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Invested in America

April 12, 2011

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Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Securities Industry and Financial Markets Association comments on File No S7-05-11, Release No. IA-3145

Dear Ms. Murphy:

The Asset Management Group (the "AMG") of the Securities Industry and Financial Markets Association ("SIFMA") appreciates the opportunity to provide our views to the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission ("CFTC") regarding certain aspects of the Proposed Rule, titled "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF" (the "Proposed Rule").[1] The Proposed Rule would implement Section 204(b) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Under the terms of the Proposed Rule, investment advisers registered under the Advisers Act, which serve as investment advisers to private funds and certain commodity pool operators and commodity trading advisers would be required to report information necessary for the SEC and other regulators, including the Financial Stability Oversight Council (the "FSOC"), to assess systemic risk.

SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that strengthen markets and encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. This letter has been prepared by the AMG of SIFMA, the voice for the buy side within the securities industry and the broader financial markets. The leadership of the AMG is comprised primarily of Chief Operating Officers and other senior executives at asset management firms, including the largest and most influential market participants in the United States. Collectively, the members of the AMG represent over $20 trillion of assets under management. The clients of AMG member firms include, among others, registered investment companies, state and local government pension funds, universities, 401(k)

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[1] Rel. No. IA-3145, 76 Fed. Reg. 8068 (Feb. 11, 2011), *available at* http://www.sec.gov/rules/proposecl/2011/ia-3145fr.pdf.

plans or similar types of retirement funds and private funds, such as hedge funds and private equity funds.

Based upon discussions with SIFMA's members, we would like to make the following points to the SEC relating to the Proposed Rule:

I. Determination of Systemic Risk

Prior to imposing voluminous information requirements upon private fund investment advisers, the FSOC should have an opportunity to first consider what constitutes "systemic risk" and whether certain hedge funds, private equity funds and liquidity funds create systemic risk at all.

The FSOC has not yet determined what constitutes "systemic risk". The Form PF contains over 60 categories of questions and would collect information from private fund managers located across the United States and in certain cases, overseas, that is unprecedented in detail, scope and sheer volume. We believe that prior to the SEC imposing an entirely new set of complex reporting requirements, as well as creating a new system for gathering this information, the SEC should postpone this regulatory initiative until the FSOC defines what constitutes "systemic risk." Thereafter, the SEC will be able to better tailor its information requests and filing requirements.[2]

II. Alternatives to Implementation Beginning January 15, 2012

We acknowledge that Section 406 of the Act requires the SEC and CFTC to adopt rules to implement provisions of Title IV of the Act within the one year anniversary of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"), July 21, 2011. We also recognize that with respect to several of other parts of the Act that require rulemaking by the SEC[3] (and in other statutes enacted by Congress where SEC rulemaking was required),[4] the SEC has postponed implementation of those rules. Additionally, we note that in one recent example of SEC rulemaking relating to the Act (which relates to registration of municipal advisers), the

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2 We appreciate that there may be issues associated with delaying implementation of the Proposed Rule in order to permit the FSOC additional time to provide greater guidance to the SEC as to where and when systemic risk would exist so that Form PF could better accomplish the goal of assisting the FSOC, among other things, to assess systematic risk in the U.S. financial system. We would urge the SEC, however, to consider selecting from among several alternatives that we have outlined below in Article II of this letter as to how a delay might be accomplished here.

3 We would note that activities implementing Sections 342, 911, 915, 919D, 932 and 979 of the Act have been explicitly delayed by the SEC due to budgetary uncertainties. We believe that financial concerns could also be relevant here due to the additional manpower required and software development and implementation costs that would certainly be required to be incurred by the SEC in order for the SEC to begin receiving the first Form PF reports filed by private fund advisers prior to January 15, 2012.

4 For example, in connection with the Gramm-Leach-Bliley Act, the statutory requirement involved the broker dealer registration requirements of banks was repeatedly delayed by the SEC, as were specific statutory rulemaking deadlines.

SEC adopted an interim final temporary rule[5] to ensure that municipal advisers temporarily satisfy the registration requirement of Section 975(a)(1)(B) of the Act until the SEC has had an opportunity to promulgate a final permanent registration program.[6] In light of the many unresolved matters which are described in this letter, we believe that the SEC could balance the need to comply with the deadline imposed in Section 406 by the Act, but still provide additional time for the SEC, the FSOC and private fund advisers to address these matters in a comprehensive, thoughtful manner.[7] Moreover, in light of the SEC's recent decision to postpone the implementation of the private fund adviser registration requirements,[8] for which private fund advisers will be required for the first time to register under the Advisers Act,[9] we believe it is increasingly sensible to delay implementation of the Proposed Rule.

III. Certain Private Funds and Hedge Funds Should be Exempted from Reporting Obligations under Form PF

A. Definition of Hedge Funds and Private Equity Funds in the Proposed Rule is overly broad.[10]

Section 404 of the Act gives the SEC discretion to define the scope of private funds subject to reporting. In crafting an appropriate definition of "hedge fund" and "private equity fund" for purposes of reporting by private fund advisers on Form PF under Section 404, we believe that the SEC should apply at least the exclusions which will be applied to the definitions of hedge fund, private equity fund and "similar funds" under Section 619 of the Act. That

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5 *See* Rule 15Ba-2-6T, 17 CFR 240.15Ba2-6T ("Temporary Rule").

