MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

May 29, 2015

By email to fsb@bis.org

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

Re: MFA Comments on Second FSB/IOSCO Consultation Document – Assessment Methodologies for Identifying Non-Bank Non-Insurer Globally Systemically Important Financial Institutions

Dear Sir or Madam:

Managed Funds Association ("MFA")[1] welcomes the opportunity to provide comments on the Financial Stability Board's ("FSB") and International Organization of Securities Commissions' ("IOSCO") second consultation paper, Assessment Methodologies for Identifying Non-Bank Non-Insurer Globally Systemically Important Financial Institutions (the "Consultation Paper"). Discussed below are our comments on specific aspects of the Consultation Paper; however, as an initial principle, we believe that systemic risk is best addressed holistically, as opposed to by the designation of individual participants. We also believe that before the FSB and IOSCO make any final determinations regarding designations or assessment methodologies for identifying and designating individual firms, more analysis needs to be done to provide a clear rationale for how identified risks may be systemic in nature and how the designation of individual firms, as opposed to regulation of activities, would address those identified risks. We note that such a process is currently being undertaken by the Financial Stability Oversight Council (the "FSOC") in the U.S. and that the FSB has announced a work plan to examine market-based activities and the role of asset

[1] Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

management.[2] We believe that the FSB and IOSCO should consider the results of those projects before making any decisions regarding designations or designation criteria.

Although we believe it is premature for regulators to make decisions about assessment methodologies for designations of investment funds, we discuss below our thoughts on the proposed methodologies set out in the Consultation Paper. In considering the specific metrics and indicators proposed by the FSB and IOSCO in the Consultation Paper, we believe the FSB and IOSCO should adopt final recommendations consistent with the following key points:

- While the Consultation Paper sets out a number of risk factors relevant to investment funds, we do not believe that the identified risks rise to the level of systemic risks.

- Laws in many jurisdictions, such as the United States, set out factors that relevant authorities must consider as well as providing companies being considered for designation certain process and legal rights. To ensure that the global systemically important financial institution ("GSIFI") designation process does not unduly interfere with the legal requirements of individual jurisdictions, the process for designating GSIFIs should only come after a determination has been made to designate a firm as a systemically important financial institution ("SIFI") at the national level, pursuant to the laws of the applicable jurisdiction.

- Systemic risk regulators should conduct analysis at the individual fund level and not at the asset manager level.

- The FSB and IOSCO should use a metric other than gross notional exposure ("GNE") to measure an investment fund's size, since GNE does not accurately represent reflect a fund's economic exposure, market risk, counterparty exposure, or market footprint. Among other limitations, GNE fails to account for material variations in the risk posed by a given position or portfolio based on (i) asset class, (ii) tenor, (iii) netting terms, (iv) margining and collateral arrangements, and (v) clearing status.

- The FSB and IOSCO should only recommend indicators that are consistent with the statement in the Consultation Paper that investment funds may cause systemic risk via the counterparty channel and the market channel.

- The FSB and IOSCO should only recommend indicators well designed to measure systemic risk and not recommend indicators that are likely to measure other types of non-systemic risks.

General Comments on Consultation Paper

We seek to explain in this letter certain key characteristics of the hedge fund industry and the regulatory regime applicable to our members, the funds they manage and the counterparties and

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[2] See Mark Carney, FSB, letter to G20 Finance Ministers and Central Bank Governors, 9 April 2015, *available at* http://www.financialstabilityboard.org/wp-content/uploads/FSB-Chairs-letter-to-G20-April-2015.pdf and FSB Plenary meets in Frankfurt, Germany, 26 March 2015, *available at* http://www.financialstabilityboard.org/2015/03/fsb-plenary-meets-in-frankfurt-germany/.

creditors to those funds. We believe these characteristics and the regulatory regime make the hedge fund industry and its individual members improbable sources of systemic instability to the global financial system. We are concerned that the indicators presented in the Consultation Paper may reflect a view that hedge funds could be sources of systemic risk and may, especially in periods of market stress, destabilize the global financial system. For example, several of the risk indicators discuss the possibility of "forced asset sales" and the possible impact of such asset sales on fund counterparties and the markets more broadly. The indicators also indicate the FSB's concern about the interconnectedness of investment funds and their asset managers to their service providers and counterparties, which include the largest financial institutions – and our responses seek to address that concern and explain why we believe it to be misplaced.

Before addressing the specific indicators and thresholds proposed in the Consultation Paper, we believe it is important to discuss several key principles regarding systemic risk regulation generally. First, we believe that further analysis needs to be conducted with respect to risk indicators that regulators will use to determine whether they believe a firm poses systemic risks. We are concerned that the Consultation Paper sets out twenty proposed risk indicators for investment funds, including a number of proposed ratios, but does not propose specific thresholds for the various metrics and ratios or an explanation of how, why, or when these indicators would identify a stated risk as systemic. As drafted, the Consultation Paper merely provides a long, but not necessarily complete, list of potential ways to measure the market, operational, and counterparty risks that all investment funds face, without providing context, metrics, or analysis of how those risks can become systemic in nature. Instead, the Consultation Paper appears to assume that the risk indicators listed could, hypothetically, identify when systemic risk is posed. The Consultation Paper also contains no discussion of how those indicators would be weighed by regulators in making a decision about designation; for example, it is unclear whether an investment fund would have to exceed a yet to be proposed or determined threshold with respect to a certain number of the risk indicators, or exceeding the yet to be assigned threshold for a single indicator would be deemed a sufficient basis for a designation decision. As such, we believe the indicators effectively create a subjective framework for regulators to assess investment funds, without providing meaningful guidance to regulators or market participants regarding which risks are systemic in nature. We encourage the FSB and IOSCO to consider the results of the work being done by the FSOC in the U.S. with respect to asset management activities and products and conduct its own further analysis as part of the FSB's recently announced project on asset management activities to better identify and explain how those activities present systemic risk, prior to making final decisions on how to analyze investment funds.

Second, we submit that, while no hedge fund closure threatened the broader financial system during the financial crisis, regulations implemented and market practices adopted since the financial crisis further mitigate the risk that the liquidation of assets held by one or more hedge funds, even in periods of market stress, could have widespread impact on the financial system or cause any significant harm to a hedge fund's counterparties. Large hedge fund managers[3] with a U.S. nexus are now directly supervised by either the U.S. Securities and Exchange Commission ("SEC") or the U.S. Commodity Futures Trading Commission ("CFTC") and, in many cases, by both the SEC and

[3] We use the terms "large hedge fund" and "large hedge fund manager" throughout this letter to refer generally to hedge funds with at least $1 billion in AUM and their managers. The Preqin database indicates that firms with over $1 billion in AUM manage over 90% of hedge fund assets. *See Billion-Dollar Club Boasts 90% of Hedge Fund Assets*, FINALTERNATIVES, *available at* http://www.finalternatives.com/node/27176.

