May 29, 2015

Via Electronic Mail (fsb@bis.org)

Secretariat of the Financial Stability Board
c/o Bank of International Settlements
CH-4002, Basel, Switzerland

Re: Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions

Dear Ladies and Gentlemen:

The Investment Adviser Association ("**IAA**")[1] appreciates the opportunity to comment on the FSB and IOSCO's recent consultation on methodologies for identifying non-bank non-insurer ("**NBNI**") global systemically important financial institutions ("**G-SIFIs**").[2] Because the IAA's members are primarily U.S. asset management firms, we have a great interest in the FSB and IOSCO's work on this topic, particularly as it relates to asset managers.

This is a complex topic, and we appreciate that the FSB and IOSCO have published a second Consultation and are seeking additional input in order to consider every angle before moving forward.

Nonetheless, we are disappointed that this Consultation introduces a newly proposed methodology specifically for asset managers. Evidence gathered from the first consultation amply demonstrated that traditional asset management is not a source of systemic risk—not because the FSB and IOSCO's proposed methodology was flawed, but because asset management is fundamentally an agency business where the asset manager is neither a counterparty to nor a guarantor of its clients' investment risks. While the Consultation acknowledges this basic conclusion—that the core function of managing assets as an agent on behalf of others is not a source of systemic risk—it then proposes a new methodology based on hypothetical risks arising from some asset managers' non-core "other" activities.

That approach is misguided, both in singling out asset managers for a sector-specific methodology and, more fundamentally, in pursuing the designation of particular firms as G-

[1] The IAA is a not-for-profit association that represents the interests of investment adviser firms registered with the U.S. Securities and Exchange Commission. The IAA's membership consists of more than 550 firms that collectively manage approximately $16 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations, and many of our members are part of a global financial services firm. For more information, please visit www.investmentadviser.org.

[2] "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions" (the "**Consultation**") published by the Financial Stability Board (the "**FSB**") and the International Organization of Securities Commissions ("**IOSCO**"), available at http://www.financialstabilityboard.org/wp-content/uploads/2nd-Con-Doc-on-NBNI-G-SIFI-methodologies.pdf.

SIFIs. Any specific activities that raise systemic risk concerns should be evaluated across all firms and sectors, not through designation of individual asset managers. The Financial Stability Oversight Council (the "**Council**") and the International Monetary Fund (the "**IMF**") appear to recognize this, and have shifted their focus to products and activities.[3] We would encourage the FSB and IOSCO to abandon the designation approach and refocus their efforts along a similar path.

In so doing, it will be important to fully evaluate the impact of current regulatory developments with respect to the U.S. asset management industry. The Securities and Exchange Commission (the "**SEC**"), which is the primary regulator of U.S. asset managers, is undertaking several substantial initiatives that will address financial stability concerns, including regulatory proposals for liquidity management, stress testing, transition planning, and enhanced data reporting.[4]

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[3] *See* Notice Seeking Comment on Asset Management Products and Activities, Docket No. FSOC-2014-0001, available at http://www.treasury.gov/initiatives/fsoc/rulemaking/Documents/Notice%20Seeking%20Comment%20on%20Asset%20Management%20Products%20and%20Activities.pdf ("**Notice**") (the Council has directed staff "to undertake a more focused analysis of industry-wide products and activities to assess potential risks associated with the asset management industry") at 3.

See also International Monetary Fund's Global Financial Stability Report, available at http://www.imf.org/External/Pubs/FT/GFSR/2015/01/pdf/c3.pdf ("given that the [asset management] industry is diverse and that differences in investment focus seem to matter significantly for funds' contribution to systemic risk, a product- or activity-based emphasis seems to be important") at 121.

[4] The SEC staff has proposed amendments to Form ADV (the registration and disclosure form for SEC-registered asset managers) that would require asset managers to report more data on separately managed accounts. Asset managers with large total separately managed account regulatory assets under management, and that manage accounts with large net asset values, would be required to report even more data under the Investment Advisers Act of 1940 ("**Advisers Act**"). *See* Amendments to Form ADV and Investment Advisers Act Rules, SEC Release No. IA-4091 (May 20, 2015) (Advisers Act data reporting proposal), available at http://www.sec.gov/rules/proposed/2015/ia-4091.pdf. The SEC has also proposed significant changes to registered investment company ("**registered funds**") reporting requirements, including rule changes that would require standardized, enhanced disclosure about derivatives in investment company financial statements under the Investment Company Act of 1940. *See* Investment Company Reporting Modernization, SEC Release Nos. 33-9776; 34-75002; IC-31610 (May 20, 2015), available at http://www.sec.gov/rules/proposed/2015/33-9776.pdf.

SEC Chair Mary Jo White indicated that "the staff is also developing recommendations to enhance the management and disclosure of liquidity risk by mutual funds and ETFs, and to update the liquidity standards for those investment vehicles. The staff is also reviewing options for specific requirements for the use of derivatives by funds, including measures to appropriately limit the leverage these instruments may create, in addition to enhanced risk management programs for such activities. And the staff is studying new requirements for stress testing by large investment advisers and large funds, as well as provisions for transition plans after a major disruption in an investment adviser's operations." *See* Chair Mary Jo White, *Statement at Open Meeting: Modernizing and Enhancing Investment Company and Investment Adviser Reporting* (May 20, 2015), available at http://www.sec.gov/news/statement/modernizing-investment-company-and-investment-adviser-reporting.html.

For more detailed information on the SEC's rulemaking agenda in this regard, *see* Chair Mary Jo White, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry*, Remarks at The New York Times DealBook Opportunities for Tomorrow Conference Held at One World Trade Center, New York, NY (Dec. 11, 2014), available at http://www.sec.gov/News/Speech/Detail/Speech/1370543677722; David W. Grim, Acting Director, Division of Investment Management, *Remarks to PLI Investment Management Institute 201*5, New York,

We are concerned, however, that the FSB and IOSCO may attempt to go forward with a designation approach, and therefore offer the following comments. We address only those aspects of the Consultation that relate to the proposed methodology for analyzing asset managers.[5] An Appendix contains responses to the questions in Section 7 of the Consultation on sector-specific methodologies for asset managers.

