# Alternative Investment Management Association

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Submitted via the CFTC website: http://comments.cftc.gov

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Submitted via the SEC website: http://www.sec.gov/rules/proposed.shtml

12 April 2011

Dear Sir / Madam,

**SEC and CFTC request for comment on Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF**

The Alternative Investment Management Association (AIMA)[1] appreciates the opportunity to provide comment on the Commodity Futures Trading Commission's (CFTC) and the Securities and Exchange Commission's (SEC) (together, the Commissions) request for comments on the proposed rules on 'Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF' (the Proposed Rules).

The Commissions are required under section 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to propose rules that implement the "collection of systemic risk data, reports, examinations [and] disclosure" requirements of section 404 of the Dodd-Frank Act. The Proposed Rules will be relevant to many AIMA members who are hedge fund managers registered with the Commissions as investment advisers under the Investment Advisers Act of 1940, as amended (the Advisers Act) and/or as Commodity Pool Operators (CPOs) and Commodity Trading Advisers (CTAs) under the Commodity Exchange Act of 1936, as amended, (the Commodity Exchange Act). We note at this stage that we are providing comments on aspects of the Proposed Rules only insofar as they apply to hedge funds; we provide no specific comments on those sections of the Proposed Rules which apply to liquidity funds or private equity funds.

**AIMA's comments**

The Commissions' proposed Form PF has the stated purpose of allowing the Commissions and the Financial Stability Oversight Council (FSOC) to "monitor private funds in order to identify any potential systemic threats arising from their activities"[2]. The Commissions have also stated that "our initial view is that the investment

[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 1,100 corporate bodies in over 40 countries, with 11% based in the US and over 30% of AIMA members' total assets under management (AUM) managed by US investment advisers.

[2] Proposed Rules, page 21, V. CFTC Cost-Benefit Analysis.



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activities of hedge funds may have the potential to pose systemic risk for several reasons and, accordingly, that advisers to these hedge funds should provide targeted information on Form PF to allow the FSOC to gain a better picture of the potential systemic risks posed by the hedge fund industry"[3]. Before commenting on the content of Form PF and the process for reporting, we wish to provide comments in response to the Commissions' questions as to whether hedge funds are a potential source of systemic risk.

*Hedge funds as a source of system risk*

We are not aware of there being any single hedge fund operating today, either within or outside the US, which could be considered systemically important under any reasonable set of determination criteria. Equally, the hedge fund industry has not been shown to pose a risk to the financial system by its collective action. Rather, the experience of the financial crisis was such that, whilst nearly 1,500 hedge funds went into liquidation and closed as a result of the market disruption[4], not a single dollar of taxpayers' money was used to support a hedge fund; neither has there been any proven link to show that the failure of any given hedge fund during this period caused financial distress at a bank or investment bank, or caused any such entity to fail or require Federal funding. Even the case of Long Term Capital Management (LTCM), a hedge fund which collapsed in 1998, does not demonstrate that hedge funds are systemically important - although LTCM's actions caused potential funding and liquidity problems at the banks with which it had relationships, the Federal Reserve was not required to use any federal funding or resolution tools to deal with LTCM; the banks collectively produced a market solution and no investment bank failed as a result of LTCM's activities. Investment banks and prime brokers have learnt from this experience and now, for example, both (a) hold greater quantities of capital against their hedge fund lending exposures and (b) limit lending to hedge funds much below the estimated 250 times leverage employed by LTCM.

On the other hand, hedge funds are important providers of liquidity in many markets and, in this role, they enhance market efficiency by helping price discovery and by mitigating losses that may otherwise result from withdrawal of liquidity from traditional investors and market participants. Whilst collectively the hedge fund industry provides liquidity to the market, single hedge fund managers are comparably small in the overall scheme. Globally, the hedge fund industry manages about $2 trillion in assets[5] – the equivalent to the assets of many of the largest US banking groups individually. High leverage has also been given as a reason why hedge funds may be considered systemically relevant, however recent evidence[6] has suggested that on average the largest hedge funds have leverage of only two or three times net equity, and, in nearly all cases, this is secured borrowing[7].

