Scott C. Goebel
Senior Vice President
General Counsel
FMR Co.
82 Devonshire Street V10E, Boston, MA 02109-3614
617.563.0371 FAX 617.385.1331 SCOTT.GOEBEL@FMR.COM

April 12, 2011

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

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

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

Dear Ms. Murphy and Mr. Stawick:

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "SEC") and the Commodity Futures Trading Commission's (the "CFTC," and together with the SEC, the "Commissions") joint proposed rules that would require certain investment advisers, commodity pool operators, and commodity trading advisors to file information about private funds on Form PF (the "Proposed Rules").[2] The Proposed Rules are promulgated under Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which direct the SEC to require registered advisers of private funds to maintain records and file reports designed to assist the Financial Stability Oversight Council (the "FSOC") in assessing systemic risk in the U.S. financial system and require the Commissions to jointly issue rules establishing the form and content of such reports with respect to private fund advisers also registered with the CFTC.[3]

The Proposed Rules would require all private fund advisers to provide basic identifying information on each private fund they advise in addition to information about their private fund assets under management and more generally about the funds' performance

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[1] Fidelity Investments is one of the world's leading providers of financial services, including mutual fund management and distribution, securities brokerage, and retirement recordkeeping, among other businesses.
[2] Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Company Act Release No. 3145, 76 Fed. Reg. 8068 (proposed Jan. 26, 2011) available at http://www.sec.gov/rules/proposed/2011/ia-3145fr.pdf ("Proposed Rules").
[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010) ("Dodd-Frank").

and use of leverage. Proposed Form PF would require more detailed disclosures depending on the type of private fund and whether the adviser is a "Large Private Fund Adviser."

Fidelity recognizes the significant work undertaken by the Commissions' staff in preparing the Proposed Rules with the goal of obtaining more transparency of private funds that may be deemed to present systemic risk to the U.S. financial markets. We also appreciate that Dodd-Frank requires the Commissions to meet their extensive rulemaking responsibilities in a short period of time. However, Fidelity is concerned that the reporting regime in the Proposed Rules is overly broad and cumbersome and therefore unnecessarily subjects a wide range of private funds and advisers to onerous disclosures and significant expense without corresponding benefits.

In particular, Fidelity urges the Commissions to delay their final rulemaking until the FSOC defines, or at least provides some clarity regarding its perspective on, systemic risk. Without such guidance it will be impractical, if not impossible, for the Commissions to devise and for the public to comment on a form that effectively and efficiently targets information useful to identifying systemic risk. To the contrary, a form that is not tailored to the FSOC's conception of systemic risk has the potential to diminish the overall effectiveness of the FSOC risk identification efforts by generating an enormous volume of extraneous data.

We also write to express our views on the requirements of the Proposed Rules with respect to (1) the frequency and timing of reporting, (2) the minimum dollar threshold requiring additional disclosure for hedge funds, (3) the monthly data requested, (4) generally, the onerous nature and volume of the data requested, and (5) the proposed certification of Form PF by private fund advisers. We believe that the accelerated timing, frequency, and detail of the reporting obligations in the Proposed Rules for Large Private Fund Advisers are unduly burdensome and, with respect to certain required data, likely impossible to produce within the proposed deadlines.

I. The Commissions Should Delay Any Final Rulemaking Until the FSOC Defines "Systemic Risk" with Greater Specificity

Fidelity recognizes that the Proposed Rules are intended to fulfill Dodd-Frank's mandate that the SEC and CFTC require registered private fund advisers to file information on private funds that is deemed necessary and appropriate for the FSOC's assessment of systemic risk. However, the FSOC has yet to define "systemic risk" for these or any other purposes under Title I of Dodd-Frank. When it comes to defining "systemic risk" there appears to be consensus on only two points: (1) there is not yet a consensus definition[4] and

[4] *See, e.g.*, Mathias Drehmann & Nikola Tarashev, "*Systemic Importance: Some Simple Indicators*," *BIS Quarterly Review*, March 2011, at p. 25, 26 ("Systemic risk is an elusive concept: it can have significant economic consequences and is quantitatively important, yet there is no clear consensus on how it should be measured").