6 The Temporary Rule expires on December 31, 2011.

7 In adopting the Temporary Rule, the SEC had indicated that it had considered whether it should issue a broad based exemption from the Act in order to allow the SEC additional time to consider a final permanent registration program before requiring registration, but in light of the October 1, 2010 effective date that Congress had set for Section 975 of the Act, it had concluded that "delaying implementation of any registration for municipal advisers and not accommodating temporary registration would not appear to achieve the purposes intended by Congress in selecting an October 1, 2010 registration date." Temporary Rule at 6.

8 *See* Letter from Robert Plaze to the President of the North American Securities Administrators Association, Inc., (April 8, 2011) available at http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf

9 Section 403 of the Act repeals the existing private fund adviser exemption under Section 203(b)(3) of the Act and had it gone into effect on July 21, 2011, it would have had the effect of requiring many previously unregistered investment advisers to many hedge funds and private equity funds to register as investment advisers under the Advisers Act. Since many of these investment advisers are not currently registered as investment advisers under the Advisers Act, they will now not be required to register until the first quarter of 2012. Therefore, we believe that it would be preferable to delay having the reporting requirements under Form PF go into effect until after Section 403 goes into effect and the currently unregistered investment advisers become registered under the Advisers Act.

10 As set forth under caption B below in this section, we believe that private equity funds should be excluded entirely from reporting on Form PF. If private equity funds are not excluded entirely, the scope of private equity funds subject to reporting at least should be limited as described under this caption A.

section, also known as the "Volcker Rule," was intended to strengthen the financial system and constrain risk taking at banking entities, but also shares a common goal with the Proposed Rule – the safety and soundness of non-bank financial entities. Entities that are not prohibited investment vehicles to banks under that section should not be the subject of required reporting under Section 404.

The Volcker Rule generally prohibits a banking entity from investing in, or having certain relationships with, any fund that is structured under Section 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940, as amended (the "1940 Act") (exclusions commonly used by various types of funds under of the 1940 Act) "or such similar funds" as certain Federal agencies may determine by rule.[11] That language is very broad, as funds that do not have the attributes generally associated with "hedge funds" or "private equity" commonly use those exemptions, and the "or such similar funds" language expands the scope of covered entities even further.

The legislative history of the Act indicates that Congress understood that the general definition was overbroad, and intended for regulatory agencies to provide exemptions for issuers that are not properly treated as hedge funds or private equity funds. We described this history in a prior comment letter (the "Volcker Rule Comment Letter").[12]

Subsequent to the enactment of the Act, the FSOC prepared and released a study in January 2011[13] pursuant to Section 619. The Study noted that Congress's decision to define "hedge fund" and "private equity fund" in the Volcker Rule as any entity that, but for sections 3(c)(1) or 3(c)(7) of the 1940 Act, would be an "investment company" under that act brought a very "wide variety of funds and other legal entities" that rely on those exemptions within the ambit of the Volcker Rule.[14] Citing comments received on this "significant" issue that identified various issuers not traditionally understood by the market to be hedge funds or private equity funds, including venture capital funds, the Study recommended that the Agencies[15] "carefully evaluate" the range of issuers captured by the general definition and "consider whether it is

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[11] Section 619 of the Act defines both a hedge fund and a private equity fund as "An issuer that would be an investment company, as defined in the Investment Company Act of 1940...but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine."

[12] See 156 CONG. Rec. H5226 (daily ed. June 30, 2010) as cited in letter from SIFMA to FSOC dated November 5, 2010 available at http://www.sifma.org/issues/item.aspx?id=22125

[13] *See* FSOC, Study & Recommendations on Prohibitions on Proprietary Trading & Certain Relationships with Hedge Funds & Private Equity Funds (January 18, 2011) (the "Study"), available at http://www.treasury.gov/initiatives/Documents/Volcker%20sec%20%20619%20study%20final%201%2018%2011%20rg.pdf

[14] *See* Study at 61-62.

[15] The Agencies have been identified in the Study as: the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the SEC and the CFTC

appropriate to narrow [it] by rule in some cases."[16] In the Study's discussion of this issue, the FSOC recommended that the Agencies consider using their authority to either expand or limit the number of funds by considering the investment activities and other characteristics of such Section 3(c)(1) and (7) Funds and "similar funds", including:

- ***Related compensation structure***: Does the fund earn an allocation based on fund performance including both realized and unrealized gains?
- ***Trading/Investment strategy***: What trading or investment strategy does the fund utilize?
- ***Use of leverage***: Does the fund borrow or otherwise utilize material leverage for the purpose of increasing investment performance?
- ***Investor composition***: Is the fund's capital received from a broad group of unaffiliated investors?"[17]

In light of its findings in the Study, the FSOC made two important recommendations:

- "In implementing the Volcker Rule, the Agencies should consider criteria for providing exceptions with respect to certain funds that are technically within the scope of the 'hedge fund' and 'private equity fund' definition in the Volcker Rule but that Congress may not have intended to capture in enacting the statute."[18]
- The Agencies should "carefully evaluate the range of funds and other legal vehicles that rely on the exclusions contained in section 3(c)(1) or 3(c)(7) and consider whether it is appropriate to narrow the statutory definition by rule in some cases."[19]

The Study described the definition's overbreadth, but did not provide any guidance on how the agencies should go about construing this definition in accordance with congressional intent.