Whilst the FSOC is currently looking at non-bank financial companies (NBFCs), which may include hedge funds, to assess whether any NBFCs are systemically important under the 11 determination criteria of section 113 of the Dodd-Frank Act (and would, as a result, require further regulation by the Federal Reserve) it remains our view that no single hedge fund is today sufficiently large, leveraged, complex or interconnected that its failure or financial stress would cause a market disruption severe enough to destabilise the US financial system. However, we appreciate that there is no concrete data to draw conclusions either way, and that the exercise will be useful to allow the FSOC to make evidence-based conclusions. Provision of this information to the FSOC should not, however, create the presumption that hedge funds are systemically important, only that it is possible that one or more such funds may become so in the future. It is important, therefore, that the FSOC does not make any determinations on NBFCs that are advisers to hedge funds until they have received the information the Proposed Rules would provide.

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3 Ibid, page 7.

4 The HFR Global Hedge Fund Industry Report for the second quarter 2010 suggests that at the height of the financial crisis in 2008, 1,471 hedge funds closed, which can be compared against the closures of hedge funds five years earlier (in 2003) of only 176.

5 Hedge Fund Intelligence, 'Global Hedge Fund Assets Exceed $2 trillion' (28 March 2011).

6 See the FSA's 'Assessing the possible sources of systemic risk from hedge funds - A report on the findings of the Hedge Fund Survey and Hedge Fund as Counterparty Survey', February 2011, page 4.

7 Ibid, Page 6.



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AIMA's members are happy to provide useful information to the Commissions and the FSOC that will show that they are not systemically important, as long as (a) that information is not overly burdensome to report, remains confidential and requires only the provision of information which is relevant to the FSOC's assessment and (b) the method of providing the information is clear and allows time for the proper preparation of reports. It should also be noted that the Commissions should not seek to design Form PF as the only source of systemic risk information on private funds. Form PF should be used to obtain enough information to make a preliminary assessment, which can be followed up with data requests and dialogue for those firms who may potentially pose systemic risks – Form PF should not be considered the 'complete picture' of the private fund industry.

*Definition of "hedge fund"*

The proposed definition of "hedge fund" does not, in our opinion, capture the appropriate features of a hedge fund that should be subject to more detailed reporting. Under the proposed definition, satisfying any one of the three broadly worded tests would make a private fund a "hedge fund" for the purpose of the Proposed Rules and Form PF. For example, any fund with a performance fee based on unrealised gains or NAV would be caught and, thus, many long only/traditional funds which do not use leverage and which do not short sell would have to be regarded as "hedge funds" for the proposed reporting obligation. As a result, this definition will capture many funds which are clearly not hedge funds, causing additional detailed reporting to be supplied and unnecessarily processed by the Commissions.

We do not agree with the assertion that the proposed definition would "promote international consistency", it being materially different from both the UK Financial Services Authority (FSA) definition[8] and the International Organization of Securities Commissions (IOSCO) definition[9]. Both of these definitions are more focussed on the true attributes of hedge funds. One of the key distinctions between them and the Commissions' proposed definition is that, in the case of the FSA, it requires the fund to satisfy "a number" of the ten identified criteria and, in the case of IOSCO, a fund must satisfy "a combination of some of" the six identified criteria.

With reference to short sales, it would be preferable to have a clear, objective 'bright-line' test which looks at whether a private fund actually engages in short selling, rather than, as proposed, whether the fund "may sell short" - many traditional funds are able to sell securities short but do not do so in practice. If actual short sale activity is of interest, we fail to see why a "may sell short" test is pertinent or appropriate. Equally, if the ability of a hedge fund to borrow amounts in excess of half of its net asset value is of regulatory interest, why does the test not consider whether the hedge fund has, in fact, borrowed such an amount (rather than merely 'may' borrow)? If the definition is worded to ensure that start up hedge funds are captured, or to ensure that hedge funds which happen to hold a long position at a given time are captured, we believe the Proposed Rules should be amended to include those private funds which are currently short, or which envision or contemplate taking short positions in the reporting period. The fact that an investment adviser's investment mandate does not specifically exclude the option of taking short positions should not be used to conclude that the adviser 'envisions' or 'contemplates' taking short positions.

