



Alternative Investment Management Association

Via Electronic Mail: <http://comments.cftc.gov>

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

1 July 2011

Dear Mr. Stawick,

The Commodity Futures Trading Commission Registration and Systemic Risk Reporting

Further to the invitation to attend the roundtable discussion on 6 July 2011 hosted by the Commodity Futures Trading Commission (the 'Commission'), the Alternative Investment Management Association ('AIMA')¹ would like to provide a summary of and a follow up to our various comments made on the proposed rulemaking set out in the Commission's release, 'Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations; Proposed Rule', published in the Federal Register on 11 February 2011 (the 'Release').²

AIMA fully supports the goal of regulatory reforms to address potential systemic risk and to improve regulatory transparency through expanded regulatory coverage of market activities. We are therefore supportive of introducing mandatory private fund adviser³ registration. In terms of reporting, we have supported the G20 mandate and roadmap that regulators strive for a globally consistent and coordinated approach, which would not only benefit advisers and other market participants, but would also allow for increased comparability of collected data and cross-border collaboration for regulators. We also request and encourage regulators to carefully consider the potential impact of new registration and reporting requirements. The increased compliance costs for regulated firms should be proportionate and appropriate relative to the potential benefits to regulators, markets and the economic system as a whole.

In particular, where possible, rules for the registration of entities that are significant participants in the swap market should be coordinated nationally (with the SEC) and internationally (with the International Organization of Securities Commissions ('IOSCO') and other national or relevant regulators), so that those entities do not face duplicative regulatory regimes and related costs nationally or internationally. We urge global legislators and regulators to work together towards a sensible and desirable regime that reflects the legitimate interest for regulatory oversight.

¹ AIMA is a trade body for the hedge fund industry globally; our membership represents all constituencies within the sector - including hedge fund advisers, fund of hedge funds advisers, prime brokers, fund administrators, accountants, lawyers and investors. Our membership comprises over 1,250 corporate bodies active in 45 countries.

² Release 76 Fed. Reg. ad 7978.

³ In this submission we have used the term "private fund adviser" synonymously and interchangeably with "hedge fund manager".



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The Commission should be aware that, assuming a significant narrowing of the scope of exemptions to registration as currently proposed in the Release, without further modification, there would be a significant increase in the number of advisers that would be required to register (and report) as a CPO or CTA with the Commission as a result of:

- Expansion of the definition of "commodity interests" (Section 721 of the Dodd-Frank Act) to include over-the-counter trades ('swaps'), which increases the number of private fund advisers and operators who will fall under the definitions of CPO and CTA in the CEA; and
- Proposed elimination of exemptions in Rules 4.13(a)(3) and 4.13(a)(4)⁵ upon which several thousands of U.S. and non-U.S. CPOs in respect of private funds, asset managers and other commodity pools currently rely.

Therefore, for the first time many U.S. and non-U.S. private fund operators or advisers will be required to register as CPOs and/or CTAs, and report the entirety of their global commodity pool operations to the Commission, even if they are very small firms or their "swap" activities are marginal or only incidental, and/or if they operate or advise only a single non-U.S. fund with a single U.S. investor and enter into a single swap.

We believe that this approach would be disproportionate, and result in an unduly burdensome regime for many advisers (particularly smaller and mid-sized advisers), advisers already registered with the SEC, and non-U.S. advisers. The present submission is intended to provide further evidence and support for a more proportionate approach. AIMA's comments may be summarised as follows:

- There are significant cost implications stemming from registering with multiple regulators, and conforming to different national and international reporting regimes.
- We recommend that the Commission and the SEC coordinate their registration and reporting scope and approach, and seek to combine their systemic risk reporting requirements into a single form and/or undertaken to share information from one report.
- We would encourage the Commission to provide exemptions for small CPOs/CTAs, US advisers registered with the SEC, and non-US funds/advisers with a limited nexus to the US market (e.g., limited U.S. assets under management, clients or swap activity). This may most easily be achieved by providing exemptions similar to those proposed by the SEC, thereby exempting many smaller and non-US advisers.
- We suggest the simplification of reporting Form CPO-PQR, and the introduction of reporting thresholds and tiering, including an \$1bn AUM threshold for systemic risk reporting on both Forms CPO-PQR (Schedule C) and CTA-PR (Schedule B), (consistent with the approach proposed with respect to Form PF.

Cost of compliance with registration and reporting requirements

There are material costs associated with registering as an adviser or fund manager with multiple regulators. With the removal of the exemptions in Rules 4.13(a)(3) and 4.13(a)(4), the number of advisers which will be required to comply with multiple registrations is set to rise dramatically. As previously stated, AIMA is supportive of registration, but urges regulators to coordinate and cooperate more closely in recognising the registration of private fund advisers in the US or in other jurisdictions.