We believe that Congress used very general language in Section 619 of the Act and in Section 404 of the Act precisely because Congress recognized the difficulty of crafting a precise statutory definition and left it to the regulatory agencies to flesh out the details. We argued in the Volcker Rule Comment Letter that certain types of funds should be excluded for purposes of the Volcker Rule. As further described below, we suggest like exclusions for purposes of reporting on Form PF. In general approach, we believe reporting should be required only for hedge funds

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[16] *Id.* at 62.

[17] *Id.* at 62-3.

[18] *Id.* at 7.

[19] *Id.* at 62.

and private equity funds that are commonly regarded as traditional hedge funds and private equity funds.[20] This approach will avoid including too many funds and accounts, and too much data, and would avoid imposing too high a burden on the industry, with no benefit to regulators seeking to understand systemic risk. Given the complexities of the market landscape, this is not intended to be an exhaustive list as other funds or structures may also be appropriate to exclude.

1. Credit Funds Credit funds are funds that primarily extend credit, i.e., make loans or engage in other extensions of credit. Credit funds should be exempted from reporting on Form PF because credit funds promote and protect the safety and soundness of banking entities and the financial stability of the U.S. Credit funds lend money on a long-term basis, supporting liquidity and stable credit, strengthening the overall economy and promoting job creation by providing credit to companies that cannot access public markets. (See the Volcker Rule Comment Letter for further discussion of this issue.[21])

2. Regulated Foreign Investment Companies Foreign regulated investment companies, such as funds that qualify as Undertakings for the Collective Investment of Transferable Securities ("UCITS") should be exempted from reporting on Form PF even if they are offered or sold to one or more U.S. investor.

B. Certain private funds which do not pose the ability to create systemic risk should be excluded from the reporting obligations of Form PF.

Information about private funds whose investment guidelines permit a fund to engage in investment activities involving leverage, selling short and derivatives will be required on Form PF even it those funds do *not* actually engage in those activities if that fund's adviser otherwise is subject to Form PF's requirements. We believe that the Form PF reporting requirements should only apply to private funds that actually engage in those activities, or even to those private funds that use leverage and engage in short selling as part of the fund's principal investment strategy. Below are several types of funds and types of information that we believe should be exempt from reporting on Form PF:

1. Private Equity Funds Private equity funds typically have long-term investment time horizons and focus, a limited number of investments and turnover, and significant restrictions on redemptions, frequently including lock-ups of 10-15 years (which would prevent a "run" on such a fund during periods of market volatility). These funds typically invest directly in operating companies and do not invest in exotic securities, and issue public and/or private debt securities which already provide extensive public reporting including information about an issuer being filed with the SEC. Additionally, private equity funds also tend to limit concentrations based upon industry, geography and/or size of a single investment, which results in the ability to avoid

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20 Please see Annex A of this letter for a suggested definition of a "hedge fund" and a "private equity fund" for use in the Proposed Rule.

21 *See* Volcker Rule Comment Letter at 10-11.

reliance on one or a few investments to achieve more measured risk adjusted returns and to reduce overall portfolio risk. Therefore, by their nature, these funds pose little, if any, systemic risk, irrespective of the size of the fund and, thus, these types of funds should be exempt from reporting on Form PF.

(i) Private Equity Funds should not be required to value their portfolios on a monthly basis As an industry practice, private equity funds only value their investment portfolios on a quarterly basis because information is typically only received from underlying portfolio companies on a quarterly basis; accordingly, the Form PF requirement to value funds on a monthly basis will likely not result in the FSOC assessing any meaningful differences in values between months of the same quarter. Accordingly, we would propose that monthly reporting of Private Equity Funds be eliminated from the Proposed Rule and only quarterly reporting be required.

A Large Private Fund Adviser ("LPFA") to private equity funds with more than $1 billion in assets under management ("AUM"), together with any parallel funds or parallel managed accounts as of the close of business of the calendar quarter, would be required to file a separate Section 4 requiring more specific reporting relating to each private equity fund that they advise for that quarter. We believe that Section 4 of Form PF should be limited to private equity funds with significantly more than $1 billion in AUM, and believe that advisers should be permitted to use their own methodologies for reporting metrics within Form PF, such as leverage calculations, value at risk, NAV, derivative and collateral values, and debt-to-equity ratios.

2. Funds of Funds The Proposed Rule permits a private fund adviser to exclude information about funds of funds that *solely* invest in other funds.[22] We believe that the exclusion proposed by the SEC in the Proposed Rule is too limiting.

(i) Availability of information is limited - Particularly as it relates to private equity funds, an adviser to a fund of funds may not receive all necessary information with respect to the underlying funds, especially if they invest alongside the private equity funds they invest in because they are not the sponsors of the underlying private equity buyout transactions. Therefore, information relating to private equity fund of funds that is not available from an underlying fund should not be required to be reported on Form PF.

(ii) Separate reporting structure for underlying funds – As an initial matter, we believe that funds of funds should not have to report on Form PF under any circumstances, as the underlying funds will be reporting the same information to the SEC and CFTC. Moreover, funds of funds by their nature will pose little

[22] *See* Proposed Rule at 35-36.

systemic risk, as leverage is rarely used at the fund of funds level (except to the extent that there is a need to fund capital calls (for private equity funds and hedge funds) or to manage redemptions (for hedge funds).