An alternative approach would be to not define "hedge fund" in Form PF and simply require that all advisers managing in excess of $1 billion in private fund assets (regardless of strategy) complete section 2 of Form PF. This would be a simpler approach; however, we question whether it would be more effective. "Effective" needs to be judged in light of what the Commissions are trying to achieve - if it is to obtain further detailed data about the investment activities of hedge funds, then we do not consider the proposed approach or the alternative approach described above to be materially different. The proposed definition is currently so broad that it would likely capture a great number of private funds which are not hedge funds such that there may well be little difference between the two approaches in practice. If eliciting more detailed information from hedge funds is

[8] The FSA Hedge Fund Survey lists ten investment techniques and characteristics which help firms decide whether they should be considered hedge funds, including use of short-selling, use of derivatives for investment purposes and pursuit of absolute returns. A firm is so defined if it "generally satisfies a number of these criteria".

[9] The IOSCO Hedge Funds Oversight - Final Report (June 2009) lists six characteristics of a hedge fund, including significant performance fees and that significant own funds are often invested by the manager. IOSCO consider an investment scheme to be a hedge fund if it displays "a combination of some of the …characteristics".



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the regulatory goal, a more focussed definition of 'hedge fund' is needed. The Commissions may consider the FSA definition or IOSCO definition as more appropriate to ensure that only hedge funds, and not other types of private fund, are captured under the 'hedge fund' definition. The Commissions will not be able to select only those funds which they know to be hedge funds, as the FSA can do with its voluntary Hedge Fund Survey, and must develop a sufficiently robust definition.

For the purposes of Form PF, we think it is appropriate that a commodity pool which satisfies the definition of a "private fund" should be categorised as a hedge fund. We agree that if an adviser advises two or more managed accounts that "pursue substantially the same investment objective and strategy and invest in substantially the same positions as the private fund" (i.e., parallel managed accounts), the details of those parallel managed accounts should be reported on Form PF. However, we believe the Commissions should interpret the term "substantially the same" narrowly, and that they should not seek to capture managed accounts as private funds unless these operate in substantially the same way, such that they otherwise appear as if they were private funds. To otherwise include managed accounts would risk creating inaccurate information on the private fund industry.

*Large Private Fund Adviser thresholds and aggregation*

The purpose of requiring additional information from Large Private Fund Advisers is to assess the potential systemic risks which the largest private funds may pose. The $1bn AUM threshold is such that around 200 US hedge fund managers will be required to file section 2 of Form PF[10]. We would question whether those 200 funds could genuinely be expected to pose systemic risks and whether the Commissions (or the FSOC) would have sufficient resources to review this data and make an assessment on so many funds. A more appropriate threshold may be $5bn AUM, which is more likely to capture those funds which could potentially pose systemic risks – this still captures around 50-60% of the US hedge fund industry assets or just over 75 large hedge fund managers. Additionally, AUM will vary through time and, in light of this, the Commissions may wish to consider whether an average AUM taken over the quarter is more appropriate as a threshold.

Using AUM as a measure of size is likely to be the simplest metric for assessing a firm's approximate footprint in the market. For a more accurate picture, the Commissions may also wish to consider the size of the AUM together with leverage used; however, in this case we would strongly argue for a higher additional reporting threshold to prevent smaller funds being captured.

An adviser may manage a number of independent private funds, which are managed by separate and independent traders of the adviser. However, we agree that, for the purposes of the Proposed Rules, it is sensible to aggregate all private funds which the adviser managers. This said, aggregation of data across multiple independently managed private funds may cause a misleading picture about the adviser's individual funds and this should be borne in mind when information is considered by the Commissions and the FSOC. Although we agree with the aggregation provisions of the Proposed Rules we do not believe there would ever be sufficient incentive to restructure funds simply to avoid this additional reporting requirement. We agree and support the exclusion of fund of funds – their inclusion would create duplicative reporting and will over emphasise the impact that hedge funds have in the market.