CFTC. Although we do not discuss European regulatory reform in detail in this letter, we note that European policy makers and regulators have adopted or are adopting rules similar to many of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") reforms discussed in this letter, consistent with objectives set out by the G-20. This ensures a fair amount of regulatory uniformity with respect to oversight of hedge fund managers between the United States and European jurisdictions. To the extent that hedge funds are linked to their service providers and counterparties, they also are linked and exposed, albeit indirectly, to regulation applicable to those entities. These regulations, both direct and indirect, including the reforms implemented under the Dodd-Frank Act and other post-crisis reforms, as well as those undertaken by European regulatory agencies, have had a substantial impact on hedge funds and their managers because banks, broker-dealers, swap dealers and other hedge fund counterparties have changed their business practices in order to comply with the new rules. Hedge funds, their managers and their investors have been, directly and indirectly, beneficiaries of these new regulations, which is why MFA has supported many of these new initiatives and constructively engaged in the related rulemaking process.

Third, we believe that systemic risk is best addressed holistically, as opposed to by the designation of individual participants. Key, and we believe laudable, examples of such an approach are regulations implemented under Title VII of the Dodd-Frank Act, such as central clearing and margin requirements, which apply to markets holistically and approach sources of potential risk on a market structure-basis. This regulatory approach, which may, at first glance, appear to leave entities unregulated because it does not prioritize entity-level regulatory requirements, addresses fundamental market behaviors and investment activities that represent sources of risk comprehensively and in a manner that is even-handed and limits opportunities for regulatory arbitrage. Similar regulatory efforts also have been effective at addressing structural weaknesses in important parts of short-term funding markets, such as tri-party repo and money market funds. We believe that a market structure-approach is the appropriate method of addressing potential systemic risk because it regulates both sides of every relevant transaction, thereby addressing the financial interconnections between firms. With a comprehensive focus on markets and investing activities, systemic risk regulators can strengthen the system as a whole, rather than merely changing characteristics of certain isolated individual market participants. To reiterate, we strongly believe that systemic risk is best addressed holistically at the system level.[4]

Fourth, we appreciate the role that the FSB and IOSCO have in helping coordinate and harmonize national rules at the global level. It is important to note, however, that laws in many jurisdictions, such as the United States, set out factors that relevant authorities must consider as well as providing companies being considered for designation certain process and legal rights. To ensure that the GSIFI designation process does not unduly interfere with the legal requirements of individual jurisdictions, the process for designating GSIFIs should follow regulators' determinations made pursuant to national laws. We believe that the designation process should follow national rules regarding the process to determine which financial institutions should be designated as SIFIs, including providing a meaningful opportunity for affected institutions to engage with their national

[4] U.S. Treasury Secretary Jacob Lew acknowledged this same dynamic at the January 22, 2015 open session of the FSOC when he stated: "As we learned during the financial crisis, without a mechanism to look at the entire financial system, risks to financial stability can spread quickly across institutions and markets. This siloed approach allowed certain risks to fall through the cracks of the regulatory system, and failed to protect us in the lead-up to the crisis."

regulator as part of that process. Only after a determination that an entity should be designated as a SIFI at the national level should consideration be given whether to designate the entity as a GSIFI.

We generally agree with the Consultation Paper that there are limited channels by which an investment fund could cause systemic risk and that the counterparty and market channels are the most relevant for regulators to consider. In that regard, we believe it is important that any methodology and indicators proposed by the FSB and IOSCO (and ultimately any methodology and indicators implemented at the national level) should be consistent with the FSB statement that investment funds can cause systemic risk via the counterparty channel (as a counterparty, causing large, destabilizing losses to a systemically important financial institution) or the market channel (as a market participant, liquidating one or more large positions and thereby causing material and destabilizing disturbance to a systemically important financial market). Set out below are MFA's views on the extent to which the proposed indicators are likely to assist regulators in assessing the systemic risk that an investment fund may present through these channels.

Even when given quantitative metrics are exceeded, however, we believe that the particular characteristics of a given investment fund might be such that it does not pose systemic concerns. As such, we believe that the FSB and IOSCO should make clear that none of the indicators listed in the Consultation Paper are necessarily determinative that an investment fund poses systemic risk or should be designated as a SIFI. We further encourage the FSB and IOSCO also to make clear that the relevant national authorities have discretion to determine that an investment fund does not need to be designated as a SIFI or GSIFI even if the fund meets multiple indicators in the FSB's and IOSCO's final recommendations.

Overview of the Structure of the Hedge Fund Industry

Several unique characteristics of hedge funds and hedge fund managers distinguish them from other financial institutions and even from other participants in the asset management industry.

Size and Diversity of the Industry

Although the hedge fund industry is a meaningful participant in financial markets and the financial system, it is very small in size when considered in relation to the broader financial markets and other industry segments. For example, the hedge fund industry is significantly smaller than the global mutual fund industry. The global mutual fund industry managed $31.32 trillion in assets as of September 30, 2014,[5] with U.S.-based mutual funds managing approximately $18.6 trillion.[6] In contrast, the global hedge fund industry had an estimated $2.85 trillion in assets under management ("AUM") as of December 31, 2014,[7] with U.S.-based hedge funds managing approximately $1.7 trillion.[8] In other words, on both a global and U.S.-only scale, the hedge fund industry is less than 1/10th the size of the mutual fund industry. As another point of comparison, the aggregate assets of

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5 Investment Company Institute, *Worldwide Mutual Fund Assets and Flows Third Quarter 2014* (Dec. 30, 2014), http://www.ici.org/research/stats/worldwide/ww_09_14.

6 ICI, *2014 Annual Report to Members*, at II (Nov. 18, 2014), *available at* http://www.ici.org/pdf/14_ici_annual.pdf.

7 Press Release, Hedge Fund Research, Inc., Hedge Funds Conclude 2014 With Inflows As Investors Position for Volatility (Jan. 20, 2015), *available at* https://www.hedgefundresearch.com/pdf/pr_20150120.pdf.