I. Asset Managers' Core Function Does Not Present the Necessary Indicators of Systemic Importance; A Sector-Specific Methodology for Asset Managers Is Unwarranted

According to the Consultation, the objective of the proposed assessment methodologies is to identify NBNI financial institutions whose financial distress or disorderly failure, because of their size, interconnectedness, substitutability, complexity, and cross-jurisdictional activities, would be transmitted to other financial firms and markets and potentially cause significant disruption to the wider financial system and economic activity at the global level.[6] Thus, in order for an asset manager to be a G-SIFI, its failure must significantly disrupt the global financial system and global economic activity. This is—intentionally and rightly—a very high standard, and one that even the largest and most complex asset management firms should not meet.

This conclusion is based on the fundamental nature of asset managers and the regulation of the asset management business, which, as described in more detail below, not only do not create, but indeed mitigate, potential threats to financial stability. These factors must remain central to the FSB and IOSCO's assessment of systemic risk in the asset management industry and consideration of whether a methodology dedicated to asset managers as a separate sector is warranted.

Asset Managers are Agents, with No Balance Sheet Exposure by or to Clients. As the Consultation recognizes, "[t]he core function of an asset manager is managing assets as an

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NY (Mar. 5, 2015), available at http://www.sec.gov/news/speech/remarks-pli-investment-management-institute-2015.html, and David W. Grim, Acting Director, Division of Investment Management, *Remarks to the IAA Compliance Conference*, Arlington, VA (Mar. 6, 2015), available at http://www.sec.gov/news/speech/remarks-iaa-compliance-conference-2015.html.

[5] We note that many of our members serve as investment advisers to registered funds, non-U.S. public funds, and/or private funds (generally, "**funds**"). While we focus on asset managers here, we submit that the FSB and IOSCO's proposed methodology in the Consultation also is flawed with respect to its analysis of funds and therefore support the letters submitted by the Investment Company Institute and the Managed Funds Association. *See* letter from Paul Schott Stevens, President & CEO, Investment Company Institute, to Secretariat of the Financial Stability Board, dated May 29, 2015, and letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to Secretariat of the Financial Stability Board, dated May 29, 2015.

[6] According to the Consultation, "[t]he NBNI G-SIFI assessment methodologies aim to measure the impact that an NBNI financial entity's failure can have on the global financial system and wider economy, rather than the probability that a failure could occur." *See* Consultation at p. 10.

agent on behalf of others."[7] The nature of this agency business, where the adviser acts merely as an agent in managing assets owned by clients who are seeking exposure to certain investment strategies and their attendant investment results, is reflected in all aspects of the business. For example, there is an absolute separation between an asset manager's assets and liabilities and the assets and liabilities of the fund or account it manages,[8] there is no legal obligation for an asset manager to back-stop investor losses or guarantee investment performance, and there are strict prohibitions on commingling client assets with asset managers' proprietary assets or using the assets of one client to meet the obligations of another client. As agents, asset managers do not put their own capital at risk when they engage in financial markets on behalf of third parties (*i.e.*, their clients).

This is a fundamental and critical distinction between asset managers and banks or broker-dealers, which often act as principals in their dealings with customers or act with respect to their own balance sheet in ways that might put their customers' assets at risk.[9] Prudential regulations are designed accordingly, to ensure that the firm can make good on its promises. Capital requirements for banks protect against depositors losing the value of their deposits and incentivize banks not to take risks with their own balance sheets that would endanger the bank or the banking system—in other words, to operate prudently. Similarly, capital requirements for broker-dealers help to ensure that they can make good on their promises, settle trades and maintain and protect customer assets entrusted to them and help to manage the orderly liquidation of a broker-dealer and the transfer of customer assets to another broker-dealer.[10]

Asset managers make no such promises. Unlike banks or broker-dealers who can default on obligations to their depositors or customers, asset managers do not accept deposits, hold client assets, or clear or settle trades. They are not counterparties to or on behalf of their clients, and so cannot default in any way that would imperil client or other counterparties' assets. Rather, fund investors or separate account clients bear investment risk. They invest with the specific goal of capturing market returns associated with specific investment

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[7] *Id.* at 47.

[8] In some cases, an asset manager may invest in a fund that it manages. Having this "skin in the game" aligns an asset manager's interests with those of the fund investors. In its capacity as a fund investor, the asset manager is treated the same as any other investor and the basic principle of separation between the assets and liabilities of the asset manager and the fund holds.

[9] The Consultation states that "asset managers tend to have small balance sheets and the forced liquidation of their own assets would not generally create market disruptions." Consultation at 48.

[10] The primary purpose of the net capital rule (Rule 15c3-1 under the Securities Exchange Act of 1934) "is to ensure that registered broker-dealers maintain at all times sufficient liquid assets to (1) promptly satisfy their liabilities—the claims of customers, creditors, and other broker-dealers; and (2) to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks if they should be required to liquidate." *See* Key SEC Financial Responsibility Rules, available at https://www.sec.gov/about/offices/oia/oia_market/key_rules.pdf, at 130-131.

strategies or indexes. The asset manager acts only in the capacity of agent, and makes no promises that would protect against investment losses experienced by clients.

As a result, the risks to an asset manager's balance sheet are quite different than the risks to a bank's balance sheet, and the concepts of "distress" and "disorderly failure" derived from the banking context have little relevance to asset managers. Investment losses do not constitute "distress"—unlike bank depositors, fund investors and separate account clients are not promised a gain on their investment or a return of their principal.[11] And if an asset manager leaves the business, its clients' assets are transitioned to another manager or managed by the clients themselves, with little or no direct economic consequence to the client.

No Guarantees. In the same way, any concerns about investment products that rely on the offering institution's financial health and its ability to back obligations incurred by those investment products should not apply to asset managers. Asset managers are not counterparties to their clients' trades and do not expressly guarantee investment performance.[12] Instead, as the Consultation notes, "the client assumes the risk of investing."[13]

No Recourse. Asset managers are separate and distinct legal entities from their clients. Assets of a fund or a separate account belong solely to the fund and its shareholders, or the separate account owner, respectively, and never become the property of the asset manager. All gains and losses of the fund or separate account are thus borne only by the fund shareholders or separate account owners and do not affect any of the asset manager's other clients. Client assets are held by custodians in segregated accounts to maintain this strict separation from the adviser.[14] Creditors of the custodian and the asset manager do not have recourse to the clients' assets held in custody by the custodian.

Substitutability. The Consultation clearly recognizes that the asset management industry is large and diverse and asset managers generally are highly substitutable.[15] It

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[11] There is a difference between market or investment risk and systemic risk. In the words of the Council, "investment risk is inherent in capital markets, representing a normal part of market functioning." *Notice, supra* note 3, at 4. As Chair White recently noted, "Our objective . . . is not to eliminate all risk. Far from it. Investment risk is inherent in our capital markets – it is the engine that gives life to new companies and provides opportunities for investors." White, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry, supra* note 4.