*Foreign private advisers and exempt reporting advisers*

We agree with the Commissions' proposal that those advisers which qualify for an exemption from registration be equally exempt from having to complete Form PF. Such investment advisers, who would be required to register but for an applicable exemption (e.g. foreign private advisers using the foreign private adviser exemption), are so exempt because Congress has assessed that they are unlikely to pose any systemic threats to the US financial system. They should, therefore, not be required to complete any part of Form PF. In the case of an investment adviser managing less than $100m, the adviser will be exempt from SEC registration in any case and should not be required to file Form PF.

[10] Proposed Rules, page 32.



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Likewise, those advisers who only advise private funds and have less than $150m AUM managed in the US will be exempt under the SEC's private fund advisers exemption - again because they are deemed unlikely to pose any systemic risks in the US - and, therefore, should not be required to file a Form PF with the SEC[11]. Where an investment adviser has greater than $150m AUM managed in the US attributable to private funds only, or where the investment adviser has less than $150m AUM attributable to private funds, but also advises publically offered funds (or does not qualify for a private funds exemption), we agree that there is a case for those advisers reporting limited information. Where the AUM attributable to private funds is between $100m and $150, but where other non-private funds are also being advised, the SEC should only require the adviser to report on Form PF in respect of their private fund clients, assets and investors.

*Frequency of reports*

For private fund advisers, other than large private fund advisers, we agree that annual reporting is likely to be appropriate. For regular reporting by already registered investment advisers, 90 days should also be sufficient to compile the details necessary to make the report. Whilst we appreciate the desire to begin making filings on Form PF for newly registered advisers shortly after registration, we are concerned that providing data within 15 days of the next occurring calendar quarter is likely to be a very short time scale for firms to compile a large amount of new data. This short time period may mean that new registrants will struggle to comply with the requirement, where the urgency for new registrants to complete the Form PF seems unjustified given that newly registered advisers who are just beginning to trade will likely pose less, or at most no more, systemic risk than already registered entities. We would, therefore, suggest that all private advisers completing only section 1 of Form PF be given the full 90 days in which to complete their annual report.

For AIMA members who are large private fund advisers, or advisers to hedge funds with assets greater than $500m, we understand that the requirement to complete the required sections of Form PF each quarter and to file Form PF within 15 calendar days of the end of each quarter will be burdensome and difficult (if not impossible) to complete. Large private fund advisers have substantially more data to compile for each question and will be required to complete a large number of additional questions in section 2. A specific example of where 15 days is unlikely to be sufficient is in respect of accurately valuing the assets which the adviser manages - in the case of commonly traded, liquid, assets 15 calendar days is a short period to obtain the prices of large portfolios of assets. However, for large illiquid funds, where prices require valuing against models instead of trading prices, 15 calendar days is an almost impossible target. The actual time it will take an adviser to value the assets will depend upon how accurate the information provided must be. Advisers will often produce approximate valuations in a short period for certain purposes, and will refine these until they are as accurate as required. If data provided in Form PF must be accurate, providing accurate and audited data will take substantial amounts of time. If the Commissions instead require only information provided on a 'best efforts' basis, using unaudited approximations of the figures requested, Form PF can be completed in a shorter amount of time[12]. We believe the Commissions should not require audited figures as the degree of detail is unnecessary for assessing systemic risk, but advisers should instead be required to complete Form PF on a 'best efforts' basis with information given as accurately as possible 'in good faith'. Advisers should not be required to provide information in Form PF as accurate, sworn under penalty of perjury, nor should they attract any other form of liability for information provided in good faith which is later shown to be inaccurate.

Additionally, all private fund advisers will be concerned that, despite assurances, the data being provided (much of which is proprietary data) will not be kept confidential (as discussed below). Providing the data after a reasonable period of time has passed will ensure that any leaked information will be of less use to other market

[11] AIMA notes that the CFTC also has similar exemptions for CTAs and CPOs under the Commodity Exchange Act, and the CFTC Regulations, and that these are currently subject to new proposals from the CFTC that seek to better align the requirements with those for Investment Advisers under the Investment Advisers Act. Where appropriate exemptions are provided to these firms, reporting on Form PF should also be unnecessary.

[12] Schedule 13G filings, for example, are provided on the basis that "after reasonable inquiry and to the best of my knowledge and belief …the statements are true, complete and correct in all material respects".