8 Preqin, U.S. Hedge Fund Industry, at 3 (Sept. 2013), *available at* https://www.preqin.com/docs/reports/Preqin_Special_Report_US_Hedge_Fund_Industry_Sep_13.pdf.

all U.S. bank holding companies with assets greater than $10 billion was over $15 trillion as of September 30, 2014,[9] or over five times the total assets managed by the entire hedge fund industry. There are five U.S. bank holding companies each of which owns assets equal to 50% or more of the entire U.S. hedge fund industry's AUM.[10]

Hedge funds represent a relatively small part of the asset management industry, pursue a tremendous diversity of investment strategies and invest in a wide variety of asset classes. As a result, the overall composition of any two hedge funds' portfolios is likely to be quite different. Accordingly, it would not be accurate to describe the hedge fund industry as pro-cyclical. Rather than approach hedge funds as a single type of product offered by asset managers, regulators must be careful to differentiate among the many varied types of funds and take into account the diversity of their strategies and assets.

Structure of Hedge Funds

Hedge funds are generally structured as partnerships, limited liability companies, or similar entities, with fund investors holding percentage interests or shares in these funds. All of a fund's profits and losses flow directly to its partners and members.

Hedge fund managers are legal entities that are distinct from the funds they manage, often formed as limited liability companies that enter into advisory contracts with the hedge funds that they manage. An affiliate of the manager is typically the general partner or managing member of a fund. Large hedge fund managers often advise multiple hedge funds that pursue different investment mandates or strategies, and, consequently, the assets of any fund advised by a manager may represent only a fraction of the manager's total AUM. Hedge funds may make investments directly or indirectly through subsidiary investment vehicles. Hedge funds that enter into credit agreements typically do not cross guarantee the credit agreements of any other fund with different investors managed by the same manager and generally hedge funds are not exposed to the liabilities of other funds with different investors managed by the same manager.

Industry Concentration and Substitutability of Hedge Fund Managers

The hedge fund industry also is significantly less concentrated than other sections of the financial services industry. As a result, it is unlikely that the closing of any one fund or adviser would create systemic risk. For example, 100 investment advisers represent approximately 50% of total AUM by all hedge fund managers,[11] while only four bank holding companies represent over 50% of U.S. bank holding company assets.[12] In 2014, the largest hedge fund adviser managed assets

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9 Nat'l Info. Ctr., *Holding Companies with Assets Greater Than $10 Billion*, FED. FIN. INSTS. EXAMINATION COUNCIL, http://www.ffiec.gov/nicpubweb/nicweb/HCSGreaterThan10B.aspx (last visited Mar. 4, 2015).

10 *Id.* (JPMorgan Chase & Co., Bank of America Corp., Citigroup Inc., Wells Fargo & Co., and The Goldman Sachs Group, Inc.).

11 Stephen Taub, *The 2014 Hedge Fund 100: The World's Top Hedge Funds*, INST. INVESTOR'S, May 12, 2014, *available at* http://www.institutionalinvestorsalpha.com/Article/3340199/The-2014-Hedge-Fund-100-The-Worlds-Top-Hedge-Funds.html.

12 Nat'l Info. Ctr., *supra* note 9 (last visited Mar. 4, 2015). *Cf.* Steve Schaefer, *Five Biggest U.S. Banks Control Nearly Half Industry's $15 Trillion In Assets*, FORBES, Dec. 3, 2014, *available at* http://www.forbes.com/sites/steveschaefer/2014/12/03/five-biggest-banks-trillion-jpmorgan-citi-bankamerica (citing SNL figures that 5 commercial banks accounted for 44% of U.S. bank assets as of Sept. 30, 2014).

equal to only approximately 6% of the global hedge fund industry's assets and the second largest managed only 2% of industry assets.[13] Given that the global hedge fund industry was estimated at $2.85 trillion in AUM, 6% of the industry represents roughly $154.8 billion in AUM and 2% represents roughly $57 billion in AUM.

We note that the test for special leverage requirements developed by the U.S. Board of Governors of the Federal Reserve System (the "Federal Reserve") is $10 trillion in assets under custody, or 60 times the AUM of the largest hedge fund manager and that at least nine bank holding companies have assets at least five times the AUM of the largest hedge fund manager, with three having assets at least ten times the AUM of the largest manager.[14] Assets are even less concentrated when looking at concentration on a fund-level basis since each adviser can manage multiple funds.

Each year, many hedge funds close for any number of reasons such as extended poor performance, the retirement or departure of senior personnel, or a changed market environment. In each case, the fund's portfolio is wound down by the manager, sometimes gradually over many months and, less frequently, in a "liquidation" by the prime brokers or other market participants that hold the fund's collateral. This market discipline is a hallmark of the industry as hedge funds and hedge fund managers close while new funds and managers emerge. Moreover, because hedge funds are one of many different types of asset management structures, other types of investment managers and institutional investors also replace the services of hedge funds that cease operations. This continued cycle of fund closures and launches evidences that hedge fund managers and funds are highly substitutable.

We further note that, while hedge funds do liquidate and wind up with some regularity, no hedge fund has ever been bailed-out by the government and hedge fund closures have generally not been identified as a primary source of instability during the financial crisis. Even the famed near-failure of Long-Term Capital Management in 1998, which we believe is an outdated and no longer relevant example of hedge fund risk, avoided a government bail-out and, more importantly, led to a number of structural reforms that have been implemented across the hedge fund industry and, more broadly, across key markets in and counterparties with which hedge funds interact. During the financial crisis, there were special government programs for banks, the Troubled Asset Relief Program and commercial paper guarantees, similar programs for insurance companies, and even direct guarantees of money market funds. However, we submit that there was no government relief program for hedge funds for a simple reason – though hedge funds suffered investment losses and some closed, hedge funds were not a cause of systemic risk. Hedge funds wind up and merge routinely in transactions that do not disrupt the markets, much less create systemic risk.

Leverage

Hedge funds are often thought of as highly leveraged, but many hedge funds are, in fact, less leveraged than many other financial institutions. Several studies of our industry conducted in the

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13 *Billion-Dollar Club Boasts 90% of Hedge Fund Assets*, FINALTERNATIVES, *available at* http://www.finalternatives.com/node/27176 (citing figures from Preqin's Hedge Fund Spotlight, *available at* https://www.preqin.com/docs/newsletters/hf/Preqin_Hedge_Fund_Spotlight_May_2014.pdf).

