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April 11, 2011

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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

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

Dear Secretaries Stawick and Murphy:

We are writing on behalf of a group of our clients (the “**FoF Managers**”) that manage, in the aggregate, approximately \$50 billion in assets for private investment funds (“**FoFs**”) that invest primarily in underlying private investment funds or managed accounts (“**Portfolio Funds**”) managed by unaffiliated investment professionals (“**Portfolio Managers**”).

We are writing in response to the notice of proposed rulemaking (the “**Proposing Release**”) issued by the Commodity Futures Trading Commission (the “**CFTC**”) and the Securities and Exchange Commission (the “**SEC**,” and, together with the CFTC, the “**Commissions**”) on February 12, 2011 to request that the Commissions:

- eliminate the requirement that private fund advisers complete Section 1b of proposed Form PF with respect to any FoF that does not directly:
 - borrow in excess of one-half of its net asset value;

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- have a notional exposure in excess of twice its net asset value; or
- sell securities or other assets short, except for hedging or risk management purposes; and
- define “fund of funds,” as set forth in General Instruction 7 (“**Instruction 7**”) to proposed Form PF as any private fund that:
 - invests the assets of such private fund (excluding cash and cash equivalents) primarily in interests in other private funds (or their offshore equivalents) or managed accounts (we suggest that, for purposes of the foregoing, “primarily” should mean 75% of the capital of the private fund); and
 - is marketed primarily as a vehicle for gaining exposure to a portfolio of private funds or managed accounts (or their offshore equivalents) that are managed on a discretionary basis by third-party private fund advisers.

Form PF Section 1b

Section 1b of proposed Form PF requires a private fund adviser to provide information relating to, among other things, the borrowings, derivatives exposure and investor concentration for each of its private funds, including its private funds that are FoFs. While FoFs are appropriately excluded from most proposed Form PF reporting requirements, Instruction 7 provides that Section 1b should be completed by a private fund adviser with respect to each of its FoFs. We believe that, in general, reporting on Section 1b for a FoF will not yield any useful information for the Commissions or the Financial Stability Oversight Council (“**FSOC**”), and that FoFs should generally be excluded from reporting on Section 1b of proposed Form PF.

Consistent with the requirements set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1b of proposed Form PF is designed to elicit information from private fund advisers that may be useful for the FSOC in assessing systemic risks to the financial markets posed by private funds—in particular the leverage and investor concentrations of private funds. While we agree that such information is indeed useful for the Commissions and the FSOC in connection with their oversight responsibilities, we do not believe that the participation by FoFs directly in the financial markets (as opposed to their investing in Portfolio Funds which themselves may or may not participate more extensively in these markets) is sufficiently material to yield any meaningful information from a systemic risk analysis perspective.

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FoFs, which invest primarily in Portfolio Funds, participate only to a *de minimis* extent directly in the financial markets. Hence FoFs themselves — as opposed to the Portfolio Funds in which they invest — have minimal, if any, impact on these markets. Moreover, the Portfolio Funds in which FoFs typically invest are managed in the complete discretion of third-party Portfolio Managers unaffiliated with the FoF Manager. Accordingly, the FoF Managers do not indirectly impact the markets through investing with such Portfolio Managers. Data related to FoFs' indirect market participation through their investments in Portfolio Funds will, in any event, be comprehensively reported directly on the Forms PF filed by the Portfolio Managers of such Portfolio Funds.

To the extent that a FoF participates directly in the financial markets, such activities are minimal both in type and in scope. For example, a FoF may borrow, if at all, generally as an aspect of such FoF's cash management functions designed to provide interim funding for portfolio rebalancing and/or payment of withdrawal/redemption proceeds pending receipt of withdrawal/redemption proceeds from underlying Portfolio Funds. Some FoFs do borrow to increase their exposure to Portfolio Funds;¹ again, however, the borrowed amounts so invested will be reported on the Forms PF filed by the Portfolio Managers of the underlying Portfolio Funds.

FoFs cannot and do not “short” any of the underlying Portfolio Funds in which they invest (there is no practicable means of “shorting” a private investment fund) — any “shorting” by a FoF is limited to hedging or risk management purposes using other securities or derivatives.

We suggest, as an objective test of a FoF's limited market impact, that any FoF that does not: (i) borrow in excess of one-half of its net asset value; (ii) have a notional exposure in excess of twice its net asset value; or (iii) sell securities or other assets short, except for hedging or risk management purposes be required to complete Section 1b of proposed Form PF. This standard is designed to track the exclusion from the “hedge fund” definition set forth in the proposed Form PF (other than the exception to short selling for hedging purposes). Please see our proposed drafting recommendation below.

With respect to the investor concentration of a private fund, we appreciate that such information may — in the case of funds which trade directly rather than FoFs — be useful for the Commissions and FSOC in identifying the risk that such a private fund may be required to make significant asset liquidations in order to fund investor redemptions during periods of stress. However, in the case of a FoF such information is not relevant to assess market risk as

¹ Generally such leverage is limited to no more than 100% of a FoF's net asset value.