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participants and will prevent potential shadowing of an adviser's positions (and, thus, will prevent 'herding' in the market), whilst still being useful for assessing systemic risks.

To ensure data is fully and accurately collected, we would urge the Commissions to consider a longer deadline from the end of each quarter. In a number of much shorter and less detailed forms the Commissions require advisers to complete, data is not required in as short a period as 15 days. For example, Form 13F must be reported within 45 days of the reporting period, Form 10K must be reported within 60 days and Form 10Q must be reported within 40 days. The Commissions may wish to follow the example of the UK FSA, which requires completion of a bi-annual hedge fund survey by the 50 largest hedge funds it regulates within 45 days of the bi-annual reporting period. This survey contains similar styled questions (although in many cases it requires less detail) and has a reporting period which managers have found gives sufficient time to complete the survey.

We would encourage the Commissions to consider how frequently, and how urgently, the data is actually required, taking into account the time it will take the Commissions to analyse the information received and the expected low level of systemic risk which even large private funds pose. There is no need for up-to-the-minute information to assess systemic risk, and as stated above, Form PF should be the first step in assessing systemic risks and should not seek to go beyond that necessary to make that initial determination. Overall, we believe the Commissions should require large private advisers to report on Form PF in not less than 45 calendar days from the end of the reporting period.

*Content of reports*

We recognise that nothing within the report is beyond the ability of private fund advisers to collect if necessary. However, our main concern is that much of the data required to be reported is very extensive and may be more than is required to achieve the goals of assessing possible systemic risks arising from the sector. We note, for example, that some of the data required is neither currently collected nor reported either to regulators, investors or, indeed, internally at many firms. The Commissions should consider specifically what information is necessary for them to be able to make their required regulatory assessment - any information beyond this should not be required to be reported[13]. This will help reduce the detail of the questions and ease the compliance burden of completing Form PF.

We request substantial guidance from the Commissions after publication of the final rules on Form PF and before the first reporting date to address uncertainty in the form. Questions which are unclear will lead to compliance difficulties and may lead to the information being collected being less useful for the Commissions when assessing systemic risks. Question 3 asks about a firm's AUM (in US dollars); however, the form notes that this figure may be different from the AUM reported on Form ADV, and we note that this is also different from how CPOs are required to calculate 'net asset value' in the CFTC's proposed Form CPO-PQR[14]. It would be highly desirable to align the methods of calculating this information to allow easier calculating and reporting, and comparability by the Commissions across the forms. Question 18 asks advisers about the use of computer-driven trading algorithms to select investments – advisers may use trading algorithms for any number of strategies (fundamental and quantitative), and the use of computer trading algorithms is not one of the 11 section 113 FSOC determination criteria nor a relevant consideration for assessing system risk. Question 18 should therefore be removed. Question 34 asks about net counterparty credit exposure to CCPs – we believe this question may need to be rethought as advisers' relationships are generally with swap dealers and FCMs and not with the CCP, and thus information on the amount of funds held at the CCP to offset the private fund's credit exposure may not be known. Several questions ask about leverage of the private funds and borrowings[15]; however, there are many different methods of calculating leverage and borrowings and sufficiently clear definitions should be given, or sufficiently clear guidance should be provided, to allow meaningful answers to be provided by advisers.

[13] The Commissions may also consider whether less precise data is acceptable – approximate dollar figures and percentages approximated to the nearest percentage point are likely to be just as effective for assessing systemic risks as precise data.

[14] Form CPO-PQR requires that CPOs report net asset value in accordance with GAAP. This is a widely accepted and well understood definition in the industry.

[15] For example, questions 9, 10, 37 and 39 of Form PF.



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*Confidentiality*

Confidentiality is of the utmost importance to AIMA members' businesses, and information asked for in Form PF is important proprietary information. Although AIMA members do not object to providing the Commissions and other Federal regulators with this information, AIMA members require that this information is not otherwise published or made available to the public. For this reason, we are pleased that section 404 of the Dodd-Frank Act provides strong confidentiality protection to information disclosed in Form PF, including that the information may not be disclosed following a request under the Freedom of Information Act of 1966, as amended. Where information is required to be disclose by the Commissions for any reason, this must only be done so in aggregated and anonymous form that does not allow identification of any firm or firms (directly or indirectly) to which the information relates.