14 *See* Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions, 79 Fed. Reg. 24,528 (May 1, 2014); Nat'l Info. Ctr., *supra* note 9 (as reported on Banking Organization Systemic Risk Report (FR Y-15)).

past several years have demonstrated that the hedge fund industry has consistently employed relatively low levels of leverage compared to other financial institutions. U.S. regulators collect information about leverage from large hedge fund managers and should be able to analyze this information to confirm industry leverage. Because this information is not available to the public, we rely on other sources in this letter. For example, one study indicates that the average leverage ratio of the hedge fund industry from December 2004 to October 2009 was 2.1x.[15] This compares to average leverage ratios of approximately 13x for the U.S. banking industry[16] and 11.8x for the insurance industry in the same periods.[17] Although different funds use leverage in several different ways to implement their investment strategies and some use more leverage than others, they typically engage in collateralized financing that requires daily margining. In fact, in our members' experience, almost all hedge fund financing is fully collateralized. This means that, in the event that a hedge fund experiences significant losses or closes, its creditors are protected because they have legal rights to seize the fund's assets. If a fund closes or its value falls, its investors bear virtually all of the fund's losses and there is limited impact on the fund's creditors and counterparties.

In addition to a manager's internal risk assessment, a fund's use of leverage is subject to close scrutiny by its creditors and investors. Potential creditors perform extensive analysis on a fund's portfolio before extending credit to a hedge fund, and sophisticated investors may require a fund to abide by certain leverage limits and, at a minimum, typically will require transparency regarding the leverage utilized by hedge funds.[18] In particular, a hedge fund's transactions with its lenders are subject to the prudential regulation of such lenders and constraints on their capital, liquidity and leverage. Absent direct government support or evidence that hedge fund leverage poses special risks, hedge funds' use of leverage should not compel additional oversight.

Managers' Focus on Risk Management

Hedge fund managers are sophisticated, institutionalized businesses that provide services to highly sophisticated investors through their investment in funds. Hedge fund managers tend to rely on larger third parties to provide certain services including trade execution, asset custody, certain valuation services, and administration. Hedge fund managers actively recruit personnel with risk analysis, regulatory, legal and compliance expertise to help run and oversee their businesses. Additionally, large hedge fund managers devote extensive resources to building portfolio

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15 Andrew Ang, et al., *Hedge Fund Leverage* 25 (Nat'l Bureau of Econ. Research, Working Paper No. 16801, 2011), *available at* http://www.nber.org/papers/w16801.pdf. Please note that we refer to this academic study, and the other sources that provide average hedge fund leverage estimates, for illustrative purposes and that we do not necessarily believe that the methods used to calculate leverage in these studies represents the best method of calculating a hedge fund's leverage.

16 Sebnem Kalemli-Ozcan et al., *Leverage Across Firms, Bank and Countries* 14–15 (Nat'l Bureau of Econ. Research, Working Paper 17354, 2011), *available at* http://www.nber.org/papers/w17354.pdf (finding a stable aggregate leverage ratio for U.S. banks from 2000 to 2008, displayed in Figure 4). The authors of this paper derived their statistics from data on global banks for which they had consistent data reporting. Their data set included 1,123 U.S. banks, 7,335 European banks and 9,437 banks from outside of the U.S. and Europe.

17 FED. INS. OFFICE, ANNUAL REPORT ON THE INSURANCE INDUSTRY 20 (June 2013), *available at* http://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FIO%20Annual%20Report%202013.pdf (average for life and health insurers from 2004 to 2009). For property and casualty insurers, which measure leverage as a ratio of premiums-to-surplus (versus assets-to-surplus), during this period the average leverage was about 1x. *Id.* at 28.

18 We note that, pursuant to the SEC's Custody Rule, hedge fund managers generally distribute audited financial statements prepared in accordance with GAAP to their investors on an annual basis. These financial statements indicate a fund's total assets. *See* Rule 206(4)–2 under the Investment Advisers Act of 1940.

management programs and systems that incorporate sophisticated risk management tools – including proprietary software and other quantitative tools to monitor and test concentration of investments and exposure to exogenous market shock, and qualitative human analysis, including risk committees and compliance personnel oversight of trading. Managers, in our members' experience, seek continually to improve the effectiveness of their risk management programs in order to protect their businesses from operational risk and to protect their clients' assets from unwanted market risks and counterparty risk.

Finally, we note that hedge fund managers typically invest their own capital in their funds (often a material amount), which reduces any moral hazard that may exist in the agency relationship between a manager and its clients and aligns managers' interests with those of fund investors in developing robust risk control procedures and systems. We also believe that the significant investment in hedge funds by their managers improves the stability of hedge fund capital.

Sophistication of Hedge Fund Investors

Pursuant to applicable provisions of the U.S. federal securities laws, as well as similar laws in many jurisdictions outside of the U.S., interests in hedge funds are available only to large institutions and high net worth investors. Most large hedge fund managers have minimum investment amounts for their investors that are higher than the minimum thresholds set by applicable laws. The largest hedge fund investors are institutional investors with assets of several billion dollars or more, such as pension funds, endowments, foundations, sovereign wealth funds and insurance companies. These professional investors, in our members' experience, have long-term investment horizons and do not view their hedge fund investments as temporary placements of cash to which they require immediate access. Further, these investors typically invest only a small portion of their portfolios in hedge funds and further diversify their risk and minimize their exposure to any particular strategy by spreading their hedge fund investments among multiple funds. For example, U.S. public pension funds, on average, allocate only approximately 8.6% of their assets to hedge funds as of December 2013.[19] By diversifying their risk and controlling their exposure to hedge funds, these investors are able to ensure that the significant losses or other distress of any one fund would not have a severe impact.

Hedge fund investors are actively interested in hedge fund managers' risk management and operational practices. In addition to the pressure to manage risk and market exposure managers put on themselves, hedge fund investors and the third-party consultants who evaluate hedge funds for them insist that managers of the hedge funds in which they invest implement and maintain robust and transparent risk management systems, compliance infrastructures and operations. Investors and consultants increasingly scrutinize fund managers' risk management programs and spend considerable time before investing researching these practices during the due diligence process, that typically takes months to complete.[20] Detailed diligence questionnaires, in-person interviews, and third-party background and reference checks are all used to examine business operations and

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[19] Preqin, *CalPERS Withdraw From Hedge Funds – Start of a Trend?* (June 2014), *available at* https://www.preqin.com/docs/press/CalPERS-Sep-14.pdf. Under the so-called "25 percent test", hedge funds often seek to limit pension plan investments to less than 25 percent of each class of a fund's interests. *See* 29 U.S.C. § 1002(42) (Section 3(42) of ERISA); 29 C.F.R. § 2510.3-101.

[20] *See* Deutsche Bank Global, , *Third Annual Operational Due Diligence Survey*, at 16-17 (Summer 2014), *available at* https://www.managedfunds.org/wp-content/uploads/2014/07/Third-Annual-Deutsche-Bank-Operational-Due-Diligence-Survey-Summer-2014.pdf (finding that 61% of respondents take at least 4 to 8 weeks, with consultants and pension plans more likely to spend more than 8 weeks).

investment risk management practices before any decision to invest in a hedge fund is made. In our members' experience, investors and consultants continue to focus on these issues as part of ongoing due diligence even after an initial investment is completed. Managers provide regular reports to investors with detailed risk analyses, and many investors insist on at least annual follow-up due diligence meetings.