[12] Although not legally required, it is theoretically possible that an asset manager might decide to support a fund to cushion investors against possible losses for moral, business, or reputational reasons. For example, this has occurred in the fixed NAV money market fund context. The SEC recently adopted rules bolstering the regulation of money market funds.

[13] *See* Consultation at p. 47.

[14] As the Consultation acknowledges, "Asset managers generally use third-party custodians to hold investor assets, as required by regulation or as a best practice." Consultation at 47.

[15] In the U.S., as of April 8, 2015, 11,473 investment advisers were registered with the SEC. *See* Investment Adviser Association and National Regulatory Services, "2015 Evolution Revolution Report: A Profile of the Investment

implies, however, that there are no substitutes for at least some strategies, as it notes that there are "numerous substitutes existing for *most* investment fund strategies" [emphasis added]. We think that even this limited concern is misplaced. Asset managers implement a diverse range of investment strategies. There are very few strategies that are so exceedingly unique that they are concentrated in just a few firms. In those rare cases, the uniqueness is likely a function of the strategy, not the instruments (equity, debt, derivatives) used to implement it.[16]

This high degree of substitutability does not mean that firms do not fail. Like all businesses, asset managers fail or close from time to time, but those failures occur in an orderly fashion and do not deprive clients of essential or irreplaceable services.[17]

For all of these reasons, the distress or failure of an asset manager would not cause significant disruption to investor assets, much less to the wider financial system and economic activity at the global level. Accordingly, a specific G-SIFI sector methodology for asset managers is unwarranted.

II. Separately Managed Accounts are not Globally Systemically Risky

The Consultation suggests that, among the types of client accounts an asset manager manages, separately managed accounts ("**SMAs**")[18] might be "one of the channels through

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Adviser Profession," *forthcoming at* https://www.investmentadviser.org. Go to Publications >> Reports >> Evolution Revolution Reports >> 2015 Evolution Revolution Report.

According to the Consultation, "The responses received on the January 2014 Consultative Document noted that the investment fund industry is highly competitive with numerous substitutes existing for most investment fund strategies." Consultation at p. 35. The Consultation also states that "asset managers primarily provide advice or portfolio management service to clients on an agency basis. This model makes their provision of this particular activity generally substitutable as there is considerable competition in the market place. For example, investors at any time may choose to move their assets to a different asset manager, to a different investment strategy or to a different investment fund. In addition, third-party custody arrangements facilitate the substitution of asset managers, depending on the circumstances." Consultation at 49.

[16] And in any event, it is important to recognize that ultimately people—not firms—implement strategies. In the event that a firm fails, the talent and skills of its personnel will not be "lost" or "in need of replacement" in any long-term or systemic sense.

[17] According to the Consultation, "Several responses [to the first consultation] stated that many asset managers may enter and exit the market on behalf of clients regularly in an orderly manner without any global systemic impact and that clients (including investment funds) readily move assets from one manager to another. Further, responses noted that in many cases where investors change asset managers, assets may never move from an existing custodian, and there may be no immediate sales of assets in the market." Consultation at 49.

See also Exhibit B to letter from BlackRock, Inc. to Secretariat of the Financial Stability Board, dated April 4, 2014, *Firm and Fund Closures and Related Events in the Asset Management Industry over the Past 25 Years*.

[18] We caution the FSB and IOSCO to be precise in their terminology regarding SMAs. Because the term "separate account" has a very different meaning in the insurance context, it is important to distinguish SMAs from insurance company separate accounts in order to avoid confusion. SMAs are individual client accounts that are not included on the asset manager's balance sheet and are generally held in a segregated account at an independent custodian. In contrast, an insurance company separate account, which is generally designed for investment-linked variable annuities, is reflected on the insurance company's balance sheet to the extent there is a call on the general account

which distress at the level of an asset manager might transmit risk to the wider financial system."[19] This concern seems to be based on the potential for substantial transfers of SMAs in a way that could adversely affect the global financial system.

SMAs do not present systemic risk concerns. SMAs are individual client accounts of securities and other assets owned by the client that are managed pursuant to specific investment guidelines and strategies of the individual client under an investment management agreement. Larger SMAs are generally owned by sophisticated investors. The investment management agreement is negotiated between the asset manager and the client, and is used to implement customized investment strategies and parameters established at the direction of a single investor. SMAs typically reflect a long-term investing mandate that utilizes little leverage at the account level and few investments in derivatives.[20] Securities lending is not common in SMAs, and in any event, the decision to lend the client's securities is made by the client, not the asset manager.

Moreover, separate accounts provide asset owners direct ownership and control of investment assets, without the pooling present in investment funds or other collective investment vehicles. As a result, separate accounts have no "first mover advantage"—because there is only one "mover"—and thus no risk of "runs." The Consultation appears to recognize these features of SMAs, noting that they generally do not present risks of "fire sales" or mass redemption.

We understand the FSB and IOSCO's concerns over the potential for the large-scale transfer of SMA accounts upon the failure of a large asset manager, but we believe that the possibility of systemic disruption is highly unlikely, even in such a scenario. In the ordinary course, clients generally may easily transfer SMAs to another asset manager in the event of unsatisfactory performance or in order to pursue different investment strategies simply by removing trading discretion from one manager and granting it to another, providing a high degree of substitutability. Sometimes the client may need to change custodians when changing asset managers but the client often has a direct contractual relationship with the custodian. In those cases, the assets never move and remain invested. If the custodian does change, it is common for the portfolio to be transferred in kind, in which case there is no liquidation event. In the unlikely event that a large SMA manager were to exit the business, it would follow a similar process, but on a larger scale. Accounts would either remain at the

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assets of the insurance company. *See* letter from the Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**") to Secretariat of the Financial Stability Board, dated April 4, 2014, at note 1; *see also* letter from the Committee of Annuity Insurers to the Council, dated March 25, 2015, at 2-3.

[19] *See* Consultation at Note 64.

[20] A recent survey of separate accounts advised by large asset managers showed that nearly all (99%) of the separate accounts in the survey were long-only strategies, the majority (53%) of which were index strategies, and that very few used leverage. *See* Letter from Timothy Cameron, Head, SIFMA AMG, to Secretariat of the Financial Stability Board, Re: "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions" (Apr. 4, 2014), *available at* http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-fsb-and-sec-in-response-to-ofr-study-and-in-regards-to-separate-accounts/.

same custodian with a different manager, or be transferred to a different custodian and different manager. The transfer would be handled in a clear and established manner so as not to raise systemic concerns. Nothing in the process would necessitate the large-scale fire sale of client assets.

