than the fee structure. Many traditional bond funds, mezzanine funds and other predominantly long-only unlevered funds use performance fees or allocations calculated *by taking into account* unrealized gains. Most advisors do not consider or market these types of funds as *hedge funds*.

As drafted, the *performance fee test* is an alternative requirement to being categorized as a hedge fund and, if this is not changed, most private funds (whether hedge fund or not) that have a performance fee will be considered *hedge funds* for reporting on Form PF. Long only and unlevered funds are not the type of funds that the Commission and CFTC have targeted as the risky funds requiring the level of detailed reporting that may be justified for a true hedge fund.

Performance Fee Test: If the Commission decides to retain a *performance fee test* among the elements constituting a *hedge fund*, then the *performance fee test* should not be a stand-alone test connected by an "*or*" in the definition of *hedge fund*, but should be conjunctive with either the Borrowing Test or the Shorting Test.

If the Commission decides to include a performance fee test requirement in the definition of a *hedge fund*, it should be an additive requirement separated by an "and" from the other tests in the definition. Performance fees in and of themselves are likely not contributors to systemic risk, but may be when conjoined with risk-enhancing practices such as leverage or shorting.

Performance Fee Test: If the Commission decides to retain a *performance fee test* among the elements constituting a *hedge fund*, then the definition should be clarified to require that the performance fee or allocation be "*calculated and paid out on the basis of unrealized gains*" and not "*calculated by taking into account unrealized gains*".

If the Commission decides to include a performance fee test requirement in the definition of a *hedge fund*, the definition should be clarified to provide that the performance fee or allocation is "*calculated and paid out on the basis of unrealized gains*" and not merely "*calculated taking into account unrealized gains*" as proposed in Form PF. This change addresses three issues with the current definition.

- The first, we believe is a clarification, namely, "taking into account" unrealized gain could pick up flat fees or straight NAV-based fees since they "take into account unrealized" gains by virtue of the fact that the amount of a flat fee will rise or fall with NAV increases or decreases. An NAV increase inherently includes unrealized gains. Therefore, we propose that the language be that the performance be "calculated on the basis of" unrealized gains, to make it clear that the unrealized gain itself must be the basis of the performance fee.
- Secondly, many private funds, particularly private equity funds, calculate a performances fee or allocation on the basis of unrealized gains but do not pay them out unless and until realization in fact occurs. GAAP requires that unrealized gains and losses be accrued (based on marked-to-market requirements), even when the underlying fund documentation provides that the fee is not *paid* on that basis. Many if not most private funds have moved toward GAAP accounting, in many cases to comply with the SEC's custody rule. Therefore, we also propose that the performance fee or allocation not only be "*calculated* on the basis of unrealized gains" but that it be "*paid* out on the basis of unrealized gains".
- Thirdly, in some funds, flat asset based fees are charged, with a portion being subordinated in payment and subject to the fund achieving a certain return or hurdle. The proposed modification will make clear that a fee that is an asset based fee, but which is subordinated

unless a certain return or gain is achieved, will not satisfy the *performance fee test* since it is not "*calculated...on the basis of unrealized gains*."

Borrowing Test: In the definition of *hedge fund*, change "may borrow" to "borrows or expects to borrow"

Many funds have the flexibility in their guidelines to borrow but use that ability sparingly or not at all. The Commission should look at the actual activity of the fund in judging whether a private fund should be characterized as a hedge fund for purposes of reporting on Form PF.

Borrowing Test: Exclude from the *borrowing test* in the definition of *hedge fund*, all short term borrowings used to cover capital calls, redemptions and borrowings in local currency to hedge currency risk.

Many private funds use short term borrowings to cover capital calls, cover redemptions on a short-term basis or borrow in local currency to hedge against currency risk when investing in foreign countries. These types of borrowing do not pose the risks that outright borrowing presents and should be excluded in determining whether the net asset value ratio in the *borrowing test* has been met.

Borrowing Test: Exclude structural leverage from the borrowing test.