Furthermore, compliance costs are likely to increase significantly as a result of increased and different reporting and examination requirements. Several AIMA members have advised us that the proposed reporting regimes in the U.S. (the Commission and SEC), the EU/UK and Asia will require

⁵ See 17 CFR 4.13(a)(3) and (4).



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the hiring of two to three more legal and compliance professionals, and is likely to require additional significant new investments or changes to their IT systems.

After speaking to a number of smaller member firms we have estimated the costs for initial registration to be \$50,000 to \$150,000, which cost estimates vary significantly depending on a range of factors, including the number of employees who will need to pass examinations, the number of funds advised, investment strategy and complexity, existing IT systems, and whether or not an adviser is already registered or authorised and subject to a different regulatory regime. In terms of on-going costs, we have roughly estimated these to be in the region of \$150,000 to \$250,000 per year. A substantial part of this will be made up of additional compliance personnel, IT development and legal/accounting advice that will be required, and again will vary significantly depending on the factors mentioned above. For larger advisers, the costs could be expected to be greater than these estimated figures.

For mid-sized or smaller advisers who, on average, often do not employ more than 10 to 20 employees, the ability to attract and afford such additional expertise and resource should not be taken for granted. The additional costs would be significant for them. It is the small and mid-sized advisers that comprise the largest segment of the private fund industry in the United States and globally. We estimate that nearly 90 percent of private fund advisers in the world manage less than \$1bn, and approximately 81 percent manage less than \$500mn. The situation is similar in the United States. It is therefore important that the Commission and other regulators carefully weigh the benefits of extending registration and increased reporting obligations against significantly higher compliance costs.

Consistency with reporting regimes in other jurisdictions

Compliance costs increase significantly when reporting formats of one regulator deviate materially from other regulatory reporting standards, whether at the national or the international level. It is therefore important that U.S. regulators of private fund advisers as much as practically possible apply substantially similar metrics as (for example) the UK Financial Services Authority ('FSA') (which has significant history and experience in this area) and other members of IOSCO to determine and gather relevant information under their reporting requirements, including very importantly appropriate thresholds (e.g., AUM), as well as key financial metrics for comparability of reported information.

Coordination between the Commission and the SEC

In an effort to eliminate duplicative filings, we strongly recommend that the Commission and the SEC coordinate their registration and reporting scope and approach, and consider combining their reporting requirements into a single form, instead of requiring advisers to file both Form PF and Forms CPO-PQR and CTA-PR.

The Form PF, Form CPO-PQR and Form CTA-PR are materially different as currently proposed, including threshold levels for reporting firms and asset managers that advise both private funds and commodity pools. This means they could be required to track and file different sets of information with the SEC and the Commission for the same activity. A combined form would address issues relating to duplication of reporting and potential inconsistencies or, alternatively, the sharing of information gathered by a single regulatory agency. A joint reporting form would allow both regulators and the FSOC to monitor risk information using consistent data reported in a consistent manner, thereby improving the quality of systemic risk analysis and reducing the regulatory expense associated with the analysis. At the same time, it would substantially reduce the compliance burden for advisers. We would strongly support one reporting form and/or the sharing of information between the Commission and the SEC.

It is also worth noting that the SEC's recently adopted rules to implement the Dodd-Frank Act, in the absence of the Commission's proposed requirements, would not require Exempt Reporting Advisers to file the Form PF. The Commission's proposal to rescind its Rules 4.13(a)(3) and (4) could

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lead to many SEC Exempt Reporting Advisers nevertheless being required to file the Commission's equivalent form. This would produce inconsistent treatment and application, and we believe produce an unintended effect on exempt US and non-US private fund advisers. Some form of extremely simplified and less frequent notification may be appropriate for SEC exempt advisers.

Registration and reporting with the Commission

AIMA believes that the intention of Congress in the Dodd-Frank Act to exempt smaller private fund advisers and non-U.S. advisers with limited assets under management from offices in the US and a limited number of U.S. investors in private funds, should guide the Commission's deliberations related to the proposed removal of exemptions to registration.

- Advisers registered or exempt from registration with the SEC

In order to avoid unnecessary duplication of registration and reporting of registered US private fund advisers, we would recommend modifying or amending the Commission's Regulation 4.13 to maintain exemptions for advisers to private funds registered or exempt from registration under the 1940 Act.

Please also note that many non-U.S. CPOs/CTAs will be subject to registration and systemic risk reporting in their home jurisdictions. Therefore, pursuant to the G20's goal of global coordination and consistency, we suggest that, for CPOs/CTAs regulated in a jurisdiction that cooperates with the U.S. and IOSCO on systemic risk reporting, the reported data required may be shared between regulators (under strict confidentiality) in order to minimise registration and reporting by CTAs/CPOs to multiple regulators.