(2) providing a clear definition (or at least clear guidance on the regulatory perspective) is a critical first step in identifying and mitigating such risk effectively and efficiently.[5]

Fidelity believes that there is limited value in creating a disclosure reporting structure to aid the FSOC in its assessment and monitoring of systemic risk without first articulating the elements of systemic risk. The Proposed Rules obviously require the collection and reporting of a significant amount of detailed information, but without a definition of systemic risk, it is impossible to evaluate fully the costs and benefits of collecting the particular data included in Form PF. However, given the breadth of the data required by the form, we believe that some portion of the requested information will serve little utility to the FSOC. Worse, because of the sheer volume of potentially unnecessary data, the current Rule Proposals may impair the ability of the Commissions and the FSOC to focus on and identify systemic risk.

In addition, if the Commissions choose to adopt Form PF without first understanding the FSOC's views on systemic risk, we anticipate that the Commissions will be forced to amend Form PF once the FSOC clarifies its approach to systemic risk. We are quite concerned that the costs of implementation of Form PF will be magnified greatly if the Commissions are forced to update the form to require additional data in light of upcoming FSOC pronouncements on systemic risk. Therefore, we continue to join others in the regulatory, academic and business communities in urging the FSOC and the Commissions to develop with specificity, and to settle on, a clear definition of systemic risk. This approach would enable the Commissions to accomplish their goal of collecting information that is useful and beneficial to the FSOC in its monitoring of systemic risk without requiring irrelevant and potentially confusing information from private funds and advisers that is both burdensome to produce and unhelpful to regulators.

Although Fidelity urges the Commissions to delay any final rulemaking until the FSOC more clearly defines systemic risk, we recognize that the FSOC needs more information regarding private funds than is currently publicly available. In this regard, we have specific comments that focus on information that the Proposed Rules would require in Form PF relating to the frequency and timing of reporting, the minimum dollar threshold requiring additional disclosure for hedge funds, the monthly data requested, and, generally, the overly burdensome request for data.

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[5] *Id.*, at 36 (". . . regulators should have a clear understanding of their preferred perspective on systemic importance"). *See also* Richard M. Whiting, Financial Services Roundtable Comment Letter on Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (February 25, 2011), *available at* http://www.regulations.gov/#!documentDetail;D=FSOC-2011-0001-0036.1 (emphasizing the importance of the FSOC first defining key terms such as "material financial distress" and "financial stability" before seeking comments regarding designation determinations). We support this position and submit that it applies with respect to other actions under Title I that the Proposed Rules are designed to facilitate.

II. The Commissions Should Reconsider the Requested Frequency and Timing of Reporting

A. Timing of Reports. The Commissions have requested comment on their proposal to require Large Private Fund Advisers to file Form PF quarterly within 15 days after the quarter end. Fidelity does not believe that 15 days gives Large Private Fund Advisers enough time to collect, calculate and produce the information required by Form PF. Although the Proposed Rules state that most hedge fund advisers already collect and calculate certain information about their funds on a quarterly basis, we note that this information is usually limited to the types of information included in Sections 1a and 1b of proposed Form PF (*i.e.*, information about fund performance, material changes to the fund's operations or strategy, and certain basic risk reporting, such as leverage ratio, regional exposure levels and basic asset type exposure). The level of detail and granularity of information proposed to be included in Sections 1c, 2a and 2b of Form PF exceeds considerably what most funds prepare on a quarterly basis today.[6]

Fidelity recommends extending the time allotted for preparing and filing quarterly reports from 15 to 90 days. Ninety days would give Large Private Fund Advisers enough time to collect the necessary data and prepare the filings. The additional preparation time would significantly ease the burden on Large Private Fund Advisers while still providing the FSOC with quarterly data with which to monitor systemic risk. When the SEC previously considered a similar requirement for reporting by institutional investment managers on Form 13F, the SEC chose 45 days as the appropriate reporting period. Because the volume of information and level of detail requested by Form PF far exceeds that of existing required form filings such as Form 13F or Form ADV, we propose extending the filing timeframe to 45 days at a minimum, but preferably to 90 days. We believe that any additional benefits the FSOC or the Commissions might get by receiving the requested information sooner are far outweighed by the undue costs that such reporting would place on Large Private Fund Advisers and their service providers.