The *borrowing test* should be clarified to exclude leverage that is inherent in the structure of a fund but include leverage on account of assets *in* the fund (*e.g.*, repos or margin). The borrowing test should be aimed at the investments the fund makes as compared to the leverage due to the structure of the fund itself.

Shorting Test: Exclude from *shorting test* in the definition of *hedge fund,* those funds that have the flexibility under guidelines to short but in fact shorting is not a significant investment strategy used by the fund.

Many funds give themselves the flexibility to use shorting but in fact shorting is it not used as an investment technique or it is not a meaningful part of the portfolio. We suggest that the Commission change the shorting test from "may sell securities or other assets short" to "sells or currently expects to sell securities or other assets short." Further, we suggest that the Commission permit funds to engage in a modest amount of short selling before automatically categorized as a *hedge fund.* For example, 130/30 mutual funds are not typically considered high risk funds.

Shorting Test: Exclude from the *shorting test* in the definition of *hedge fund*, shorting of indexes designed to hedge the risks of specific assets, bundles of assets or beta risk within the fund.

The definition of a *hedge fund* as a fund that "may sell securities or other assets short" is overly broad. Those funds that short indexes designed to hedge the risks of specific assets within the fund, bundles of assets within the fund or beta risk within the fund should not be considered a *hedge fund* which presents the kind of risks requiring detailed disclosures.

Clarify that a *hedge fund* does not include a *securitized asset fund*.

Given the broad *performance fee test and borrowing test* that are a part of the proposed definition of what constitutes a *hedge fund*, we suggest that the Commission clarify that *hedge funds* do not included *securitized asset funds* (*i.e.*, funds that invest in or issue asset backed securities[1]). Many of the proposed hedge fund disclosures in Form PF do not appear to be directed at securitized asset funds and *securitized asset funds* are not typically thought of by the advisers as *hedge funds*.

Narrow the definition of "*private equity fund*"

Add a bright line test for redemption rights that would cause a fund to be considered a *private equity fund*.

The proposal defines *private equity funds* as those that do not provide investors with *redemption rights in the ordinary course* and are not hedge funds, liquidity funds, real estate funds, securitized asset funds or venture capital funds. What is meant by redemption rights "in the ordinary course" is vague. Many *private equity funds* lock up capital for 6 years or more. We suggest adoption of a bright line test such that *private equity funds* would be those funds that generally do not allow redemptions within the first 5 years following the date of the commitment to the fund and are not hedge funds, liquidity funds, real estate funds, securitized asset funds or venture capital funds.

Clarify that certain limited redemptions would not cause a fund to be considered a *private equity fund*:

- Funds that limit early redemptions to a small number of a Fund's investors
- Funds that allow exits only if the GP agrees based on a regulatory risk or other special justification

[1] See recommendation below on clarifying the definition of *securitized asset fund*.

If the Commission adopts a bright line test for private equity funds as suggested above, the Commission should also recognize that some funds enter into special arrangements with lead investors to permit limited liquidity for regulatory or other special purposes. The instructions to Form PF should clarify that this would not be interpreted as redemptions in the ordinary course prior to the specified period.

Add to the definition of *private equity fund* that the fund must invest primarily in equities.

The proposed definition of *private equity fund* is expressed in terms of what *is not* instead rather than *what is* a private equity fund. There is no mention in the proposed definition of *private equity fund* that the fund invests primarily in equity securities of companies. We suggest that a fund that primarily invests in equity securities <u>and</u> is not hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund be considered a *private equity fund*. Funds that primarily provide debt financing would be excluded.

Reduce the amount of detailed reporting for those *private equity funds* whose strategy is primarily to provide growth capital (as compared to financing LBOs).