(iii) Carve out from reporting for other investments attributed to a fund of funds – If the SEC determines to have any funds of funds report on Form PF at all, an exclusion from reporting on Form PF should also apply to funds of funds for any such funds, without limits, which also invest in cash, cash equivalents, U.S. Treasury securities that have a maturity of less than 60 days, Rule 2a-7 money market funds, managed accounts, and engage in operational hedging activities, such as purchasing foreign exchange forward contracts to mitigate currency risk in a portfolio. We do not believe that a fund of funds' ability to manage cash or engage in bona fide hedging should be limited.

(a) If the SEC determines to have private equity funds of funds report on Form PF, then we would propose that any such fund subject to reporting be permitted to exclude from reporting (A) any portfolio company where it is a 15% or less shareholder (not including ownership interests received via distributions in kind), or not a controlling party or a sponsor of the portfolio company, or (B) entirely if its stated guidelines require it to invest in excess of 75% of its assets in private equity funds.

(b) There should be a carveout for reporting on Form PF hedge funds of funds that do not invest directly in financial assets, but rather (A) serve as an intermediary for capital allocation into hedge funds. This situation occurs where a hedge fund of funds establishes a separate account with the underlying fund that is managed side by side with the hedge fund strategy for various reasons (liquidity, reduced fees, transparency, etc.), or (B) achieve exposure to the same investment strategy as would be provided by a hedge fund of fund through an alternative means (e.g., separate accounts, ETFs, and exchange traded notes that are linked to hedge fund investments). In the former case, these separate accounts should be viewed and treated as an investment in a hedge fund with respect to the reporting requirements of the Proposed Rule and be exempt.

3. Liquidating Funds Private funds that are in liquidation should be exempt from Form PF reporting requirements altogether or, at a minimum, report less frequently than such a private fund would otherwise be required under Form PF. For example, a private fund in liquidation would be required to report on Form PF on an annual basis rather than on a quarterly basis, as it would were it not in liquidation. For purposes of determining whether a private fund is in liquidation, we would propose that a liquidating fund be a fund that (i) no longer permitted new

investors, (ii) was engaged in the process of making distributions for the purpose of liquidating its assets and/or (iii) has fallen below a certain threshold of AUM by a certain percentage from the previous year

4. Additional Types of Investment Funds We believe that the following funds should be specifically excluded from reporting on Form PF: (i) bank collective trusts, (ii) variable insurance trusts, (iii) real estate funds, and (iv) venture capital funds.[23] With respect to real estate funds and venture capital funds, we believe that it was likely the intent of the SEC and CFTC to exclude them from aggregating and reporting under Form PF, but the existing language in the Proposed Rule may inadvertently sweep them under the definition of being "hedge funds" because each might charge performance fees and/or utilize leverage.

5. Specific Shorting Transactions A private fund with the ability to sell securities short would, under the Proposed Rule, be required to submit Form PF, even if it did not currently engage in or actually intend to sell securities short or hedge. Even if a private fund did engage in shorting, the mere fact that it is authorized or permitted under its guidelines would include it in scope. In addition, certain trades, such as relative value trades (which would generally be accompanied by an offsetting long position) certainly do not represent the types of risks of concern and should not be considered shorting for purposes of Form PF. Likewise, going short on U.S. treasury futures or other similar futures should not be considered selling short because it is generally used to manage a fund's duration. In fact, the ability to properly hedge exposure should be viewed as a characteristic of prudent portfolio management rather than an inherently risky threat to financial stability.

6. Reporting of Specific Data

(i) Reporting of Turnover Rate - We believe that the requirement under Section 2 of Form PF to report turnover rate by private fund advisers is not a measure of systemic risk and should not be required. Fund turnover is typically the result of the investment/harvesting horizon of trading strategies and not the result of market liquidity of the instruments involved. Moreover, under stress (systemic risk) situations, market liquidity can change very quickly and decrease rapidly even for instruments which are very liquid under normal circumstances.

(ii) Gross Notional Exposure - The definition of hedge fund includes private funds that "may have gross notional exposure in excess of twice its net asset value". We would recommend that this test should exclude the notional value of exchange traded derivatives, such as futures, as the true exposure is the mark-to-market value, and futures by their nature have very

[23] We would note that the SEC saw the distinction between venture capital funds on one hand, and private equity and hedge funds on the other, when the SEC proposed rules in Release IA-3111 (November 19, 2010) that distinguished the characteristics and activities of venture capital funds from those of other private equity funds and hedge funds.

large notional values relative to other trades in order to achieve their intended effect. Similarly, the test should be applied to the uncollateralized mark-to-market value for OTC derivatives, as that is the true exposure.

C. We believe only private fund managers which actively manage portfolio investments directly should be required to report information under Form PF.

There are numerous instances where private fund advisers will be unable to generate the information requested. For example, non-U.S. regulated entities, funds of funds, and minority investors will likely be unwilling to generate and/or provide the information requested (whether on a timely basis or at all) to the private fund adviser because it is either (i) not generated by the private fund adviser (and it is not in their possession) or (ii) the adviser will not be permitted access to the information. There is nothing in the Proposed Rule that would free a private fund adviser from reporting requirements.

In particular, funds of funds should also be permitted at least a *de minimis* amount of hedging, managed accounts and direct investments without triggering a reporting obligation under Form PF, as the use of such techniques and/or investment in such assets in small amounts do not create systemic risks.