Redemption Characteristics and Asset-Liability Matching

Hedge funds use both investor's contributions and borrowed funds to construct their portfolios. Managers work diligently to ensure that those investor contributions and borrowed funds match the tenor and volatility of the assets in which they invest. Managers are particularly focused on managing risk during times of market stress and maintaining adequate liquidity by matching lending duration with expected portfolio liquidity. Hedge funds are not subject to mandatory redemption requirements under any statute or regulation and their organizational documents generally impose certain limits on investors' ability to redeem their interests. Because hedge funds are able to limit their investors' ability to withdraw their investments, managers can seek to ensure that the liquidity of the fund's portfolio is consistent with their funds' redemption obligations.[21] For example, funds that invest in less liquid or longer maturity assets, like certain less liquid credit instruments, will typically allow annual or less frequent redemptions with 90-day notice periods and substantial up-front waiting periods, called initial lock-up periods. A manager of a more liquid portfolio, such as a managed futures fund, might provide quarterly redemptions with a 30-day notice period.

The hedge fund industry has also developed carefully crafted practices to manage liquidity risk.[22] For example, hedge funds do not rely on unsecured, short-term financing to support their investing activities. Instead, hedge funds generally rely on secured borrowings, for which they pledge collateral of cash or securities that are marked-to-market on a daily basis. As a result, managers strive to match closely the financing term and the expected liquidity of the financed assets. The U.K. Financial Conduct Authority (the "FCA") 2014 Hedge Fund Survey confirmed these practices, finding that the assets of surveyed hedge funds could be liquidated in a shorter timeframe than the period in which their liabilities (to investors and finance providers) would become due.[23] Overall, these practices help mitigate the potential for liquidity risks relevant to the hedge fund industry to become risks to the financial system.

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21 *See* OFFICE OF FIN. RESEARCH, 2013 ANNUAL REPORT 94 (2013), *available at* http://financialresearch.gov/annual-reports/files/office-of-financial-research-annual-report-2013.pdf ("[O]n average, funds with higher leverage have a lower proportion of hard-to-value assets. Hard-to-value assets represent a little more than 20 percent of the assets of funds with no leverage. For the category of funds with the highest leverage (mean ratio of debt to net asset value of about 2.8), the corresponding fraction was less than 5 percent. That suggests funds with larger leverage ratios may be choosing assets that are relatively easier to dispose of during a crisis.").

22 *See* MFA, SOUND PRACTICES FOR HEDGE FUND MANAGERS (ed. 2009), *available at* https://www.managedfunds.org/wp-content/uploads/2011/06/Final_2009_complete.pdf; *see also*, ASSET MANAGER'S COMM., PRESIDENT'S WORKING GRP. ON FIN. MKTS., BEST PRACTICES FOR HEDGE FUND MANAGERS (Jan. 2009), *available at*: http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/bestpractices.pdf.

23 FIN. CONDUCT AUTHORITY, HEDGE FUND SURVEY 6 (Mar. 2014), *available at* http://www.fca.org.uk/static/documents/hedge-fund-survey.pdf. ("Funds in aggregate continue to hold investments that are more liquid than the terms they offer their investors.").

Regulatory Supervision of Counterparties and Service Providers

Since the financial crisis, very significant regulatory changes have been implemented, and market practices have fundamentally changed the way hedge funds invest and manage portfolio risk. New and revised regulations (such as swap clearing and derivative margin requirements) are applicable to hedge fund managers and to their counterparties and service providers, including banks, broker-dealers, swap dealers and central clearing counterparties. Any assessment of the hedge fund industry must account for these regulatory and market practice changes in order to analyze properly potential sources of systemic risk. Changes have been driven by the Dodd-Frank Act and other regulatory reforms, which have had multiple important and positive effects including: increasing regulatory oversight of large hedge funds by requiring their managers to register as investment advisers and to report detailed information; increasing transparency and standardization in derivative markets; reducing counterparty credit risk exposure through central clearing of swaps and higher levels of margin for uncleared swaps;[24] increasing financial buffers at the largest financial institutions; and addressing deficiencies in important short-term funding markets. In addition, changes in market regulations, such as circuit breakers and enhanced short sale rules in the equities markets, together with enhanced oversight of technology preparedness form rules such as Regulation SCI, have diminished the risk of significant disruption in the event of a failure or mistake in market infrastructure.

Regulatory Reporting and Transparency

Our industry has become considerably more transparent to regulators since the financial crisis. Hedge fund managers regulated in the U.S. not only provide detailed information directly to two primary regulators, the SEC and the CFTC, but also to the FSOC through the Office of Financial Research ("OFR").[25] The Dodd-Frank Act further permits the FSOC to obtain "all reports, records, and information" filed with or provided to the SEC by an investment adviser that the FSOC may "consider necessary for the purpose of assessing the systemic risk posed by a private fund."[26] The Dodd-Frank Act generally requires all hedge fund managers with a U.S. nexus that have $150 million or more in assets under management to register with the SEC as investment advisers, and hedge fund managers with at least $1.5 billion in assets under management to comply with substantial SEC regulatory reporting requirements. The CFTC requires a broad swath of the industry to register as commodity trading advisors or commodity pool operators and report certain information to the CFTC, if they use more than a *de minimis* amount of futures or swaps in their investment strategies. Required reports provide regulators with ample information to analyze and inform their view of the industry. Through Form ADV, the SEC collects a myriad of firm-specific information from investment advisers, including information about key service providers and counterparties. Filings on Form PF and Form CPO-PQR allow regulators to monitor fund holdings and strategies in depth, to evaluate funds' use of leverage, to review each fund's asset/liability and liquidity matching, to analyze the outcome of stress tests, to see detailed counterparty exposure at

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[24] We note in this regard that hedge funds have historically—before the financial crisis—been required to post collateral for swaps.

[25] We note that the OFR has used information reported in Form PF filings in analyses discussed in the OFR's annual reports. *See* OFR, *supra* note 21, at 93.

[26] Dodd-Frank Act § 404.

both the fund and industry level and to evaluate funds' susceptibility to market shocks.[27] Certain market activities relevant to hedge funds, such as repurchase agreement transactions and securities lending, are not currently subject to specific reporting requirements. We support regulators' efforts to collect more information in these areas, as they determine necessary to ensure effective regulatory oversight.