For all of these reasons, SMAs do not present unique risks to financial stability and do not warrant separate treatment in the FSB and IOSCO's G-SIFI methodologies.

III. The Regulatory Regime for Asset Managers Further Mitigates Concerns Over Systemic Risk

Asset management is a highly and comprehensively regulated business. In order to provide professional discretionary or non-discretionary investment advice to their clients regarding investments in stocks, bonds, and other securities, as well as other assets, including real estate, currency, and derivatives, asset managers are subject to various regulatory regimes. Depending on the scope of their particular business, asset managers may be regulated by the SEC, Commodity Futures Trading Commission (CFTC), UK Financial Conduct Authority (FCA), European Securities and Markets Authority (ESMA), and other national or regional securities regulators around the world. They may need to comply with regulations governing (to name a few), disclosure, conflicts of interest, short selling, soft dollars, and dealing commission. Many types of products or accounts implicate other regulatory regimes, such as those applicable to insurance or pensions.

Our focus in this letter is on U.S. asset managers, which are regulated by the SEC under the Investment Advisers Act of 1940 ("**Advisers Act**"). Like many countries, the regulatory regime in the U.S. includes a framework of numerous specific rules and interpretive guidance, most of which are derived from the overarching fiduciary duty asset managers owe to their clients. As fiduciaries, asset managers have a duty to act in the best interests of their clients and are subject to duties of both loyalty and care, including an obligation not to subordinate clients' interests to their own.[21]

The fiduciary duty is overarching—an overlay on the specific rules and regulations to which asset managers are subject. These generally include, for example, anti-fraud provisions under various securities laws; rules governing safeguarding of client funds and securities; rules governing advertisements, marketing materials and other communications with investors; rules

[21] In *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), the Supreme Court held that Section 206 of the Advisers Act imposes a fiduciary duty as a matter of law, which includes both a duty of loyalty and a duty of care. For example, an adviser "should not engage in any activity in conflict with the interest of any client, and [an adviser] should take steps reasonably necessary to fulfill [its] obligations. [An adviser] must employ reasonable care to avoid misleading clients and [advisers] must provide full and fair disclosure of all material facts to [the adviser's] clients and prospective clients." *Information for Newly-Registered Investment Advisers*, SEC (Nov. 23, 2010).

Asset managers that provide investment management services to retirement plans that are covered by the Employee Retirement Income Security Act of 1974 ("**ERISA**") on a discretionary basis also are fiduciaries under ERISA, and must satisfy fiduciary responsibilities both under the Advisers Act and under ERISA with respect to the assets they manage for such retirement plans.

regarding the adoption and maintenance of compliance policies and procedures (and an annual review of the effectiveness of such policies and procedures); codes of ethics (governing personal trading) and rules on the supervision of employees; privacy regulations relating to client information; and recordkeeping and reporting rules.

Most importantly in the context of this Consultation, as fiduciaries, asset managers must invest their clients' assets pursuant to investment mandates determined by their clients. In this fiduciary capacity, asset managers actively manage portfolio risks associated with those mandates, applying their professional judgment to help clients achieve their investment goals without taking on unnecessary risks.

Asset managers are required to, and do, expend significant efforts on designing and maintaining appropriate compliance programs, including in the area of client asset protection—a requirement that is reinforced and monitored through regulators' examinations and enforcement and public and private disclosure of information through regulatory reporting on various disclosure forms. Indeed, as discussed in more detail below, the SEC has proposed form and rule amendments that will require asset managers to report even more data about their operations, including information on SMAs. The SEC also is undertaking initiatives to collect additional information about leverage, securities lending, and other areas.

We believe that taken as a whole, the regulatory regime for asset managers should mitigate concerns over systemic risk that would necessitate a separate G-SIFI methodology for asset managers.

IV. The SEC's Current Rulemaking Agenda Should be Taken Into Account with respect to U.S. Asset Managers

If the FSB and IOSCO pursue the approach we recommend of analyzing products and activities, it will be very important to fully evaluate the impact of the SEC's current initiatives with respect to the U.S. asset management industry. The SEC's rulemaking agenda includes regulatory proposals to proactively address the risks posed by asset managers and funds regarding liquidity management, stress testing, transition planning, and enhanced data reporting, as described in more detail below.[22]

Liquidity Management. SEC staff is developing recommendations for rulemaking to enhance controls on risks related to portfolio composition (the mix and impact of investments, liquidity, and leverage on a fund) and operations, including registered funds' fund-level controls in the areas of liquidity risk and the use of derivatives. SEC staff is considering broad risk management programs for mutual funds and exchange-traded funds (ETFs), as well as updated liquidity standards, disclosures of liquidity risks, or limits on leverage created by a fund's use of derivatives.[23]

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[22] *Supra* note 4.

[23] *Supra* note 4.

Stress Testing. SEC staff is considering appropriate ways to implement annual stress testing by large asset managers and large registered funds, as required under the Dodd-Frank Act.[24]

Transition Planning. The staff is preparing recommendations that would require asset managers to create plans for transitioning their clients' assets in the event of a market stress event, a major business disruption, an asset manager's dissolution or the departure of key personnel, or when an asset manager is no longer able to serve its clients.

Enhanced Data Reporting. SEC staff is developing recommendations to modernize and enhance data reporting to better assess and respond to risks at the registered fund level and across the asset management industry. These include rules with respect to the reporting and disclosure of registered fund investments in derivatives, liquidity and valuation of registered fund holdings, and securities lending practices. The staff has proposed amendments to Form ADV (the registration and disclosure form for SEC-registered asset managers) that would require asset managers to report more data on separately managed accounts. Asset managers with large total separately managed account regulatory assets under management, and that manage accounts with large net asset values, would be required to report even more data.[25]

We believe that these initiatives will enable the SEC to better monitor and address risks across the asset management industry in the U.S. If after studying whether these new regulations adequately address potential systemic risks, certain activities are still deemed to pose risks to the global financial system and wider economy, then the FSB and IOSCO should consider further recommendations focused on specific activities demonstrated to create systemic risk.