D. The $1 billion threshold for LPFAs is much too low and the associated reporting obligations are overly burdensome.

Compared to the size of the U.S. financial markets as a whole, as well as the size of certain sectors of those markets, managing $1 billion in assets would not render a firm systemically significant, irrespective of the investment activities undertaken by the private fund investment adviser. The $1 billion threshold appears arbitrary and if this amount were used, the number of funds that would be reportable on Form PF would far exceed the number of private funds that could pose a systemic risk. Further, investment advisers whose AUM total at least $1 billion *on any day during a reporting period* would be required to file Section 2 of Form PF on a quarterly basis. This would entail a more extensive reporting requirement along with additional compliance obligations. Much of the information required is proprietary in nature and wrongful appropriation of such information would be detrimental to the victimized firm. The AMG is wary of how such information would be handled, particularly in light of the Proposal's statement that information could be shared with SROs, regulatory agencies, and foreign governments.[24] Furthermore, these obligations would offer no substantive benefits to the FSOC.

We believe that a more appropriate threshold of AUM for increased reporting information on hedge funds and private equity funds should be set far above the $1 billion threshold. Moreover, specific positions should be above the amounts currently proposed in the Proposed Rule, as the current levels set forth in the Proposed Rule are below the threshold required to be systemically significant.

[24] *See* Proposed Rule at 8070.

Lastly, the qualifying hedge fund reporting requirement is excessively low. Section 2b of the Proposed Rule requires additional information to be provided with respect to any hedge fund of a private adviser that has over $500 million in assets. We believe that this amount is far too low, as the threshold does not represent, in our judgment, a hedge fund that could potentially represent a systemic risk. Reporting such additional information would be burdensome and again, provide the FSOC with no substantive benefit.

IV. Reporting Requirements on Form PF

A. Time Constraints

The dates proposed for a newly registering investment adviser's initial Form PF filing, the deadlines for filing quarterly reports and the effective date for LPFAs to file an initial Form PF of January 15, 2012, are unrealistic, burdensome and onerous based upon existing comparative reporting regimes imposed by the SEC and other comparative regulatory agencies.

The AMG strongly believes that fifteen (15) days following a quarter end for reporting certain information required by Form PF is an insufficient amount of time in order to satisfactorily prepare the requisite information, and would severely undercut any manager's ability to accurately gather data, determine net asset values and properly value liquid assets.

In particular, the private equity funds required to report on Form PF will not have information available from their underlying investments in sufficient time to perform the necessary calculations, as it is typical for those funds to have their underlying investments report updated values as long as three months later. Additionally, many managers will often rely on joint venture partners to provide investment-level financial information and in some cases cannot compel them to provide information on a particular timeline. Fund administrators, which provide substantial data and accounting support for many LPFAs are generally not equipped to meet these time frames. Hedge funds will be required to use estimates to perform the necessary calculations, and there will, not be time to audit those amounts used. The SEC has traditionally recognized that funds of funds require more time to report since they are generally dependent upon the reporting of underlying managers (as demonstrated in the 60 day annual financial audit extension). We believe that same rationale should extend to Form PF if the SEC does not decide to waive funds of funds reporting entirely.

The Proposed Rule imposes more frequent and more extensive disclosure requirements on LPFAs, perhaps based on the assumption that LPFAs will seek to automate the data production process required to complete Form PF. While this is true, the reporting deadline for LPFAs will still significantly impact them, as LPFAs are also likely to have more funds, a greater number of investments, more volume across multiple fund types, and a need for more input from departments and multiple internal systems in order to complete Form PF. Additionally, we note that there is a significant time delay in obtaining information from private equity funds and funds of funds due to the nature of those funds, as well as the need to report those funds on an aggregated basis with other funds for which the private adviser advises.

We therefore propose at least a one hundred twenty (120) day time period for filing of reports on Form PF for private fund advisers. We believe that such time-frames are reasonable and necessary to produce accurate data with confidence and consistency, and to verify and confirm the accuracy and integrity of the information being collected and reported. By comparison, under existing SEC rules, an audit of a stand-alone mutual fund is allowed at least a ninety (90) day time-period, and quarterly reports are required by the CFTC within forty five (45) days. Form PF is more complex than such an audit or quarterly report.

Alternatively, we believe that semi-annual reporting would provide the FSOC and the SEC with sufficient information to determine systemic trends. If conditions warranted, the SEC could increase required reporting to quarterly. The Proposed Rule notes that the SEC's staff has consulted with the United Kingdom's Financial Services Authority ("FSA"), and frequently cites FSA practice or experience as a useful guide. It is noteworthy, therefore, that semi-annual reporting would be consistent with FSA's best practice. For purposes of comparison to other SEC forms, Form 13F has a forty five (45) day timeline, Form 10-K, sixty (60) days, and Form 10-Q, forty (40) days. Each of these forms require significantly less detail than Form PF, and so a longer period to complete Form PF would be logical and appropriate. Additionally, the time-periods for filing Form 13F and Forms 10-K and 10-Q overlap with proposed filing periods for Form PF, further stressing manager resources. While the SEC is concerned that managers reporting within a time frame less frequent than monthly might manipulate information to achieve specific results at the end of a period, we do not believe it likely that any manager would change investment behavior to achieve specific Form PF results.

As discussed in Article IV, Section E, private fund advisers will need to build systems to capture the reporting, and there is insufficient time to do so, even if the publication of final rules occurs promptly. As noted above, we believe that a compliance date should be determined in relation to the publication date of the final rules and consistent with the complexity of the task, and recommend a nine (9) month compliance period from the publication of the final rules. Accordingly, we believe that an effective date of January 15, 2012 is too soon to impose these reporting requirements upon private fund investment advisers.