Additionally, we believe that regulators should continue working to implement various industry-wide data collection and transparency reforms that are currently underway. One significant information gathering tool under development is the Legal Entity Identifier, which would assign unique identifications to single corporate entities and allow global regulators and supervisors to measure and monitor systemic risk by aggregating and sharing information. It would also help funds and managers measure and manage counterparty exposure and develop a consistent and integrated view of their counterparty exposures.[28]

In the remainder of our letter, we respond to each of the thresholds and indicators proposed by the FSB and IOSCO in the Consultation Paper. Our responses highlight, where applicable, the unique features of hedge funds that mitigate the risks discussed in the Consultation Paper and emphasize the impact of existing regulation, both on hedge funds and the market participants with which they interact. While we identify below some areas for further improvement, we submit that regulators already have developed a robust regulatory framework to contain and monitor key risks in the hedge fund industry.

Level of Analysis

MFA agrees with the approach of assessing investment funds at the individual fund level; however, we do not agree that the Consultation Paper's proposal also to conduct assessments at the asset manager level. Specifically, we agree that assessment on an individual fund basis is appropriate because it is the fund which holds the financial assets and transacts with trading counterparties, generally on a collateralized basis, and to which investors commit capital.

This approach is consistent with the Consultation Paper's statement (with which we are in agreement) that the exposures/counterparty channel and the asset liquidation/market channel are the two systemic risk transmission channels relevant to investment funds. The activities described in these two channels are conducted at the individual investment fund, not at the asset manager, and the risks associated with these activities are generally limited to an individual fund, rather than across multiple funds managed by the same adviser.

Assessment of Asset Managers – We do not believe that asset managers would be the appropriate level of assessment for possible designation. Investment funds and their managers are legally

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[27] The adopting release for Form PF noted the importance of Form PF, Form ADV and Form CPO-PQR: "Collectively, these reporting forms will provide [the FSOC] and the [SEC and CFTC] with important information about the basic operations and strategies of private funds and help establish a baseline picture of potential systemic risk in the private fund industry." Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 Fed. Reg. 71,127, 71,129 (Nov. 16, 2011).

[28] *See* AFME et al., *Requirements for a Global Legal Entity Identifier (LEI) Solution*, at 7 (May 2011), *available at* http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_%28LEI%29/RequirementsForAGlobalLEISolution.pdf.

separate entities. A manager cannot commingle the assets of a fund it manages with its proprietary assets or the assets of other funds it manages. Pursuant to the requirements of the SEC's Custody Rule, fund assets are typically held by an independent custodian and are not accessible to the fund manager to repay debts or other obligations.[29] Fund managers do not guarantee the performance or financial obligations of the funds they manage, and they do not otherwise create counterparty exposure between themselves and their clients with respect to trading activities of their funds or other clients. Although certain accounting rules may bring fund assets onto the adviser's balance sheet, this does not reflect the economic or legal reality of the adviser. Accordingly, there is no interconnectedness between the fund and the manager's balance sheet.[30]

Funds managed by a common manager are also not exposed to each other's balance sheet risk. Any investment losses at one fund are borne by the investors in that fund and do not subject other funds managed by the same manager to investment losses, and, since funds typically have different investors, losses are further dispersed among a broad set of investors. Further, unlike related entities in holding company or other similar structures, the different funds managed by a hedge fund manager do not have intercompany credit exposure or engage in transactions that can link the risks associated with one company to those of other companies in the same ownership structure.

The relationships between hedge fund managers and their hedge fund clients are straightforward and detailed in fund agreements and advisory contracts. Fund agreements allow for an orderly wind down and liquidation if a manager were to go bankrupt or a fund were to close. Fund agreements prescribe the types of events that would trigger the dissolution of a fund, for example, a vote of the limited partners (by majority or super-majority), a discretionary decision by the manager, or the bankruptcy of the manager. In the case of a bankruptcy of a fund's manager, however, most agreements permit the fund to continue if the holders of a majority of the voting interests vote to continue the business and elect a new fund manager. If investors elect to liquidate the fund, fund agreements generally provide that a trustee or liquidator previously designated by the manager or the majority-in-interest holders will wind down the fund. When distributing assets of the fund, the liquidator is obligated to follow the priority of payments detailed in the fund agreement. This priority of payments affords creditors predictability and fairness and generally follows the statutory provisions of the fund's state corporate law regarding partnership or limited liability company dissolutions. Advisory contracts typically permit the hedge fund manager to terminate the advisory relationship and replace a fund's manager if it is in the best interest of the fund. We believe that the provisions of fund agreements and advisory contracts provide adequate documentation to prepare for and guide a liquidation.

For these reasons, we do not believe that asset managers present systemic risks via either the counterparty channel or the market channel. Finally, finding a substitute manager for any investment strategy is not likely to present challenges. Hedge fund managers are highly substitutable and the number of managers offering specific strategies is not so concentrated that a client would

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[29] *See* Custody of Funds or Securities of Clients by Investment Advisers; SEC Guidance Regarding Independent Public Accountant Engagements Performed Pursuant to Rule 206(4)–2 Under the Investment Advisers Act of 1940, 75 Fed. Reg. 1456 (Jan. 11, 2010).

[30] *See* FSB & IOSCO's, *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions*, at 30 (Jan. 8, 2014), *available at* http://www.financialstabilityboard.org/wp-content/uploads/r_140108.pdf (noting that the assets of a fund are not available to claims by general creditors of the asset manager).

have a difficult time finding a replacement. Further, hedge fund investors may move their mandates to non-hedge fund managers as they change the overall composition of their portfolios.

Size Thresholds

Net AUM – We agree with the Consultation Paper that size is a relevant factor in assessing whether the risks associated with an entity's activities could be of sufficient scope to create systemic risks (as opposed to operational or market risks that are not systemic in nature). For any investment fund, net AUM is the fund's loss-absorbing capacity. Given the limited channels through which funds can generate systemic risk, we support measuring size based on an individual fund's net AUM.

GNE – While we understand the FSB's and IOSCO's goal of measuring a fund's market footprint, we do not believe that GNE is an appropriate metric for determining the relevant size of a hedge fund. When assessing the potential impact of derivative portfolios, total GNE does not in fact represent a fair appreciation of economic or market exposure, as the Consultation Paper asserts. Given that the intent is to assess the *market* or *counterparty* "exposure through derivatives, considering the resulting exposure to the underlying asset or reference," it is improper to look at gross notional amounts alone without adjusting for significant variations in actual risk and exposure that vary by (i) asset class, (ii) tenor, (iii) netting terms, (iv) margining and collateral arrangements, and (v) clearing status. As proposed, GNE is thus a highly flawed metric that is ill suited to this purpose and significantly overstates a fund's true market or counterparty exposure.