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FoF investor liquidity is completely dependent on a FoF's liquidity in its underlying Portfolio Funds. Any potential effects of FoF investor concentration on the markets will be entirely reflected in data collected on Section 1b of the Forms PF filed by the Portfolio Funds in which FoFs invests. There is no benefit from requiring this information from FoFs.

“Fund of Funds” Definition

Instruction 7 provides that a private fund adviser may generally disregard its private funds that are “fund of funds” for purposes of reporting on proposed Form PF. We believe that it is generally appropriate to exclude FoF reporting on Form PF, as such reporting would not produce any meaningful data. However, the proposed definition of “fund of funds” effectively excludes all FoFs from its scope as FoFs do not generally invest *exclusively* in other private funds.

Most, if not all, FoFs engage in cash management of their reserve capital, which may involve investing FoF assets in demand deposit accounts (whether interest-bearing or not), short-term instruments that earn interest and/or in commingled investment products (*e.g.*, “money market” funds) that invest in such instruments.

FoFs may also invest directly in various financial instruments for hedging purposes. For example, FoFs (or classes of FoFs) that invest primarily in U.S. Dollar (“USD”)-denominated Portfolio Funds but are denominated in currencies other than USD, often engage directly in hedging transactions designed to reduce the FoFs' exchange-rate risk.

FoFs may also purchase or sell securities or derivatives directly in order to reduce certain FoF exposures (*e.g.*, buying S&P 500 index options or taking short S&P 500 index futures positions).

Some FoFs also invest with underlying Portfolio Managers through fully discretionary managed accounts and are deemed to be the beneficial owners of the underlying investments as the account owners of such investments.

Finally, it is possible for a FoF to receive securities *in specie* from an underlying Portfolio Fund in connection with, for example, such Portfolio Fund's liquidation.

The activities described above are incidental but inevitable aspects of FoF investment management, and none creates any credible concern that FoFs pose “systemic risk.” However, absent a technical modification to Instruction 7 designed to take into account the various non-Portfolio Fund investments routinely made by FoFs, virtually all FoFs would fall outside the “fund of funds” definition of that Instruction. Private fund advisers to many FoFs

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would therefore be required to file, in addition to all of Section 1 of proposed Form PF, a separate Section 2b with respect to its larger FoFs. Section 2b not only requires information that is only relevant at a Portfolio Fund level but also information FoFs have no ability to provide. FoFs cannot comply with Section 2b.

Additionally, the proposed definition of “fund of funds” effectively excludes all FoFs that invest in any offshore funds that are not required to rely on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, as amended, as the definition of “private funds” does not include such offshore funds.

We understand that the Commissions seek to prevent direct trading Portfolio Funds from avoiding Form PF reporting by structuring their investments as FoFs. However, we propose that Instruction 7 be revised to reflect the practical realities of FoF investment management while foreclosing direct trading Portfolio Funds from circumventing their reporting obligations. Specifically, we urge the Commissions to revise Instruction 7 to define a private fund as a “fund of funds” if such private fund directly or indirectly invests 75% or more of its capital in other private funds or managed accounts (or their offshore equivalents) and is marketed primarily as a vehicle for gaining exposure to a portfolio of private funds or managed accounts (or their offshore equivalents) that are managed on a discretionary basis by third-party private fund advisers that independently file (or are not required to file) Form PF.

Drafting Recommendation

As a drafting matter, we propose revising Instruction 7 as follows:

“7. I advise a *private fund* that primarily invests in other *private funds*. Should I include this “fund of funds” in responses to Form PF?

Except as described below, you should disregard any “fund of funds” that you advise in responses to Form PF. For example, where questions request aggregate information regarding the *private funds* you advise, do not include the assets or liabilities of any “fund of funds.”

Complete Section 1b with respect to a “fund of funds” that you advise that [during the relevant *reporting period*]:

- borrows an amount in excess of one-half of its *net asset value* (including any *committed capital*) or has gross notional exposure in excess of twice its *net asset value* (including any *committed capital*); or

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- sells securities or other assets short, except for hedging or risk management purposes.

For purposes of this Form PF, a *private fund* is a “fund of funds” only if it: (1) directly or indirectly invests 75% or more of its capital (excluding *cash and cash equivalents*) in other *private funds* or managed accounts (or their offshore equivalents) that are managed on a discretionary basis by private fund advisers that independently file (or are not required to file) Form PF; and (2) is marketed primarily as a vehicle for gaining exposure to a portfolio of private funds or managed accounts (or their offshore equivalents) that are managed on a discretionary basis by the *unaffiliated* private fund advisers.”

Thank you for your consideration of this comment letter.

Very truly yours,

/s/ David R. Sawyer

David R. Sawyer

DRS:cmd