The Proposed Rules propose that there are likely to be efficiencies in using the Investment Adviser Registration Depository (IARD) platform, operated by the Financial Industry Regulatory Authority (FINRA) to submit reports[16]. We agree that this is a sensible solution, although considerable work will be required to ensure that the IARD system is adapted to accept Form PF data and to ensure that the IARD is secure such that data cannot be accessed by anyone other than the staff at the Commissions. The information provided on Form PF must also be kept confidential from FINRA as operators of the IARD. FINRA, as a self-regulatory organisation (SRO) for the broker-dealer and securities firm industries, is owned by member firms including large sell-side financial institutions who private funds may deal with as counterparties in the course of their businesses. If FINRA (which does not regulate private funds) were to have access to the confidential private fund data, there is concern that this may be made available to sell-side financial institutions and undermine advisers' positions in the markets.

*International comparisons – the IOSCO template*

In February 2010, IOSCO published its agreed template for the global collection of hedge fund information[17], which the Proposed Rules seek to implement. Whilst the IOSCO template is high level and provides for the collection of 11 general categories of information, instead of a mandated data collection form, its purpose is stated as being "to enable the collection and exchange of consistent and comparable data amongst regulators and other competent authorities for the purpose of facilitating international supervisory cooperation in identifying possible systemic risks in this sector"[18]. Following the publication of IOSCO's template, several of the major hedge fund jurisdictions, including the UK, Hong Kong, Australia and Germany, have published surveys to be completed by their regulated hedge fund managers. Looking at the surveys and the methods of data collection used by those jurisdictions, they each differ both in the terms and in the methods of collecting data. For example, as previously mentioned, the FSA is collecting information on a voluntary basis from the 50 largest hedge funds which it regulates, whereas the Australian Securities and Investments Commission (ASIC) is seeking information from all ASIC regulated investment companies that fit the IOSCO definition of a hedge fund. Whilst the IOSCO template notes that "regulators are not restricted from requiring additional information at a domestic level"[19], we note that the Commissions' template is by some way the most comprehensive and the most extensive in terms of coverage.

Each of the surveys currently provides a useful view of the hedge fund industry in the domestic market to which it relates, but comparability of data has been significantly hampered by the differing scope and content of the surveys, as well as by the differences in the definitions of certain key terms such as 'assets under management'. The Commissions' proposed fields are also much more granular than those in other surveys. For example, the FSA requires approximate percentages and figures for certain questions, whilst the Commissions require dollar values and hard numbers. Such inconsistencies are unfortunate – they reduce the usefulness of the data collection exercise internationally and create an increased workload for large hedge fund managers with multiple international offices who will be required to collect data and complete each survey separately in a

[16] Investment Advisers have used IARD since its introduction in 2001 and are familiar with the operation of reporting using this system.
[17] http://www.iosco.org/news/pdf/IOSCONEWS179.pdf
[18] *Ibid,* page 1, Para 2.
[19] http://www.iosco.org/news/pdf/IOSCONEWS179.pdf, page 2 (Data Reporting Categories).



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duplicative manner. It would be desirable if the Commissions were to reconsider the definitions used in Form PF and to seek to coordinate on important key definitions (including "hedge fund") with their key international counterparts, where possible.

A further improvement would be to have large hedge fund managers which are regulated in multiple jurisdictions to only report on one hedge fund survey to include all their global AUM. At the moment, there is a risk that there will be duplication in reporting on several different forms that implement the IOSCO template with different regulators leading to a confusing picture of the global hedge fund market, and unnecessary duplication of effort by hedge funds.