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[24] White, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry*, *supra* note 4, at note 27, citing Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, section 165(i)(2), 124 Stat. 1423 (2010) (codified at 12 U.S.C. § 5365) ("The Dodd-Frank Act requires the Commission to establish methodologies for this stress testing of financial companies such as broker-dealers, registered investment companies and registered investment advisers with $10B or more in total consolidated assets—including baseline, adverse, and severely adverse scenarios—and to design a reporting regime for this stress testing, which must be reported to the Commission and the Federal Reserve Board.").

[25] The new proposal would require: (i) for all asset managers, the amount of separately managed account regulatory assets under management ("**RAUM**") invested in ten asset categories: (1) exchange-traded equity securities, (2) U.S. government/agency bonds, (3) U.S. state and local bonds, (4) sovereign bonds, (5) corporate bonds – investment grade, (6) corporate bonds – non-investment grade, (7) derivatives, (8) securities issued by registered investment companies or business development companies, (9) securities issued by pooled investment vehicles (other than registered investment companies), and (10) other (asset managers with $10 billion or more in separately managed account RAUM would report this data with a mid-year and year-end value); (ii) for asset managers with at least $150 million but less than $10 billion in separately managed account RAUM, the number of SMAs the asset manager advises with derivatives according to net asset value and gross notional exposure and the weighted average amount of borrowings in those accounts; and (iii) for asset managers with at least $10 billion in separately managed account RAUM, derivatives exposure and borrowing information, as well as the weighted average gross notional value of six categories of derivatives. *See* Advisers Act data reporting proposal, *supra* note 4.

V. G-SIFI Designation Would Not Achieve Regulatory Goals; The Focus Should be on Products and Activities

We support efforts to identify and mitigate systemic risk in the financial system. However, we fundamentally believe that the most effective way for the FSB and IOSCO to achieve their regulatory goals is a shift in focus from the designation of asset managers as G-SIFIs to the identification of, and perhaps further monitoring of, specific market-wide products and activities that could have a potential negative impact on the global financial system and wider economy.

The designation of an individual asset manager would lead, presumably, to additional constraints on that individual asset manager's activities.[26] In our view, this selective regulation of a small number of asset managers is a misguided approach that would likely have a number of adverse regulatory and market consequences. First, it would create an unlevel playing field, imposing additional costs and burdens on those managers designated as G-SIFIs. To the extent that those costs and burdens translated into higher operating expenses or reduced investment performance, investors could (and likely would) move their assets away from designated asset managers to other asset managers who can pursue the same or similar strategy.

Second, the imposition of prudential regulation on an asset manager as a G-SIFI could cause tension with its fiduciary duties to its clients. Prudential regulation is premised on actions that protect the safety and soundness of the institution and/or the system. Fiduciary duties are premised on doing what is in the client's best interest. Asset managers cannot—and should not be made to—make investment decisions for their own good or the good of the system as a whole. They must do what is right for their client. A prudential overlay on a firm designated as a G-SIFI could significantly impede that firm's ability to follow client directives and apply its own judgment premised on fiduciary duties, risk management, and regulatory compliance. The FSB and IOSCO have not shown that superimposing a prudential regulator's judgment over that of an asset manager acting in the best interests of its clients is justified.

Third, and perhaps most importantly, a designation approach ignores the practical reality that any risk in the asset management industry is not concentrated in individual entities, but rather broadly distributed and borne of practices engaged in by many industry participants across sectors. G-SIFI designation may constrain certain activity by a few large asset managers, but other asset managers may collectively account for more of that activity than the largest firms. As a result, the constraints on the largest firms would not eliminate and may not even meaningfully reduce the overall level of risk associated with those activities.

For all of these reasons, we see a designation approach as counterproductive to the overarching goal of reducing systemic risk. The better approach is to seek to address any risks

[26] Since no prudential measures to regulate supposed G-SIFI asset managers have been proposed, it is impossible to know precisely what would be achieved by any designation.

arising from the activities asset managers conduct and products they offer on an industry-wide basis that is not restricted to a small number of entities. This is consistent with the approach being taken by the Council and the IMF.[27]

We urge the FSB and IOSCO to refocus their efforts along those lines. In keeping with their mandates, the FSB and IOSCO should seek to explore whether activities-based regulation that would address financial stability concerns is lacking, and assess whether targeted regulatory enhancements would be necessary and appropriate.

VI. Conclusion

We appreciate the FSB and IOSCO's work on systemic risks and their efforts in publishing this second consultation to consider additional input before moving forward. But we continue to believe that, by virtue of their basic structural and regulatory characteristics, asset managers would not experience distress or fail in a way that would cause significant disruption to the global financial system and economic activity across jurisdictions. As a result, the newly proposed sector-specific methodology for asset managers is unwarranted and inappropriate. The FSB and IOSCO should abandon efforts to designate asset managers as G-SIFIs, and focus instead on addressing risks directly through monitoring or regulation of activities across all firms and sectors.

* * *

We appreciate the opportunity to provide comments on the Consultation and would be pleased to provide any additional information. Please contact the undersigned, Bob Grohowski, General Counsel, or Laura Grossman, Assistant General Counsel, at (202) 293-4222 with any questions regarding these matters.

Respectfully submitted,

Karen Barr
President and Chief Executive Officer

Appendix

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[27] The Council has directed staff "to undertake a more focused analysis of industry-wide products and activities to assess potential risks associated with the asset management industry", *Notice, supra* Note 3, at 3.

The IMF stresses the importance of a products or activities-based approach, asserting that "the analysis shows that larger funds and funds managed by larger asset management companies do not necessarily contribute more to systemic risk: the investment focus appears to be relatively more important for their contribution to systemic risk." *supra* Note 3, at 93.

APPENDIX

Responses to Questions in Section 7 of the Consultation

7.1 Definition of Asset Managers

Q7-1. Please describe any activities or services conducted by asset managers other than described above. In particular, please explain any other activities that, in your view, should be included in the scope.

We believe that the Consultation has identified the appropriate scope of asset manager activities and services. In determining whether to adopt a sector-specific methodology for asset managers, we encourage FSB and IOSCO to focus on core activities and services. An asset manager's core function is to manage assets as an agent on behalf of others. For the reasons described in detail in our letter, applying the methodology proposed in the Consultation to these core activities and services leads to the conclusion that the failure of an individual asset manager should not significantly disrupt the global financial system and global economic activity.

Any ancillary activities (*e.g.*, acting as a securities lending agent or providing risk management or pricing services) are not core asset management functions and are not widely or solely engaged in by asset managers. Therefore, the most effective way to address any perceived systemic risk posed by these activities would be further monitoring or regulation across industries and sectors, rather than through designating individual asset managers as G-SIFIs.