B. Compliance Deadline. The Commissions requested comment on *when* advisers should be required to comply with the proposed rules and file their first Form PF. We urge the Commissions to extend the compliance date of the Proposed Rules to a date that is no earlier than one year from the date the final rules are adopted, such that each Large Private Fund Adviser would need to make its initial Form PF filing after the end of the succeeding

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[6] In support of their view that much of the information required by Form PF is already produced by most private fund advisers, the Commissions cite the 2009 Report of the Asset Manager's Committee to the President's Working Group on Financial Markets, Best Practices for the Hedge Fund Industry (the "Asset Managers' Report"). In fact, the Asset Managers' Report's recommendations with respect to ongoing reporting largely coincide with the information proposed to be included in Section 1b of Form PF. The requirements of Section 1c and, particularly, Sections 2a and 2b go well beyond the recommendations of the Asset Managers' Report. We do not know of any private fund advisers that currently report the information required by Section 2 of Form PF to hedge fund investors on a regular basis.

quarter end. The current timing of December 15, 2011 will not allow sufficient time for Large Private Fund Advisers to develop systems for collecting and aggregating the required information.

Under the currently proposed compliance date and transition rule, smaller private fund advisers, which typically manage one or two funds, would have at least eight months after adoption of the proposed form to file their first Form PF. However, Large Private Fund Advisers, which may need to develop systems to aggregate data for dozens of funds and accounts, would have as little as five months to prepare for a filing that requires far more information. The information proposed to be included in Form PF will require many Large Private Fund Advisers to pull data from multiple third-party sources, including fund administrators and prime brokers, which will make it extremely challenging to develop the systems necessary to make an initial filing in January 2012. Because of the comparatively greater burden posed by Section 2 of Form PF, the compliance date and transition period applicable to Large Private Fund Advisers should be at least as long as the period applicable to smaller private fund advisers, and preferably one year.

Furthermore, in a recent letter regarding implementation of the new private adviser registration rules, the SEC has stated that it expects to extend the registration compliance date until the first quarter of 2012. Accordingly, the compliance deadlines in the Proposed Rules will likely precede the actual registration of private fund advisers, an incongruous result. Thus, we urge the Commissions to delay identifying any compliance dates in their final rulemaking until the SEC has clarified the compliance dates for private adviser registration.[7]

III. The Commissions Should Reconsider the Information Required to Be Reported on Form PF

A. Qualifying Hedge Fund Threshold Too Low. The Proposed Rules would require Large Private Fund Advisers to report certain additional information about any hedge fund they advise that has net assets, together with the net assets of any parallel funds or accounts, of at least $500 million at the close of business on any day in the reporting period (a "qualifying hedge fund"). Fidelity believes that the U.S. debt and equity markets are the most robust, resilient and liquid markets in the world. No hedge fund with net assets of $500 million is large enough to pose a meaningful risk to these markets. Accordingly, we believe that the proposed threshold for qualifying hedge funds is too low and urge the Commissions to raise the asset threshold to a level commensurate with the size and strength of the U.S. financial markets.

If the Commissions believe that fund-level reporting is necessary to achieve the goals of Title IV of the Dodd-Frank Act, then the Commissions should set an asset level threshold

[7] Letter to David Massey, President, North American Securities Administrators Association, Inc. from Robert E. Plaze, Associate Director, Securities and Exchange Commission (April 8, 2011), available at htt;://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf.

commensurate with the size of the U.S. markets. The Proposed Rules note that $500 million is the threshold used by the United Kingdom's Financial Services Authority for its semi-annual hedge fund survey. By way of comparison, $500 million represents approximately 0.014% of the total market capitalization of the London Stock Exchange.[8] If the Commissions were to set the threshold at the same level relative to the size of the U.S. equity markets, the threshold would be $2.4 billion.[9]

B. Monthly Data Unnecessary. We believe that without a definition of systemic risk from the FSOC, it is premature to comment on the appropriate frequency or level of granularity of data the FSOC will need to perform its monitoring duties. Nevertheless, the Commissions have requested comment on the frequency and character of information they proposed requiring in Form PF in a number of areas. For example, among the information requests being proposed in Section 2 of Form PF is the monthly breakdown of exposure of hedge fund assets and financing information. We see no compelling reason for requiring a monthly breakdown of exposure and financing information in a quarterly report. The Proposed Rules release offers no evidence supporting the supposition that monthly data reported quarterly is more useful for monitoring systemic risk than quarterly data, and we are not aware of any. Further, it is not clear to us from reading the release or otherwise that quarterly reporting is more effective than semi-annual or annual reporting.