*Implementation of reporting obligations*

Whilst many investment advisers and CTAs not previously registered with the Commissions expect to be required to register from July 2011, we do not think it will be appropriate for the reporting obligations to begin immediately at this point, as is recognised by the Commissions. The Proposed Rules will require investment advisers to develop systems and processes for the collection, collation and reporting of the required data. These systems will take time to establish. As this consultation closes in April 2011 and final rules will follow in the months after this, we do not believe there will be sufficient time for advisers to make preparations to meet those obligations by July 2011[20]. This is especially true for small investment advisers, who have fewer available compliance staff and less business infrastructure to reporting on Form PF, and for which completion of Form PF will be especially burdensome. The Commissions have suggested that advisers should instead be prepared to file their first reports by 15 January 2012 (for large private fund advisers) and by 31 March 2012 (for smaller private fund advisers). We believe that firms will require further time to arrange the appropriate systems and processes to compile data and complete Form PF.

We suggest that the Form PF reporting obligations should begin no sooner than nine months after the date at which the final rules are published. This will provide sufficient time for all advisers to become familiar with Form PF, for the Commissions to publish appropriate guidance on completing Form PF and for adviser to be ready to submit accurate and useful information on the first occasion. We understand that although most firms could file their reports within the time frame proposed if they had to, there is unlikely to be time to automate the process and much of the data would have to be collected and manually inputted, at considerable cost and use of time. Automated submission of information via the IARD or other electronic system to utilises the eXtensible Markup Language (XML) tagged data format or similar format is likely to be an important time saver for a large number of firms. Nine months would be the minimum required time for the Commissions and advisers to created systems that report and accept automated XML tagged data for Form PF.

When the FSA first began collecting data on hedge funds in 2010 it asked the 50 largest FSA regulated hedge fund managers to submit data on a voluntary basis. In each iteration the FSA has made adjustments to its survey to take account of the lessons learnt from the previous version of the survey, including the questions it asked, the definitions used in questions and the time it takes to report data. We understand that the SEC conducted a pilot scheme for hedge fund systemic risk reporting in 2010 that was done on a voluntary basis using a form that was largely similar to the FSA's survey. That pilot scheme was substantially different to the Proposed Rules, and we believe it would be beneficial for all advisers and for the Commissions to require voluntary reporting for the first one or two reporting periods, along with periods of reflection on issues that arose during the reporting on Form PF. The Commissions could then consider how useful the data was, and which items may additionally be necessary or which items may not be necessary at all. Form PF could be adapted so that by the time it is a mandatory requirement for all registered investment advisers and CTAs, Form PF is a useful and well-developed data collection tool. In any case, it will be important for the Commissions to keep Form PF under regular review and make amendments in future to reflect new risks and new understanding of the private fund industry. As we understand that each amendment to Form PF, once mandated, will require scheduling in the Commissions' rule-making calendar, a new proposal and a new public consultation, taking at least a year for each change, we

[20] We note that the 'burden estimates' provided in the Proposed Rules in some cases significantly underestimate the number of hours reporting on Form PF will take, especially with regards to the initial report.



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believe it is important to ensure the first Form PF is suitable for the purpose and, thus, pre-implementation testing by advisers on a voluntary basis is strongly recommended.

The Commissions should also seek to coordinate further between the Proposed Rules and the CFTC's proposed Forms CPO-PQR and CTA-PR which report similar information. A single form, with appropriate sections that require completion, by all private funds and related entities would be desirable to avoid duplication of efforts for dually registered advisers.

**Conclusion**

The Commissions seem to go further than many other jurisdictions in taking forward the IOSCO hedge fund data collection exercise, and the Proposed Rules are asking for very granular levels of detail which we believe may not be necessary to make a systemic risk assessment of individual funds or the industry sector. The high level of detail and certain highly challenging deadlines for the collection of data, along with a lack of international consistency will make the completion of the form overly difficult. For this reason, the Commissions should:

- try to simplify the form where possible;
- provide sufficient time to collect the data; and
- provide an adequate amount of time for advisers to establish systems and processes to compile the required data.

AIMA members are happy to provide the Commissions with data that will allow them to assess systemic risk, and we currently see that no single hedge fund, nor the hedge fund industry collectively will pose a substantial risk to any systemically important financial institution, to the financial markets or to the financial system as a whole.

We thank you for this opportunity to comment on the Commissions' Proposed Rules. We would be very happy to discuss with you in greater detail any of our comments.

Yours faithfully,

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