7.2 Transmission Channels

Q7-2. Please explain any potential systemic risks associated with the financial distress or default of an asset manager at the global level that are, in your view, not appropriately captured in the above description of each risk transmission channel. Are there elements of the relevant channel that have not been adequately captured? Please explain for the relevant channel separately.

We believe that the Consultation has appropriately captured the "transmission channels" by which the distress or failure of a market participant hypothetically could lead to losses on the part of counterparties or other market participants. However, although the concept of distress or disorderly failure is important to an analysis of systemic risks, as discussed in our letter, it is ill-fitting in the context of asset managers. Because of the nature of their business, asset managers simply do not fail in the same way that large, complex and highly leveraged financial institutions, such as banks, insurance companies, and investment banks might.

In order to achieve the overarching goal of reducing systemic risk, the better approach is to seek to address the risks arising from the activities and services identified in the

Consultation across all firms and sectors, rather than through designation of individual asset managers.

Q7-3. For the exposure/counterparty channel, to what extent does the assessment adequately describe the types of risks posed by asset managers' activities, such as securities lending, distinct from individual funds? Are there other activities that warrant further assessment?

The FSB and IOSCO are correct to focus on asset managers' activities "distinct from individual funds." And in this regard, the assessment adequately describes the types of risks posed by the identified activities. We submit, however, that these activities are not exclusive to or even prevalent among asset managers.

When considering any risks posed by asset managers' activities, we urge the FSB and IOSCO to keep in mind that asset management is fundamentally an agency business—asset managers are agents of their clients. The asset manager is not the asset owner. It does not lend its own securities. The asset manager does not act as the counterparty to or on behalf of its clients, and so cannot default in any way that would imperil client or counterparties' assets.

As described in our letter, the nature of an agency business limits systemic risk. The distress, failure, or resolution of an asset manager does not lead to counterparties' losses or impairment, create distress for other market participants, or create obstacles in transferring its business.

The Consultation notes that this transmission channel is intended to focus on "risks that asset managers may transmit to the global financial system when *their* distress or failure leads to losses or other impairment to *their* counterparties, including banks or brokers that have extended *them* financing or have direct trading linkages to *them*" [emphasis added].[1] We agree with this formulation, but would point out that asset managers do not have counterparties as a result of managing client assets and that there are few, if any, meaningful instances where the asset manager will have direct financing or trade linkages with a bank or broker-dealer.

Q7-4. For the asset liquidation/market channel, to what extent and under what circumstances might reputational or operational risks of the asset manager impact the entity's individual funds, contributing to high redemptions? How might it impact the transfer of SMAs?

We agree that a reputational or operational concern may lead to redemptions or clients otherwise leaving an asset manager. As noted in our letter, in the asset management business, clients hire and fire asset managers regularly. Clients can leave managers due to reputational concerns, such as compliance or regulatory problems or loss of key personnel. Even on a large scale, however, products and services offered by asset managers are structured in ways (such

[1] Consultation at 48.

as the use of third-party custodians) that minimize the risk of disruptions associated with those kinds of flows. For example, Strategic Insight recently studied the effects of star portfolio manager Bill Gross' departure from PIMCO in late September 2014. It found that:

> Interestingly, and despite extraordinary redemptions, the investment performance of the PIMCO fund roughly matched that of its peers (as compared to the Intermediate-Term Bond Morningstar Category) during the closing months of 2014.The nearly $80 billion of net liquidations out of this fund during the September to December 2014 period, representing over one-third of this flagship fund's assets, did not result in price dislocation for the fund or for the bond market.[2]

There are a number of potential reasons for this, including that asset managers employ a variety of portfolio risk management techniques, which may include stress tests and liquidity standards.[3] Large asset management firms in particular have very sophisticated risk management and monitoring tools. In addition, as outlined in our letter, SEC initiatives are underway to enhance risk management related to portfolio composition.[4] All of these techniques ensure that funds are able to handle redemption requests, even on a large scale.[5]

Many asset managers, including large ones, sustain reputational or operational risks without any global systemic impact. While reputational or operational risks of an asset manager could lead to transfers of some SMA accounts (while others may judge it prudent to remain), any such transfers are unlikely to raise systemic concerns. In ordinary times, clients may easily transfer SMAs to a different manager in the event of unsatisfactory performance or in order to pursue different investment strategies simply by removing trading discretion from one manager and granting it to another, providing a high degree of substitutability. Sometimes the client may need to change custodians when changing asset managers but the client often has a direct contractual relationship with the custodian. In those cases, the assets never move and remain invested. If the custodian does change, it is common for the portfolio to be transferred in kind, in which case there is no liquidation event. In the unlikely event that a

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[2] *See* Letter from Avi Nachmany to Jacob Lew, Secretary of the U.S. Treasury, attaching *Mutual Funds and Systemic Risk: The Reassuring Lessons of Stability Amid Past Periods of High Financial Markets Volatility*, Strategic Insight (Mar. 23, 2015), at 15, available at http://www.regulations.gov/contentStreamer?documentId=FSOC-2014-0001-0016&attachmentNumber=1&disposition=attachment&contentType=pdf.

[3] *See* Letter from Timothy Cameron, Head, SIFMA AMG, to Secretariat of the Financial Stability Board, Re: "Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions" (Apr. 4, 2014), available at http://www.sifma.org/comment-letters/2014/sifma-amg-submits-comments-to-the-fsb-and-sec-in-response-to-ofr-study-and-in-regards-to-separate-accounts/ and the accompanying survey of some of the key characteristics of separate accounts, at 9-12.

[4] *See* Note 4 to our letter.

[5] Outside of the context of reputational or operational risk, analysis suggests that, in general, mutual fund investors do not act with a herd mentality, and some investors make countercyclical investment decisions. *See Mutual Funds and Systemic Risk: The Reassuring Lessons from Past Periods of High Financial Markets Volatility*, Strategic Insight (Nov. 13, 2013), at 5.

large SMA manager were to exit the business, it would follow a similar process, but on a larger scale. Accounts would either remain at the same custodian with a different manager, or be transferred to a different custodian and different manager. Nothing in the process would necessitate the large-scale fire sale of client assets.

Q7-5. For the critical function/substitutability channel, are there any emerging activities that might be critical to a portion of financial clients that might in turn impair market functioning or risk management if no longer provided? Other than managing assets as an agent (i.e. core function), to what extent do asset managers engage in activities that may be relied upon by investors, financial institutions and corporations, and which are difficult to readily substitute? Is any asset manager difficult to substitute?