B. Risk of Disclosure of Confidential Information

The AMG has concerns about confidentiality of the information provided on Form PF.

Information provided by private fund advisers under Form PF will be subject to certain confidentiality requirements which include prohibitions against disclosure for various parties that receive this information once it is filed, including SROs, regulatory agencies and foreign regulatory agencies. Obviously, by its nature, much of the information reported on Form PF will be proprietary to those private fund advisers and their affiliates. Concerns exist among our members regarding the adequacy of confidentiality provisions contained in the existing information sharing agreements among regulators and we request that the SEC review these existing information sharing agreements and existing procedures for information sharing and, if appropriate, amend these agreements and procedures to be consistent with the restrictions contained in the Proposed Rule regarding the confidentiality of information. Additionally, once the final version of the Proposed Rule is adopted and Form PFs are prepared and filed, it may naturally be assumed that certain sophisticated investors in the private funds, lenders to private fund advisers, and similar parties will require private fund advisers to provide copies of such Form PFs to them as part of standard due diligence conducted by such parties, which would further increase the chances of inadvertent disclosure of confidential information, which could negatively impact the value of the investments and the shareholders of the private funds. Accordingly, in considering what information that is required to be provided on Form PF, we would request that the SEC be particularly mindful of the risk of such disclosure of information, and therefore, only request information on Form PF that is absolutely necessary for use by the FSOC.

C. Duplicative Reporting and Related Persons

There is significant overlap of reporting of the information required on Form PF and that required by other forms, and requiring reporting from Related Persons, co-investors, and funds of funds is potentially duplicative.

Schedule A of proposed Forms CPO-PQR and CTA-PR request substantially similar, but not identical information to Form PF, and use a different reporting format. We recommend that the SEC and CFTC jointly promulgate a single form, with appendices as necessary for information needed only by the CFTC and/or the SEC that could be filed separately as appropriate. Alternatively, Form PF could be filed with Form ADV to align the metrics required to be reported on the two forms. As currently proposed, AUM is required by both Form PF and Form ADV, but the method of calculating AUM differs between the two forms. Reporting the same type of information in different formats to two US regulators is duplicative, highly burdensome, and unnecessary.

Moreover, the information requested in both Form PF and Forms CPO-PQR and CTA-PR is proprietary, highly sensitive and, as the CFTC recognizes, public disclosure could "put reporting entities at a significant competitive disadvantage"[25]. While we appreciate the CFTC's statements regarding expected FOIA protection of Forms CPO-PQR and CTA-PR, we strongly recommend combining the reporting obligations into the jointly-proposed Form PF in order to take advantage of the clear and unambiguous statutory protection from FOIA afforded to Form PF.

We believe that only private fund advisers in the position of actively managing the underlying portfolio should be required to report the portfolio investment information required under Form PF. Related Persons of that adviser not subject to SEC jurisdiction should not be

[25] *See* FR Doc No: 2011-2437, *Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,* 76 Fed. Reg. 7976, 7982 (Feb. 11,2011), *available at* *http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2011-2437.html*

required to report their holdings.[26] With respect to private funds that co-invest in portfolio company opportunities, the sponsoring private equity fund should be responsible for reporting, as the co-investing fund will typically not have access to the detailed information the SEC is requesting. For funds of funds, the underlying fund should be required to file the relevant reports. Any reporting by the fund of funds would be duplicative and burdensome and would not assist the SEC in better assessing and monitoring systemic risk. In this regard, we note that by its terms, Item 7A of Form ADV, Part 1 ("Item 7A") requires that an investment adviser list on Section 7.A. of Schedule D all of its "related persons that are investment advisers, broker-dealers, municipal securities dealers, or government securities broker or dealers." However, the Commission's FAQ regarding the scope of Item 7A states that an adviser may "omit a related adviser from Section 7.A of Schedule D if (1) [it has] no business dealings with the related adviser, (2) [it does] not conduct joint operations with the related adviser, (3) [it does] not provide advice that is formulated, in whole or in part, by the related adviser and (4) the related adviser does not present any potential for conflict of interest with [its] clients." We believe that this FAQ also appropriately captures the scope of advisers who may invest side-by-side.

Funds of funds, in fact, may not in all cases receive all of the information requested under Form PF from underlying funds. Private equity funds of funds may co-invest alongside the private funds they invest in, but as they are not sponsors of private equity buy-out deals, they are not in the best position to provide reporting on closely held companies.

Offshore funds often utilize umbrella structures, whereby a single legal entity "holds" several sub-funds, so that each sub-fund will have segregated legal liability from the other sub-funds and that the single legal entity umbrella will not be liable as a whole to third parties for the liability of each sub-fund. These sub-funds often employ different strategies, are denominated in different currencies, have different investors etc., and therefore would be problematic to aggregate (especially within a 15 day timeline). As an alternative to aggregating these types of funds for reporting purposes, we propose that the filing be done at the individual sub-fund level since for all intents and purposes each sub-fund (and its assets) behaves as a separate entity from all others within the structure.

1. Definition of "Related Persons" Is Problematic for Purposes of Obtaining Information

There are significant hurdles for investment advisers to obtain information in many instances.