Funds that invest in equity to provide growth capital to issuers do not present the same potential for systemic financial risk as those private funds that finance LBOs and thus should not be burdened with the requirements to provide the same level of detailed as the funds that primarily finance LBOs. The release on Form PF states the observed potential systemic risks from private equity funds as being *"its method of financing leveraged buyouts"* and private funds *"imposing significant amount of leverage in their portfolio companies"*. However, growth capital does not present these types of risks. Therefore, we suggest that there be lighter disclosure required by those *private equity funds* that provide growth equity as compared to those private equity funds that primarily engage in leveraged buy outs.

Clarify the definition of "s*ecuritized asset fund*" which is one of the categories of funds that is excluded in the definition of *private equity fund*.

The proposed definition of *securitized asset fund* is a private fund that is *not* a *hedge fund* and that <u>issues</u> asset backed securities and whose investors are primarily debt-holders. We recommend that the definition be clarified to provide that securitized asset funds are private funds that <u>*invest in*</u> **or** <u>*issue*</u> asset back securities. Many CDOs invest in asset backed securities and by clarifying the definition of securitized asset fund to include these types of funds, CDOs would not be reported as private equity funds. The types of disclosures called for in Form PF for private equity funds do not appear to be geared to CDOs and by clarifying the definition of securitized asset fund, these CDOs would not be reported as private equity funds.

Narrow "*related person*" reporting

Do not require aggregation of funds managed by any related person (*i.e.*, under common control) and instead use the "separate business unit" model that has been used in connection with Section 13F reporting.

Form PF proposes that any private fund or parallel managed account advised by ***any** of the adviser's related persons* be included in the determination of whether reporting thresholds have been met such as the definition of large private fund adviser advising private equity funds. Requiring aggregation of funds managed by "*any related person*" is not possible for many large institutions such as a large firm which operates under separate business units with independent asset management functions and decision making by affiliated entities. The Commission has used a "separate business unit" concept in allowing reporting under Section 13 and we suggest that the same approach be used here. If the Commission is trying to capture side-by–side investing, it could require aggregation of funds managed by related persons that *share information about investment decisions on a real time basis*.

Instruction 5 should be revised to *exclude* reporting of parallel *managed accounts* when reporting on specific funds but *include* reporting on parallel funds.

We believe that reporting data where parallel managed accounts are aggregated with the largest private fund to which it relates will produce confusing and misleading data. Separately managed accounts are often set up with unique guidelines negotiated with the client and are not often exactly aligned with a particular fund strategy. On the other hand, two funds that invest in parallel should logically report as an aggregated fund as that would be more meaningful than multiple reports with parallel data points.

If the Commission deems that such separately managed account data is in fact required, then it should be reported on a summary and high level basis and not with the detail that a fund is required to separately report. The mandate in the Dodd-Frank Act was to obtain data on the private *fund* industry and not the managed account or advisory business in general. Requiring advisors to match separate accounts to funds and aggregate data seems to extend beyond this mandate.

Exclude registered funds from the definition of *parallel managed accounts*

Exclude registered investment companies, UCITS and SICAVs from the definition of "*parallel managed accounts*".

Registered investment companies, UCITS and SICAVs are already subject to extensive reporting requirements and portfolio management restrictions. Including data from these funds as parallel managed accounts serves no meaningful purpose and poses additional burdens on advisors of multiple funds. We ask that the Commission exclude such registered companies from being considered parallel managed accounts.

Eliminate the requirements for certain data and analytics that are extremely burdensome

We believe that the proposal significantly underestimates the amount of time that will needed to be spent and expense to be incurred if advisory firms are to complete Form PF in its current form.

Many of the requested items on Form PF are not tracked by advisory firms on the frequency, by the category or on a fund-by-fund basis in the manner requested by the proposed Form. This is particularly true of "analytics" as opposed to data or information. Firms often have varying ways of reviewing their positions form a risk point of view and requiring a conformance to a single regulatory framework is likely to be burdensome for many firms.

For example, while a firm may have some liquidity data across the securities that it manages over various strategies, the liquidity may be not tracked in all strategies on a fund-by-fund basis or over the period of time it would take the liquidate a fund's portfolio at carrying value (Question 28). If this question continues as part of the Form in its current formulation, many firms would have to devote significant time and resources to building models and systems to produce this information. Similarly, while firms may have some data on open positions, data is often not collected on a fund by fund basis according to sub-asset class (Question 31).