- Small CPOs/CTAs

We recommend that the Commission considers aligning its registration (and reporting) regime with the framework for small private fund advisers proposed by the SEC under the Investment Advisers Act of 1940 (which includes a proposed reporting regime substantially similar to that of the FSA and proposed by IOSCO). This could be achieved by providing exemptions, similar to those adopted by the SEC which exempts advisers with less than \$150 million in assets under management. As noted below, advisers with less than \$150 million of AUM, while a significant number of firms, comprise only about 3.5% of the total AUM in the hedge funds sector⁶. As such, these smaller advisers would dramatically increase the regulatory review process, add little to an analysis of industry or broader market conditions, while imposing significant additional compliance costs on the smaller advisers.

- Non-US CPOs/CTAs

We recommend that the Commission provide exemptions for non-US CPOs which are similar to the exemptions recently adopted by the SEC under the Investment Advisers Act of 1940. Under the foreign private adviser exemption, non-U.S. advisers with limited assets under management from a limited number of U.S. clients (including for these purposes U.S. investors in private funds) are excluded from registration and are not subject to reporting.

Not providing meaningful exemptions for non-US CPOs/CTAs could lead to a dramatic regulatory and supervisory overlap. In previous submissions, we have mentioned that approximately 3,500 non-US asset managers would likely need to register if the exemptions under 4.13 were rescinded as proposed. However, further contacts and data gathering from additional national authorities, including the UK, Italy, Spain, France, Germany, Netherlands, Hong Kong, Australia and Singapore,

⁶ In addition to the FSA and IOSCO, such an approach would be similar to the authorisation regime proposed in the EU Alternative Investment Fund Advisers Directive (AIFMD). The Directive distinguishes between an authorisation, which requires advisers with more than EUR 100 million assets under management to comply with all the provisions of Directive, and a lighter registration regime for smaller advisers who are only subject to very limited registration and reporting requirements.



Alternative Investment Management Association

indicate that there could be 5,000 to 6,000 asset managers (of all types of funds) in those jurisdictions that may become subject to the Commission's proposed registration and reporting requirements. In the UK alone, according to the Investment Management Association⁸, there are approximately 2,000 asset managers and funds, with a material proportion managing less than €100 million in size. These numbers include all types of managers, funds and collective investment schemes.

Today, there are numerous Memoranda of Understanding in place between US regulators and non-US regulators containing provisions on the exchange of information, including for the purpose of systemic risk oversight. We believe that the exchange of information for the purposes of monitoring systemic risk will be further improved with the implementation of the IOSCO reporting template and the Alternative Investment Fund Managers Directive in the EU, as well as regulatory reforms taking place across the globe.

Reporting

We fully support the periodic reporting of systemically relevant information, but we believe that the Commission should introduce appropriate qualitative and quantitative thresholds designed to capture a significant and representative portion of the market and hedge fund sector, without producing an excessive burden on reporting advisers, and in particular smaller and midsize advisers.

We believe that for risk reporting purposes, the Commission should focus its attention on fewer managers and seek a representative sampling of industry AUM and activities (i.e. 15-20% of managers and 70-80% of AUM). In this way, the Commission can best obtain, from the hedge fund sector a representative picture of broad market activity and market risk profiles. To provide the Commission with an understanding of the hedge fund universe, and how a limited and targeted number of advisers may satisfy your regulatory objectives as concerns hedge fund reporting, we include in Tables 1 and 2 below the estimated breakdown of the hedge fund universe into three brackets.

The tables have been prepared by using the Hedge Fund Intelligence database of single advisers, which represents approximately 60 percent of the universe in the U.S., and 60-65 percent worldwide (i.e., including US advisers). The table also includes estimates of the total number of private fund advisers potentially captured by the different reporting thresholds. According to this recent market data, about 248 private fund advisers, with net assets under management greater than \$1bn, reflect approximately 80% of US hedge fund sector AUM.

⁸ See the IMA's response to the ESMA Call for evidence - Implementing measures on the Alternative Investment Fund Advisers:

http://www.esma.europa.eu/index_new.php



Alternative Investment Management Association

Table 1 - the US Hedge Fund Advisers HF AUM, estimate of total US HF industry universe

AUM brackets for the CFTC proposed reporting schedules	Number of US based hedge fund advisers in the HFI database	Estimate of the number of all US based HF in the various brackets*	Proportion of Hedge Fund Advisers as % of Total US advisers in the HFI database	Proportion of AUM as a % total Hedge Fund AUM	US based HF AUM in the HFI database (million USD)	Estimate of AUM repartition in the various brackets of all USD based AUM* (million USD)
Schedule A CPO-PQR/Part A CTA-PR (\$0-149m)	689	1,148	61%	3.45%	28,824.08	48,040
Schedule B, CPO-PQR/Part B CTA-PR (\$150m-\$999m)	295	492	26%	15.02%	125,438.85	209,065
Schedule C CPO-PQR/Part B CTA-PR (\$1bn and over)	149	248	13%	81.52%	680,662.00	1,134,437
Total	1,133.00	1,888	100%	100.00%	834,924.93	1,391,541.55

*This estimate is obtained by a simple extrapolation, assuming the HFI database represents 60 percent of the US hedge fund universe.