There are a numerous instances where we believe that private fund advisers will be unable to generate the information requested. For example, non-U.S. regulated entities, funds of funds, and minority investors will likely be unwilling to generate and/or provide the information requested (whether on a timely basis or at all) to the private fund adviser because it is either (i)

[26] Footnote 92 of the Proposed Rule suggests that assets of any related person should be reported on Form PF. If this were to be to implemented, the private investment adviser of a larger financial services organization would be responsible for filing reports on funds within their organization over which they have no involvement, which will have the effect of distorting the financial reporting on Form PF.

not generated by the private fund adviser (and it is not in their possession) or (ii) the adviser will not be permitted access to the information. Moreover, with respect to a non-U.S. domiciled entity, there will be an issue as to whether a court in a non-U.S. jurisdiction would compel a foreign party to provide such information. In any of the foregoing circumstances, the Proposed Rule should free a private fund adviser from reporting in such circumstances.

We believe that a revised definition of "Related Person" is appropriate, and propose that such persons are defined as those that are required to be aggregated for purposes of Section 13 reporting under the Securities Exchange Act of 1934, as amended.

D. Clarification Required Surrounding Similar and Parallel Accounts

A significantly more narrow and clear definition of "Similar and Parallel Accounts" should be adopted.

Form PF does not make clear what level of similarity must exist with respect to an investment strategy in order to require aggregation and reporting among private funds. How similar do parallel accounts have to be in order to be reportable? Does the strategy have to be an exact clone of an existing fund or does a strategy need to be included in the same performance composite in order to be reportable? The original intent appeared to be true "clone" funds with absolutely identical characteristics, but introducing ambiguous terms like "similar" will dramatically alter the shape of the requirements. There are instances whereby a client will request a private investment adviser to develop a fund or manage an account that uses a similar investment strategy as an existing investment fund, but the client will impose its own specific guidelines. It is unclear as to how such a fund or account would be treated under Form PF. We therefore believe that the definition of "similar and parallel accounts" is too broad, and that the $500 million threshold for the definition of a "qualifying hedge fund" is far too low if the adviser has to aggregate similar and parallel accounts.

E. Costly New Systems Will be Required

Form PF will necessitate costly new systems to be built which will require an additional period of time beyond the initial filing dates set forth in the Proposed Rule and the compliance costs will be borne by private fund investors.

Current portfolio accounting and risk management systems of private funds are not currently designed to produce the information that Form PF requires. Given the complexity of Form PF data, precise instructions and objective definitions will be a critical part of any reporting systems. These instructions and definitions must be translated into systems to collect and calculate data. Further, once the reporting requirements under Form PF have been adopted by the SEC and CFTC, the SEC will need to develop, test and implement an EDGAR-like software portal to capture the required filing information by private fund advisers. As a result, software vendors will need to be retained by both the private fund advisers and SEC, contracts entered into and a significant amount of customized software developed by programmers on very short notice. Accordingly, we believe that the estimated time and costs to comply with the Proposed Rule as set forth in Article IV of the Proposed Rule are grossly understated, both for Smaller Private Fund Advisers and for LPFAs. Finally, those costs for information technology enhancements, administrative costs and personnel costs to comply with the Proposed Rule would be passed directly onto private fund investors, thereby reducing those funds' investment returns.

In light of the complexity of the tasks and the fact that no date for publication of the final rules has been set forth in the Proposed Rule, we believe that the efforts to develop, test and implement these systems will take a longer period of time than the earliest Form PF filing date of January 15, 2012 set forth in the Proposed Rule. Even after the rule is finalized, the SEC will undoubtedly need to issue FAQs, clarification remarks, interpretative guidance, etc. Given the form's granular nature, third party service providers (e.g., prime brokers, fund administrators, custodians) and advisors will need considerable lead-time to implement the final version of the Proposed Rule. This includes a significant technology effort (including data analysis, application development, and rigorous testing), devising/implementing estimation techniques, and establishing new workflows. Without adequate lead-time of at least nine (9) months after the final rule's publication, many advisors will be forced to file without ensuring that systems/data/workflows were tested sufficiently. Importantly, we note that such a nine (9) month period will only provide an additional four (4) months to comply with the rule assuming it is adopted by the anniversary of the Act.

We note that further feedback or cost estimates are impossible to provide at this stage because the final parameters of both the form and the reporting logistics are unknown. We suggest that the SEC seek further industry feedback once these factors are better known to avoid incomplete or insufficient consideration of the associated costs for Form PF.

F. We believe that the significant detailed information required by the Proposed Rule on Form PF will not result in the gathering of meaningful data. As an alternative, we propose that Form PF should only require reporting of "red flags."

Prior to promulgating Form PF, we believe that the SEC should obtain industry input as to what these red flags should be. Funds approaching such threshold "flags" could report this information, rather than submit an overly burdensome report of information; much of which is irrelevant to the Commission's goal of curtailing systemic risk

For example, we believe that investor concentration is only potentially relevant with regard to hedge funds where an investor holds more than 10% of the fund, and/or the five largest investors in the fund own more than 40% of the fund's total assets and the fund is larger than $1 billion in total assets.

If the Commission decides not to modify the requirements detailed in Form PF, We support the approach in the Proposed Rule which allows for reporting parties to specify their own assumptions and methodologies. We believe this flexibility may allow investment advisers to more easily generate reporting metrics for Form PF within its existing reporting structure, such as leverage calculations, VaR, derivative and collateral values, debt-to-equity ratios and the like, if required. If the SEC did propose standardized metrics for purposes of Form PF, investment advisers will be required to develop and maintain two sets of data, and convert from their own categories to SEC categories for each filing on Form PF, which will be cumbersome, expensive and burdensome.