At the most basic level, the notional value of a derivative is purely a nominal number. For example, Contract A could have a notional value of $1 billion and a fixed rate of 1 bps while Contract B could have a notional value of $100 million and a fixed rate of 10 bps. The economics of the two are identical, but the notional value differs by a factor of 10x.

With respect to asset class, GNE overstates interest rate derivatives, which for similar amount of risk have much higher notional amounts than other derivatives. For example, the risk of a $100 million notional USD 5 year interest rate swap and the risk of a $100 million notional 5 year single-name CDS are significantly different and bear no relation to each other. This is why, for example, the Basel conversion factors vary by asset class (*e.g.*, 0.5% for a 1-5 year interest rate swap compared to 8% for a 1-5 year Equity Swap). Moreover, BIS data show that the global OTC derivative notional amount outstanding is approximately $691 trillion, of which $563 trillion (81%) is interest rate derivatives and only $7 trillion (1%) is equity derivatives.[31] Given the size of the interest rate derivatives market, an investment fund that meets the GNE threshold because of the amount of its interest rate derivatives is significantly less likely to create disruption via the market channel than an investment fund that meets the GNE threshold because of the amount of its derivatives of other asset classes. Further, because of the difference in risk exposure per dollar of notional of derivatives in different asset classes, the potential for a fund to lose money – and hence cause losses for its counterparties – is significantly different per dollar of notional depending on what asset class the derivative represents.

With respect to tenor, we believe that notional exposures of derivatives (listed and OTC) without modification to account for differences in duration do not provide a particularly useful

[31] http://www.bis.org/publ/otc_hy1411.pdf.

measure for purposes of understanding the true size or systemic impact of an investment fund. The risk of a $100 million notional 1 year interest rate swap is significantly different than the risk of a $100 million notional 30 year interest rate swap. In addition, the delta adjustment for options fails to differentiate not only among options of different terms, but also between long and short options – the maximum loss on a long option is generally much less than its delta equivalent, while the maximum loss on a short option can be considerably higher. Using an approach that accounts for differences in duration is consistent with the systemic risk reports in the U.S. SEC's Form PF, which provides for the calculation of exposures of interest rate derivatives in terms of the 10-year equivalent duration-adjusted value for such positions.

With respect to netting and hedging, GNE overstates the risk in portfolios that have demonstrable and widely accepted offsetting exposures. Such offsetting exposures should not be included in the calculation of a threshold designed to identify funds that may present systemic risk, absent a sound basis to specifically include such offsetting risks. In particular, options that are hedged with the reference asset or other offsetting options, futures hedged with the deliverable reference asset, interest rate swaps hedged with corresponding government bonds, and interest rate derivatives held under the same master agreement or at the same clearinghouse should, to the extent there are offsetting cash flows, be recognized in any effort to measure a fund's total exposure. The fact that interest rate derivatives do not currently have standardized starting dates or fixed rates means that offsetting positions with nearly identical cash flows, durations, and other risk characteristics will generate notional exposure without creating any material economic risk to a clearinghouse or a counterparty, let alone creating systemic risk through the counterparty or market channels.

With respect to margin and collateral, it is important that any final exposure threshold account for the fact that derivatives positions for which initial and daily variation margin are posted pose significantly less risk than derivatives positions for which margin or collateral is not posted. We note in this regard that many hedge funds have zero net uncollateralized exposure. When a fund posts initial margin and exchanges daily variation margin, the fund poses less counterparty risk because the initial margin protects the counterparty against future exposure to the fund and the daily variation margin protects the parties against current exposures. It is worth noting that, as part of the U.S. SEC's and CFTC's "major swap participant" calculations, uncleared swaps that are subject to daily margining arrangements receive a discount factor (0.2x).

With respect to clearing, it is important to note that positions cleared through a central counterparty (a "CCP") create less risk than uncleared transactions. In broad terms, a CCP reduces systemic risk by interposing itself as a counterparty to every trade, performing multilateral netting, and providing various safeguards and risk management practices to ensure that the failure of a clearing member to the CCP does not affect other members. Moreover, CCPs ensure that initial and variation margin is posted with respect to all cleared positions, also resulting in less risk for cleared transactions than uncleared transactions. Given the different risk profiles of cleared positions compared to uncleared positions, we believe that any final exposure threshold needs to provide for adjustments to account for cleared versus uncleared positions.

Finally, the proposed $400 billion threshold for GNE does not appear to be appropriately calibrated. According to BIS statistics, the notional amount outstanding of all OTC derivatives as of June 2014 was $691 trillion, of which $563 trillion (81%) is interest rate derivatives. Comparing the

proposed $400 billion GNE threshold to the $691 trillion figure suggests that a fund whose derivative portfolio represents as little as 0.06% of the global OTC derivatives market should nonetheless warrant consideration as a global SIFI due exclusively to the size of its derivatives portfolio. Separately, when the Basel-IOSCO Working Group on Margin Requirements ("WGMR") published its final policy framework establishing minimum standards for margin requirements for *non-centrally cleared* derivatives only, they set a 5 year phase-in process that segmented entities by their aggregate notional amount of non-centrally cleared derivatives.[32] The relevant aggregate notional thresholds for that phase-in are:

Year	**Aggregate Notional Thresholds**
1	$3 trillion
2	$2.25 trillion
3	$1.5 trillion
4	$0.75 trillion
5	$8 billion

Assuming the phase-in and associated scaling of the thresholds was intended to capture more systemically relevant entities in the earlier phases, it is an anomaly to suggest a fund with as little as $400 billion in gross notional derivatives exposure is potentially systemically significant, when such an entity would not even have been considered relevant enough by the WMGR for inclusion until the very end of its phase-in process. Further, the WGMR thresholds only looked at *uncleared* OTC derivatives, not all OTC derivatives.

For reasons similar to those discussed above, we believe that any other gross asset test that might be used in lieu of GNE should also provide for differentiation based on the kinds of assets that make up the gross asset test. A variety of legitimate policy considerations associated with investment-grade sovereign debt portfolios, including interest rate derivatives referencing such instruments, as well as the relatively reduced risk associated with such sovereign debt, suggest the importance of such differentiation.