For the reasons set forth in our letter, we do not believe that asset managers engage in activities apart from their core function that are so critical and unique that the asset manager would be difficult to substitute. Asset managers do not typically themselves provide pricing services or act as a securities lending agent. Rather, asset managers may rely on affiliated or unaffiliated service providers to perform these functions, if such functions are part of their business model.

As explained in our letter, with respect to their core functions, asset managers are highly substitutable. The asset management market is large and diverse,[6] and in the unlikely event an asset manager went out of business, clients would move to one of many competitors. Asset managers are familiar with and are able to conduct transition management efficiently and quickly when necessary. If there were a delay in transferring the advisory contracts to another asset manager, this would not rise to the level of a systemic risk.

Transition management services are a highly evolved and sophisticated professional field within the industry, as leading asset managers and other service providers routinely assist in the restructuring or migration of assets from one asset manager to another. Transition management specialists help minimize transaction costs while managing investment and operational risks. Transitions are also facilitated by technology and other service providers such as custodians.

7.3 Materiality thresholds

Q7-6. Please explain any practical difficulties in applying the above proposed thresholds for an initial filter of the asset manager universe and limiting the pool of asset managers for which more detailed data will be collected and to which the sector-specific methodology (set out in Section 7.4) will be applied.

[6] In the U.S., as of April 8, 2015, 11,473 investment advisers were registered with the SEC. *See* Investment Adviser Association and National Regulatory Services, "2015 Evolution Revolution Report: A Profile of the Investment Adviser Profession," *forthcoming at* https://www.investmentadviser.org. Go to Publications >> Reports >> Evolution Revolution Reports >> 2015 Evolution Revolution Report.

The Consultation notes that the definition of the materiality threshold "is especially relevant for the activities where the asset manager does not act as an agent, but for its own account."[7] We agree, and submit that any materiality threshold should be based on the asset manager's balance sheet assets that reflect its own assets. The Consultation notes, accurately, that asset managers tend to have small balance sheets.[8]

When assessing an asset manager's balance sheet, please be aware that there is currently some uncertainty regarding the circumstances in which the assets of third party non-proprietary funds managed by the asset manager should be excluded from the asset manager's total assets, even if those funds are required to be consolidated under U.S. GAAP.[9] As a result, for some asset managers of private funds, a consolidated balance sheet may overstate the extent to which the asset manager's own balance sheet assets are at risk.

On the other hand, assets under management ("**AUM**") are not an appropriate indicator of systemic risk. For all of the reasons explained in our letter, given the agency model of asset managers, higher AUM does not translate into higher systemic risk. Accordingly, we see no merit in a threshold based on AUM.

Q7-7. Please provide alternative proposals, if any, for a more appropriate initial filter (with the rationale for adoption and quantitative data to back-up such proposals).

We think that a focus on an asset manager's own assets reflected on its balance sheet is the right approach, making alternative proposals unnecessary.

7.4 Indicators for assessing systemic importance

While, ultimately, we recommend that the FSB and IOSCO abandon the G-SIFI designation approach, we offer the following specific observations.

Size. An asset manager's size alone should not be used to assess systemic risk. Products and activities, rather than size, should be analyzed to determine the impact, if any, on risk to the global financial system. Further, the largest asset managers have sophisticated risk management processes in place and may have diversified businesses. Indeed, we are not aware of any empirical data or academic study indicating that larger asset managers are

[7] *See* Consultation at 50.

[8] *Id.* at 48.

[9] Accounting standards currently require asset managers to consolidate certain investment funds that they manage on their balance sheets when preparing financial statements in conformity with U.S. generally accepted accounting principles ("**U.S. GAAP**"). However, in February 2015, the Financial Accounting Standards Board ("**FASB**") issued an Accounting Standards Update that amends the current guidance. *See* Financial Accounting Standards Board (FASB) Accounting Standard Update (ASU) No. 2015-02, Consolidation (Topic 810): Amendments to the Consolidation Analysis (Feb. 18, 2015), available at http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176164939022&acceptedDisclaimer=true. The amendments are effective for future reporting periods.

systemically riskier than smaller asset managers, or that the size of an asset manager has any impact on the financial system should an asset manager fail, experience distress, or otherwise dissolve. As a result, looking at an asset manager's size in isolation is not a useful initial filter.

Because size does not accurately capture the risk profile of an asset manager, size should not be a dispositive factor in assessing how to protect against systemic risk. As mentioned in our letter, a focus on size is also at odds with the Council and the IMF's view. Rather than size, a market participant's products and activities, regardless of sector, are much more likely to be indicators of activity that could cause "significant disruption to the global financial system and economic activity across jurisdictions."

Size: Net Assets Under Management. The Consultation states that where possible, AUM should be "split" according to assets managed in funds and SMAs. We do not believe that this classification has any bearing on assessing systemic risk at the asset manager level because, in either case, the assets of a fund or a separate account belong solely to the fund and its shareholders, or the separate account owner, respectively, and are not at risk should the asset manager fail. See the discussion under Section I, "Asset Managers' Core Function Does Not Present the Necessary Indicators of Systemic Importance; A Sector-Specific Methodology for Asset Managers Is Unwarranted" in our letter.

The Consultation also suggests that the transfer of certain bespoke positions in SMAs might necessitate an unwinding of positions that could have a material adverse effect on certain market segments. Although hypothetically possible, this scenario seems unlikely to present systemic risk. A bespoke strategy likely is a small part of a market segment, particularly if it is dominated by a single manager. Moreover, the failure of that dominant manager would not necessarily result in the rapid unwinding of the SMA positions. Instead, it is possible—and perhaps more likely—that the SMA client would be unable to transfer the account due to difficulty in finding another manager to replicate the strategy, resulting perhaps in a temporary loss of liquidity for the individual client, but no material adverse effects on the overall market or market segments.

Size: Balance Sheet Assets. We submit that the better indicator of risk and complexity is balance sheet assets, not AUM. However, asset managers tend to have small balance sheets and they do not include client assets on their own balance sheets.

Interconnectedness: Leverage ratio. We understand the FSB and IOSCO's concerns about leverage to the extent that leverage could magnify losses. However, leverage is not typically found at the asset manager level. Rather, if a client takes on a certain amount of leverage, it bears the risks, and those risks are restricted, monitored, and managed pursuant to the client's investment objectives.