In their release, the Commissions state that requiring monthly reporting will significantly mitigate the ability of advisers to engage in "window dressing," or manipulating data to mask activities or risks of a private fund just prior to the end of a reporting period.[10] (Just why an adviser would be motivated to engage in this type of activity is unclear to us.) However, we submit that any adviser willing and able to undertake a scheme to modify its positions to "window dress" quarterly data could easily do the same with monthly data. However, requiring all Large Private Fund Advisers to report monthly data dramatically increases the burdens on firms.

C. Overly Burdensome Request for Data. As a general matter, Fidelity believes that the detail and volume of information required by proposed Form PF is overly burdensome. As currently proposed, Form PF would require reporting of information ranging from the aggregate notional value of derivative positions and basic information about borrowings, concentration and performance (for all private fund advisers), to the duration of fixed income portfolio holdings and turnover rate of the adviser's aggregate portfolios during the reporting period (for Large Private Fund Advisers of hedge funds). As we previously noted, however, until the FSOC defines systemic risk, it is impossible to know what data is necessary in any assessment of such risk.

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[8] As of December 31, 2010, the LSE had a total market capitalization of US$3,613 billion. *See* "2010 World Federation of Exchanges, *2010 Market Highlights* (January 26, 2011), available at http://world-exchanges.org/files/file/stats%20and%20charts/2010%20WFE%20Market%20Highlights.pdf.
[9] As of December 31, 2010, NYSE Euronext and NASDAQ OMX, the U.S.'s two largest exchanges, had a combined market capitalization of $17,283 billion. *Id.*
[10] *See* Proposed Rules at 8082.

In this regard, we highlight as an example the reporting requirement in Section 2 of proposed Form PF related to turnover rate. Although portfolio turnover may be a relevant consideration for investors in mutual funds, it is not an effective, or widely used, measure of risk for hedge funds. Thus, requiring private fund advisers to report such information would result in a real cost to private fund advisers without any corresponding benefit to the FSOC in its assessment of systemic risk. Once again, we urge the Commissions to delay their final rulemaking until the FSOC provides more clarity surrounding the definition of systemic risk. This will ensure that any reporting requirements correspond to and address the applicable factors the FSOC identifies as being relevant to its assessment and monitoring process.

IV. The Commissions Should Remove the Certification Requirement in Form PF.

Proposed Form PF requires private fund advisers to certify, under penalty of perjury, that the information and statements made in the form are "true and correct".[11] Fidelity believes that this requirement is unreasonable given the volume and complexity of the information required to be reported. In addition, we are concerned that the certification requirement authorizes the Commissions to bring an enforcement action for a misstatement in a Form PF filing that would necessarily be filed hastily, given the 15 day filing deadline. Thus, we urge the Commissions to consider removing the certification requirement in Form PF, regardless of whether the 15 day filing deadline is extended.

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Fidelity reiterates its recognition of the thoughtful approach taken by the Commissions as they address difficult and complex issues with respect to the Proposed Rules. We urge the Commissions to consider our recommendations before moving forward with these Proposed Rules.

We appreciate the opportunity to comment on the Proposed Rules. Fidelity would be pleased to provide any further information or respond to any questions that the Commissions or their staff may have.

Sincerely,

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

[11] *See* Section 1a, Item A.2. of Proposed Form PF.

Eileen Rominger, Director, Division of Investment Management
Robert E. Plaze, Associate Director, Division of Investment Management
U.S. Securities and Exchange Commission

The Honorable Gary Gensler, Chairman
The Honorable Bart Chilton, Commissioner
The Honorable Michael Dunn, Commissioner
The Honorable Scott D. O'Malia, Commissioner
The Honorable Jill E. Sommers, Commissioner
Daniel S. Konar II, Attorney-Advisor
Amanda L. Olear, Special Counsel
Kevin P. Walek, Assistant Director
Commodity Futures Trading Commission