Source: Hedge Fund Intelligence, December 2010

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Table 2 - Global Hedge Fund Advisers HF AUM and estimate of total HF industry universe (simple extrapolation)

AUM brackets for the CFTC proposed reporting schedules	Number of global hedge fund advisers in the HFI database	Estimate of the number of global HFM in the various brackets*	Proportion of Hedge Fund Advisers as % of Total global AUM advisers in the HFI database	Proportion of AUM as a % total global Hedge Fund AUM	Global HFM AUM in the HFI database (million USD)	Estimate of AUM repartition in the various brackets of all global AUM* (million USD)
Schedule A CPO-PQR/Part A CTA-PR (\$0-149m)	1415	2,358	62%	4.47%	61,130.82	101,885
Schedule B, CPO-PQR/Part B CTA-PR (\$150m-\$999m)	611	1,018	27%	18.68%	255,705.95	426,177
Schedule C CPO-PQR/Part B CTA-PR (\$1bn and over)	258	430	11%	76.85%	1,051,807.61	1,753,013
Total	2,284.00	3,807	100%	100.00%	1,368,644.38	2,281,073.97

*This estimate is obtained by a simple extrapolation, assuming the HFI database represents 60 percent of the global hedge fund universe.

Source: Hedge Fund Intelligence, December 2010

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The data from the above tables illustrates that, without setting appropriate thresholds and carefully considering the information requested and its analytical usefulness, a very large number of advisers (and other asset managers) would have to comply with the significantly more detailed reporting requirements of the Commission. We believe a reporting regime more closely designed to track advisers broadly, and separate regime to gather market and systemically-relevant risk information is preferable and easily achieved.

We recommend that the threshold for reporting on both Forms CPO-PQR and CTA-PR under Schedule A should be advisers managing more than \$150 million of net assets (subject to the removal of position level data, as described below in 'Format of reporting'). We propose that Schedule B in CPO-PQR should be eliminated, with much of its requested data provided in Schedules A and C (see below under 'Format'). The threshold for reporting under Schedule C in CPO-PQR and Schedule B in CTA-PR should be \$1bn net assets under management.

From the data collected, the Commission and FSCO will be expected to carefully analyse and address any significant emerging market or systemic risks. We therefore urge the Commission to carefully consider the regulatory benefit and relevance, and the advisers' marginal cost related to compliance, as well as the Commission's capacity to manage and analyse this much data. It would seem more beneficial to use Schedule A to track advisers and their basic information, and to rely on Schedule C to gather more detailed risk and market information.

Format of reporting on CPO-PQR

We believe the Commission should seek to simplify the proposed form by eliminating Schedule B. Some of the information asked for in Schedule B may be moved to Schedule A, some can be moved to Schedule C, while some items can be removed altogether. For example:

- We propose that position level data is unnecessary in Schedule A, as this Schedule includes many smaller advisers, and thus should more properly focus on more basic information for broadly tracking advisers (registered and possibly exempt).
- Question 1 regarding "description of strategy" of Schedule B could be moved to Schedule A to give the Commission a means to classify advisers and a general view of the pool.
- Schedule C is more appropriate to focus on counterparty data and other more detailed information regarding borrowings.
- Investor composition in Schedule C should be reported only on an aggregated, category basis (e.g. 'x% high net worth individuals'; 'y% institutional investor - pension funds', 'z% institutional investor - insurance companies', etc.).

Frequency and timing of reporting

We propose that reporting should be conducted annually for Schedule A and semi-annually for Schedule C, due to the volume of data and reporting required, related costs, ability of the Commission's staff to analyse and use reports of greater frequency, and because the monitoring of potential risks or material changes in market conditions should not require greater frequency of reporting.

The full reconciliation of a commodity pool's financial information usually takes up to 15 days or more. This can be even longer for less liquid portfolios that may (increasingly) require third party valuations. The proposed deadline for reporting is too short, and should be extended to 45 days.

We look forward to discussing these issues further at the roundtable discussion on 6 July 2011, and we are of course happy to clarify or expand on any issue related to this submission.

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Yours sincerely,

Andrew Bahn

Chief Executive Officer