Interconnectedness: Guarantees and other off-balance sheet exposures. As discussed in our letter, asset managers do not explicitly guarantee the performance or financial obligations of investment funds or clients they manage. There is no legal obligation for an asset manager to back-stop investor or client losses or guarantee investment performance. As a result, there is no reason to believe that asset managers should have significant off-balance sheet exposures. Therefore, while guarantees and other off-balance sheet exposures are an important risk

indicator, they have little bearing for asset managers. To the extent an entity engages in those activities, the activities should be evaluated across all firms and sectors to assess whether targeted regulatory enhancements would be necessary and appropriate.

Substitutability, measured by a percentage of the asset manager's revenues as compared to the total revenues attributable to the relevant business. The vast proportion of revenues for nearly all asset managers comes from their asset management fees—in other words, fees from their core function. As the Consultation recognizes and as our letter explains in more detail, the asset management industry is large and diverse and asset managers are highly substitutable, particularly with respect to that core function.[10]

Market share, measured by a percentage of the asset manager's AUM in a particular strategy as compared to the total AUM invested in the same strategy for all managers. We do not believe that market share is an important risk indicator. As we explain in our letter, asset managers implement a diverse range of investment strategies. There are very few strategies that are so exceedingly unique that they are concentrated in just a few firms. In those rare cases, the uniqueness is likely a function of the strategy, not the instruments (equity, debt, derivatives) used to implement it.[11]

Complexity: Impact of the organizational structure. An asset manager may have an affiliate that experiences distress or failure. However, for the same reasons that the distress or failure of the asset manager would not have an appreciable affect on fund assets or client accounts, any effect on the asset manager from its affiliates' potential distress or failure would be limited in scope. Take, for example, the impact of the failure of Lehman Brothers on its asset management subsidiaries. Within two weeks after it failed on September 15, 2008, Lehman Brothers entered into an agreement to sell its asset management businesses to two private equity firms. Within nine months, the asset management businesses were completely spun off from Lehman Brothers, operating as Neuberger Berman Group LLC under employee control. The failure of Lehman Brothers had an appreciable impact on the asset managers, but the asset management business was able to continue to operate largely intact even as the rest of the firm failed.

Complexity: Difficulty in resolving a firm. Difficulty in resolving a firm is an important indicator of systemic risk, but as explained in our letter, it would be far less difficult to resolve a large asset management firm than other large, complex financial services organizations. Even asset managers that are part of other businesses can be resolved separately and easily. See Section I, "Asset Managers' Core Function Does Not Present the Necessary Indicators of Systemic Importance; A Sector-Specific Methodology for Asset Managers Is Unwarranted" in our letter.

Cross-jurisdictional activities: Number of jurisdictions in which an asset manager has a presence. While cross-jurisdictional activities are an obvious risk indicator with respect to the

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[10] *Supra* Note 15 to our letter.

[11] And in any event, it is important to recognize that ultimately people—not firms—implement strategies. In the event that a firm fails, the talent and skills of its personnel will not be "lost" or "in need of replacement" in any long-term or systemic sense.

global nature of any impact of the distress or failure of a financial entity, activities in multiple jurisdictions are not necessarily more risky. Indeed, geographical diversification may mitigate risk. See also Section III, "The Regulatory Regime for Asset Managers Mitigates Concerns Over Systemic Risk" in our letter.

Q7-8. Please explain any proposed indicators set out above that, in your view, are not appropriate for assessing the relevant impact factors and its reasoning. What alternative indicators should be added and why would they be more appropriate?

As we discuss above, several of the proposed indicators are not appropriate because they do not translate meaningfully to the asset management industry. We do not have any suggestions for additional indicators. The FSB and IOSCO could use the indicators as currently proposed to reasonably conclude, as we have, that no asset manager should be designated a G-SIFI.

As an overarching alternative to the designation approach, we recommend focusing on products and activities, as well as assessing the SEC staff's current initiatives relating to registered fund liquidity management programs, annual stress testing for large asset managers and large registered funds, transition plans for investment advisers, and enhanced data reporting by asset managers.

Q7-9. What are the practical difficulties (e.g. data availability, comparability) if any with collecting data related to these indicators? Please clarify which items, the practical problems, and possible proxies that could be collected or provided instead.

We recognize that the FSB and IOSCO face challenges collecting data to implement the proposed methodologies. As noted in the Consultation, "Given different corporate structures and accounting methodologies, however, it may be difficult to measure the activities of the asset manager (i.e. the calculation of the asset manager's balance sheet may not include the balance sheets of all of the asset manager's affiliates or its off-balance sheet activities, to the extent they exist). Moreover, data regarding an asset manager's balance sheet assets is not as readily available as AUM."[12] Nonetheless, it is critical to evaluate the appropriate indicators, even if the relevant data is more difficult to collect. For reasons explained above, as they consider whether a sector-specific methodology is warranted for asset managers, the FSB and IOSCO should remain focused on the extent to which asset managers—separate and distinct from the funds they manage—place their balance sheets at risk. Assets under management is not an appropriate proxy.

Also, as noted, the SEC has proposed amendments to Form ADV (the registration and disclosure form for SEC-registered asset managers) that would require asset managers to report more data on separately managed accounts. Asset managers with large total separately managed account regulatory assets under management, and that manage accounts with large net asset values, would be required to report even more data.[13] The SEC also is undertaking initiatives to

[12] Consultation at 53.

[13] *See* Amendments to Form ADV and Investment Advisers Act Rules, SEC Release No. IA-4091 (May 20, 2015), available at http://www.sec.gov/rules/proposed/2015/ia-4091.pdf. The SEC has also proposed significant changes to registered investment company reporting requirements, including rule changes that would require standardized,

collect additional information about leverage, securities lending, and other areas that will enable the SEC to better monitor and address risks across the asset management industry in the U.S.

Q7-10. Which of the proposed indicators set out above, in your view, should be prioritized in assessing the systemic importance of an asset manager?

Because firms with large, leveraged balance sheets may be difficult to resolve, we believe that the extent to which a firm's own balance sheet assets are at risk, the extent to which a firm is leveraged, and the relative difficulty of resolving a firm should be prioritized in assessing systemic importance. Applying these metrics to asset managers—which typically have small and simple balance sheets, little or no leverage, and are relatively easy to resolve—we expect the FSB and IOSCO to conclude, as we have, that a sector-specific methodology for asset managers is unnecessary and unwarranted.

enhanced disclosure about derivatives in investment company financial statements. *See* Investment Company Reporting Modernization, SEC Release Nos. 33-9776; 34-75002; IC-31610 (May 20, 2015), available at http://www.sec.gov/rules/proposed/2015/33-9776.pdf.