



Alternative Investment Management Association

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File Number S7-12-11

Jennifer J. Johnson
Board of Governors of the Federal Reserve System
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Submitted via the SEC website: <http://www.sec.gov/rules/proposed.shtml>

Submitted via the Board website: <http://www.federalreserve.gov>

1 June 2011

Dear Ms Murphy and Ms Johnson,

Proposed regulations with respect to incentive based compensation practices

The Alternative Investment Management Association ('AIMA')¹ welcomes the opportunity to respond to the proposed rules (the 'Proposal') to implement Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the 'Act'), issued by the Office of the Comptroller of the Currency, Treasury, Board of Governors of the Federal Reserve System ('Board'), Federal Deposit Insurance Corporation, Office of Thrift Supervision, Treasury, National Credit Union Administration, U.S. Securities and Exchange Commission ('SEC') and Federal Housing Finance Agency.

This submission contains AIMA's comments on the Proposal relating to the rules to be issued by the Board and the SEC. AIMA believes that the Proposal overall represents a balanced approach and therefore only has comments relating to the definition of 'covered financial institutions' as further outlined below.

Covered financial institutions

Total consolidated assets

The scope of the Proposal is limited to 'covered financial institutions' as defined in Section 956 of the Act and we support the proposed methods for calculating 'total consolidated

¹ AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector - including hedge fund managers, fund of hedge funds managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,200 corporate bodies in 45 countries, with around 31% of our manager members based in the U.K. and, of them, 207 are hedge fund management firms (another 59 are fund of funds managers).



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assets'². We understand the Proposal to mean that assets under management shall not be included when calculating 'total consolidated assets'.

Investment adviser

The Act defines 'covered financial institutions' to include, *inter alia*, an investment adviser, as such term is defined in section 202(a)(11) of the Investment Advisers Act.

Investment advisers shall, according to the Proposal³, include any firm that meets the definition of 'investment adviser' under the Investment Advisers Act, regardless of whether the firm is registered as an investment adviser or subject to an exemption. We recognise that it is unlikely that any significant number of exempt investment advisers will be captured by the Proposal as a result of the threshold on total consolidated assets. However, in relation to non-U.S. investment advisers, we would encourage the SEC and the other regulators to carefully consider ways to limit the extraterritorial application of the incentive based compensation requirements to non-U.S. investment advisers, particularly those that will be exempt from the requirement to register, where they have no U.S. operations (or only limited U.S. operations). One possibility would be to count only total consolidated assets attributable to U.S. operations of non-U.S. investment advisers toward the thresholds.

Bank holding company

The definition of 'covered financial institutions' includes bank holding companies as defined in 12 CFR 225.2(c)⁴ as well as the "U.S. operations" of a foreign bank that is treated as a bank holding company pursuant ('foreign bank holding company') to section 8(a) of the International Banking Act of 1978 (12 USC 3106(a)) that has total consolidated U.S. assets of \$1 billion or more⁵. We note that the definition 'covered financial institutions' also includes the subsidiaries of a bank holding company.⁶

First, we would recommend clarifying what is meant in respect of the "U.S. operations" of the foreign bank holding company. It is not clear that the assets of a non-U.S. domiciled subsidiary with U.S. clients should not be included when calculating the foreign bank holding company's total consolidated assets. According to the Proposal, only U.S. assets should be included when calculating the threshold of \$1 billion or more assets for foreign bank holding companies. This means that non-U.S. assets of a non-U.S. subsidiary would not be included when calculating total consolidated assets for a foreign bank holding company. We agree with this principle. However, it is less clear what will constitute "U.S. operations" which have to be included. We would recommend limiting the scope of these terms to subsidiaries which are domiciled in the United States or branches of non-U.S. entities operating within the United States.

The second concern is whether non-U.S. subsidiaries of a U.S. bank holding company or foreign bank holding company would be required to apply the proposed compensation rules.

² Part 248-Regulation S-P, Regulation S-AM, and incentive-based compensation arrangements, Subpart C-Incentive-based Compensation Arrangement, §248.203 (i) and Part 236 - Incentive Based Compensation Arrangements (Regulation JJ), §236.3 (i).

³ See footnote ten on page 21174 in the Proposal.

⁴ Part 236 - Incentive Based Compensation Arrangements (Regulation JJ), §236.3 (c)(ii).

⁵ Part 236 - Incentive Based Compensation Arrangements (Regulation JJ), §236.3 (c)(iv).

⁶ See page 21174 in the Proposal.



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Subjecting non-U.S. subsidiaries of bank holding companies to the U.S. compensation rules may lead to unnecessary jurisdictional overlap, resulting in a significant regulatory burden and enforcement concerns in some cases. As an example, a U.K. asset manager, without any U.S. assets, which is a subsidiary to a bank holding company in the U.S., will be required to apply the rules in the Proposal while it will also be subject to rules on incentive based compensation in the U.K. We would therefore propose that the rules should include a carve-out for non-U.S. subsidiaries without U.S. assets and non-U.S. subsidiaries with U.S. assets but without operations in the U.S.

We are, of course, happy to discuss further with you any point or detail that arises from this submission.

Yours sincerely,

Jiří Król

Director of Government and Regulatory Affairs