V. Private Fund Adviser Certification Requirement is Unreasonable

Item A.2. of Section 1a of Form PF, which requires private fund advisers to certify, under penalty of perjury, that all information and statements contained in the Form is "true and correct," is unreasonable.

We believe that the certification requirement is unreasonable, given the volume and complexity of the information required to be reported, particularly in light of the 15-day filing deadline. Even with an extended deadline, certification should not be required. Such a certification would be even more complicated for advisers filing on behalf of related persons. Any adviser signing Form PF will likely require internal certifications from each related person before signing, thereby introducing a new internal certification process that would need to occur within those funds within an unreasonably short period of time. To the extent that an alternative approach to a certification would be considered by the SEC, we believe that a statement indicating that certain estimates on Form PF have been made in good faith would be a reasonable alternative to a certification.

If you have any questions or require additional information, please do not hesitate to contact me at 212-313-1389. Thank you for your attention to these comments.

Sincerely,

Timothy W. Cameron
Managing Director
SIFMA's Asset Management Group

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Jennifer B. McHugh, Acting Director
Robert E. Plaze, Associate Director
Division of Investment Management

ANNEX A

Proposed Definitions Of Hedge Fund And Private Equity Fund

SIFMA believes that a hedge fund for purposes of reporting on Form PF should be defined as an entity that (i) is a pooled investment vehicle that has a large number of sophisticated, third-party institutional and high net worth investors and that makes a large number of investments, (ii) would be an investment company (as defined in the 1940 Act) but for Section 3(c)(1) or 3(c)(7) of the 1940 Act, and is not otherwise registered under the 1940 Act and (iii) has the following additional characteristics:

1. the fund and its investment activities are not subject to regulatory restrictions or limitations;

2. because it is exempt from the 1940 Act and other comparable laws, its investors are not entitled to the protections afforded by the 1940 Act or such other comparable laws, including requirements that apply to the management and operations of the fund (e.g., requirements relating to independent directors on the board of directors, limitations on leverage and short sales and certain investment restrictions and restrictions on certain types of transactions);

3. it is advised by a professional investment manager that has the sole discretion to invest and reinvest the vehicle's cash and to otherwise manage the vehicle's portfolio in accordance with investment guidelines proposed by the manager and agreed to by its investors;

4. it trades for its own account in securities, derivatives or other financial instruments principally for the purpose of selling in the near term or otherwise with the intent to resell in order to profit from short-term price movements;

5. as part of its stated investment strategy, it employs material leverage to enhance the returns on its investments;

6. investors have the right to redeem their investments in whole or in part at specified times, but do not have daily redemption rights, and such redemption rights may be further restricted or suspended indefinitely if, as a result of market conditions or otherwise, the securities or instruments in its portfolio become illiquid or third-party valuations are not readily available; and

7. the investment manager earns a management fee (based on the NAV of total assets under management) and a carried interest that is performance-based (i.e., it is calculated taking into account the performance of the fund's entire portfolio over a specified period of time (such as a year), subject to various measures such as a "high water mark," "hurdle rate" or other adjustments).

SIFMA believes that a private equity fund for purposes of reporting on Form PF should be defined as an entity that (i) is a pooled investment vehicle that has a large number of sophisticated, third-party institutional and high net worth investors and that makes several investments, (ii) would be an investment company (as defined in the 1940 Act) but for Section 3(c)(1) or 3(c)(7) of the 1940 Act, and is not otherwise registered under the 1940 Act and (iii) has the following additional characteristics:

1. the fund and its investment activities are not subject to regulatory restrictions or limitations;

2. because it is exempt from the 1940 Act and other comparable laws, its investors are not entitled to the protections afforded by the 1940 Act or such other comparable laws, including requirements that apply to the management and operations of the fund (e.g., requirements relating to independent directors on the board of directors, limitations on leverage and investments in illiquid equity securities and other instruments and restrictions on certain types of transactions);

3. the purpose of the fund is to generate significant investment returns by (i) investing in several private, established operating companies (other than startups or venture capital companies), (ii) acquiring the unregistered equity or equity-like securities of such companies for which there is no public market and for which third-party valuations are not readily available, (iii) holding those investments long-term, and (iv) realizing on such investments and distributing the proceeds thereof to investors before the end of the fund's life;

4. it is advised by a professional investment manager that has the sole discretion to invest the vehicle's cash and to otherwise manage the fund's portfolio in accordance with investment guidelines proposed by the manager and agreed to by its investors;

5. it has a limited life, such as ten years with a limited number of one-year extensions;

6. it seeks representation on the boards of directors of the operating companies in which it invests and/or enhanced information rights or access to the management of the operating companies in which it invests;

7. it can admit new investors to, or permit existing investors to increase their investment in, the fund only during an initial start-up period, after which the fund is closed;

8. investors are not permitted to withdraw or redeem their investments in the fund;

9. the investment manager earns (i) a management fee (based on the total capital commitments and/or invested capital) and (ii) a carried interest that is performance-based (i.e., it is calculated taking into account the performance of all of the fund's investments over the life of the fund); and

10. it provides for a "clawback" obligation pursuant to which the investment manager is required to return carried interest if it is determined, at the end of the life of the fund, to have received carried interest in excess of what it is entitled to receive in light of the performance of all of the fund's investments.