There are numerous examples within Form PF where extensive IT, portfolio analytics and third party vendor data and resources will have to be brought to bear for an advisory firm to complete the form. The Commission should give consideration to allowing advisers to cut back on some of these requirements or permitting firms to present some information using the measurements and categories that are currently employed by the firm.

Requiring monthly performance for each *private fund* (NAV change/performance (gross and net)) should be changed to quarterly (Question 14).

Many closed-end funds in non-marketable strategies produce quarterly valuation and performance data and not monthly data. Requiring monthly data would add a significant burden and cost to these funds. We request that Question 14 require the requested data to be reported on a no-more-frequent basis than the fund currently has in place.

Eliminate requirement for market factor impact analytics (Question 36)

The stress testing called for by question 36 is overly burdensome. As discussed above, the proposed definition of *hedge fund* would pick up many funds that would ordinarily *not* be thought of by an adviser as a "*hedge fund,*" and thus would trigger the detailed analytics called for by Question 36. An analyst at the firm estimated that it would take one to two days for the firm's systems to compute and verify the data for one fund's response to question 36. Depending on the strategy, a firm may have some data points for some strategies but it is unlikely that many (if any) firms track the analytics as proposed by this question. After consulting with our analysts, we believe that the burden presented by question 36 would tie up many systems for extended periods and negatively impact the firm's ability to respond to client inquiries, management inquiries and other regulatory requirements. Further, the formulation of the question presents so many variables and assumptions that we believe that the data from various advisers will not be comparable. We urge the Commission to eliminate this question from Form PF.

Eliminate the requirement for counterparty data.

The detail on counterparty exposure (Questions 19, 20, 32, 33) should be obtained from the counterparties themselves and not from the advisers. The Form calls for the percent of NAV exposure and dollar exposure to the top 5 counterparties on a fund by fund basis. Since the size of the funds will vary widely, the counterparty detail will *not* be meaningful and will take significant effort to develop since advisory firms do not track these items in the manner requested by Form PF.

Eliminate requirement for information and data on *financial industry portfolio companies* for large private equity fund investments. (Section 4 Question 66(b))

Information on the stability of financial industry participants is best gathered from those entities, not advisors who happen to invest in them through funds. Data on financial industries is gathered through other regulatory constructs and regulators. It should not be incumbent on advisors of private funds to provide financial information on such investees (e.g. debt-to-equity ratios of banks in which it invests) where it is otherwise readily available from the primary source itself.

Make the effective date of the Rules at least 9 months following the date that final rules are published

The proposed effective date should be a minimum of 9 months from the date that the final rules and reporting system are adopted.

Advisory firms will need a significant amount of time to build systems and processes and coordinate both within and outside the firm to gather data feeds to complete Form PF in its current form. The form calls for data from portfolio companies, about investors in the funds, about fund performance, about hypothetical impacts of various factors and stressors, about financing arrangements, about counterparties, about parallel entities and accounts etc., all of which will require extensive coordination and development time. The Commission should take into account the many other regulatory reforms and compliance matters that advisors are working through as a result of the economic crisis and in the wake of the Dodd-Frank Act.

If the final rules are not promulgated until late in 2011, firms will not have sufficient time to educate and hire personnel, contact third parties and portfolio companies and then develop and test their systems to assist in producing the data. In the case of large, diverse multi-asset class firms with many private funds, we estimate that it will take a minimum of 9 to 12 months to analyze the sources of data across the various product groups at the Firm, build a reporting system, test the new systems, collect, process and verify the information for the first filing. Depending on the system that selected for inputting the data, significant training of additional personnel could be required. Accordingly, we urge the Commission to delay the effective date of the Form PF rules until 9 to 12 months following the publication of the final rules (including the selection of the filing format) in the Federal Register.

Extend the time frame for quarterly filings of Form PF

Given the amount of data required from many sources (including portfolio companies), move the filing date for Form PF to 60 days following the end of the quarter.

Completing a Form PF will require coordination by many departments since the nature of the information is so diverse—portfolio information, performance information, analytics, investor information, risk data. Information will need to be gathered from custodians and administrators as well as portfolio company issuers, aggregated along the lines requested by the form and verified for submission. Since an advisory firm will have to rely on provision of information from third party sources it is difficult to predict how long from the end of the quarter it will take but 60 days would be a minimum. The Commission allows 45 days for its 13F reports and those require gathering of only one type of information, namely, voting equity securities, which data is readily available on portfolio management platforms as a matter of course. Form PF, in contrast, requires a wide array of types of data that need to be pulled from various sources both within and outside the firm and, besides the data, it requires the application of analytics tests to that data.

Incorporate the balance of required CFTC reporting into Form PF

Include in Form PF all data for CFTC reporting so CFTC reporting funds do not need to make a separate filing with the CFTC

For those funds that are required to provide information to both the CFTC and the Commission, it would be helpful if Form PF would be expanded so that all CFTC information could be provided on the one Form PF under one filing regime rather than requiring a separate filing to the CFTC each quarter for the balance of the information not contained in Form PF for CPOs and CTAs. The SEC and CFTC have taken a step toward coordination in drafting form PF and we ask that they consider taking the final step to allow an integrated form of filing for private funds, whether they be commodity pools or not.

Limit an adviser's filing responsibility to those funds for which the adviser is responsible for books and records

An adviser's responsibility for filing Form PF should be limited to those funds for which the adviser is the sponsoring institution and is responsible for maintaining books and records.

An adviser is sometimes hired to manage a fund or a portion of a fund that is established and structured by an investment bank or other third party sponsor. This is typical in the structured funds arena, such as CDO's. As part of the fund structuring by the investment bank, a trustee or administrator is hired to perform the back office, custody and all reporting functions. It maintains all the books and records of the fund, including portfolio positions, performs compliance testing, and provides all reports from its data and records. The investment advisor is simply an additional service provider to an independent entity, whose function is to identify and select securities within a pre-determined framework for the fund. In those cases, it should be the responsibility of the sponsoring institution and/or administrator or trustee who has the best access to the information to complete and file Form PF. The advisor is not in a position to provide many of the types of information for funds simply because it provides advisory services to the fund.

General Comment on the Information and Data Sought on Form PF

We have given above some specific suggestions on the data and information requested by Form PF, as we have been able within the time constraints of the SEC for providing comment letters. However, we believe the breadth, scope and volume of detail required by Form PF is so voluminous and detailed that it may result in having less rather than more visibility on potential systemic risks.

The mandate of Section 404 of the Dodd Frank Act was to have data collected on private funds "*such as the amount of assets under management, use of leverage, counterparty risk exposure and trading and investment positions for each private fund*". These are the types of information that could possibly be useful for a systemic overview of the economy in the hands of private funds. The information requested in PF goes far beyond these examples. A 44 page filing which will be multiplied several times for advisers with multiple funds, is extremely intensive and probably too detailed. Once a regulatory burden or requirement is enacted, it is rarely "cut-back" later on the basis that it was too expansive or overbroad, and it is likely that whatever is adopted will become the requirement for a long time. We ask if in the long-run this level of information is really sufficiently valuable or informative and if a similar perspective could not be obtained from focusing largely on the data points that provide "the *amount of assets under management, use of leverage, counterparty risk exposure and trading and investment positions for each private fund*" as described in Section 404 of the Dodd Frank Act.

We appreciate the Commission's consideration of our comments on Form PF. Please do not hesitate to contact the undersigned at (213) 244-0648 (Michael.Cahill@tcw.com) or Linda Barker, Deputy General Counsel, at (213) 244-0694 (Linda.Barker@tcw.com) if you would like us to provide any additional information regarding our comments or other matters.

Respectfully submitted,

Michael Cahill

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