Moreover, we are greatly concerned by several statements made in the Consultation Paper as arguments against using an adjusted GNE test. The Consultation Paper states that the main advantage of GNE is its simplicity and "the fact that it cannot be gamed through risk mitigating techniques." We agree that establishing metrics that could be easily manipulated by market participants would not provide a useful mechanism for regulators to assess risk; however, we are troubled that legitimate risk mitigation activities by investment funds, or any regulated financial institution, would be characterized by regulators as something nefarious. A metric that discourages the use of risk mitigating behaviour creates perverse incentives for market participants, which is inconsistent with the goals of regulatory reform. Moreover, while simplicity is a reasonable consideration in determining metrics for regulatory analysis, simplicity in and of itself is not a sufficient rationale for using a GNE metric that does not provide a fair representation of an investment fund's market footprint, which is the intended purpose of the metric.

[32] http://www.bis.org/publ/bcbs261.pdf

We also are concerned with the statement in the Consultation Paper that allowing certain GNE adjustments may introduce "model risk as risk mitigation techniques employed will vary considerably across funds." Global regulators have recognized the importance of risk-adjusting inputs in rulemakings establishing margin and capital requirements, and important regulatory thresholds, such as those set for major swap participants.[33] We strongly disagree with the notion that similar adjustments would be inappropriate in the context of investment funds. Therefore, any analysis of derivatives exposures should similarly account for these inputs, consistent with established regulatory risk criteria.

For the reasons discussed above, we encourage the FSB and IOSCO to use an alternative metric other than GNE for determining a fund's total exposure, which is calibrated to account for each of the issues discussed above. To the extent that the FSB and IOSCO decide to use GNE as the size threshold, we believe that the size threshold should be adjusted significantly higher to represent an investment fund of material size when compared to the $691 trillion OTC derivatives market or, alternatively, the FSB and IOSCO should use an adjusted GNE threshold to better reflect the fact that interest rate derivatives overinflate an investment fund's market footprint when measured by GNE. In this regard, we believe the FSB should adopt an approach consistent with the U.S. SEC's Form PF, which provides for the calculation of exposures of interest rate derivatives in terms of the 10-year equivalent duration-adjusted value for such positions. We believe this approach, taken after careful consideration by U.S. regulators during the Form PF rulemaking process, provides a more useful metric with respect to interest rate derivatives than does GNE.

Interconnectedness

Indicator 2-1 Balance sheet financial leverage and Indicator 2-2 Leverage ratio – We agree that a fund's leverage ratio is a relevant factor for assessment. Like other types of investment vehicles and financial institutions, hedge funds use leverage in a variety of different ways and to varying degrees. Hedge funds use leverage to expand the assets on their balance sheets per unit of investor capital, to enhance returns and to mitigate risk by hedging other investments. Not all hedge funds use leverage, and use of leverage varies among managers and by investment strategy type (*e.g.*, long/short, relative value, event-driven and arbitrage strategies all use leverage to varying degrees, with considerable variability among funds).[34] Additionally, various asset classes and instruments have differing risk and liquidity characteristics that make them more appropriate for increased leverage. While some hedge funds use more leverage than others, managers typically use leverage with terms that more closely match the investment period of the assets they are financing and are

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[33] *See, e.g.*, Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 78 Fed. Reg. 62,018, 62,095 (Oct. 11, 2013); Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30,595, 30,749 (May 23, 2012).

[34] *See* FIN. SERVICES AUTHORITY, ASSESSING THE POSSIBLE SOURCES OF SYSTEMIC RISK FOR HEDGE FUNDS 14 (Aug. 2012) (fund leverage per investment strategy data); *see also* SEC, IMPLICATIONS OF THE GROWTH OF HEDGE FUNDS 37 (Sept. 2003), *available at* http://www.sec.gov/news/studies/hedgefunds0903.pdf ("The degree to which a hedge fund uses leverage depends largely on its investment strategy."). We note that this study evaluates hedge fund leverage on the basis of GNE. We think that the same trends would be apparent if alternative measures of leverage were used, and, as discussed in more detail elsewhere in our letter, we do not believe GNE is the appropriate measure of hedge fund leverage.

not dependent on access to overnight financial markets, like banks and brokerage firms were heading into the global financial crisis. These are important distinctions as not all leverage entails identical risk.

It also is important to recognize that, while leverage can be a source of risk, leverage and risk are not the same. In fact, when conceived not as a means of increasing market exposure but rather as a way of extending "balance sheet" per unit of capital, leverage can be used simultaneously to reduce some kinds of risk and to enhance expected return. As such, leverage can be utilized with constant or even lower risk per unit of capital compared to un-leveraged investing. For example, it is possible that risk as a unit of capital could be high with low balance sheet use, just as risk per unit of capital could be low with high balance sheet use. To see how leverage might be used to mitigate some risks, consider the following example of how leverage might be applied in a relative value investment strategy. An investor wants to put $1 million to work and believes a given automobile stock is expensive relative to its industry peers while a certain technology stock is cheap relative to its own industry peers. This investor is otherwise agnostic on where the overall stock market or the auto or tech sectors in particular are going. Without access to leverage on the long side, the best the investor can probably do is to short the auto stock and buy the technology stock, capturing some of the relative value and hedging the systemic factor risk. But with access to leverage, the investor could more effectively target its desired risk/return by, first, hedging the short position in the auto stock with a basket of long positions in other auto stocks and, second, hedging the long position in the technology stock with a basket of short positions in other tech names. The use of leverage in this second example has two benefits:

- it allows the investor to isolate more precisely the investment thesis (that the stocks are mispriced relative to their industry groups) and focus the investment on his precise area of expertise, which increases expected return; and
- it reduces the portfolio's exposure to industry group risk and expected volatility.

So by using leverage, the investor has increased the expected return of the portfolio and decreased expected volatility and exposure to a big risk factor (industry group moves) with respect to which this investor is not intending to take risk.

This example also shows that when leverage is used precisely and carefully, risk and volatility are not proportional to the amount of leverage employed. That would only be the case if leverage is used to proportionately increase the size of all positions instead of being used (in addition to increasing position size) to reshape the portfolio in potentially helpful, risk-reducing ways. We think it is important for regulators to recognize that while use of leverage can increase risks, it can also be used as a tool through which investors modify their exposure to other risk factors. Leverage is both one of many inputs and one of many risk management tools in the portfolio construction process.

Accordingly, we do not believe that risk management practices concerning the use of leverage which seek to avoid concentration of risk and to limit or hedge certain exposures in investment portfolios would amplify risks. We note that hedging strategies designed to reduce market risks would be subject to the same collateral and margin requirements as any other investments, which considerably limit market-wide risk.

Indicator 2-3 Ratio of GNE to the NAV for the investment fund – While we agree that a fund's leverage ratio is a relevant factor for assessment, for the reasons discussed above, we disagree with the proposed use of GNE as a metric for determining the ratio.

Indicator 2-4 The ratio of collateral posted by the investment fund to its NAV – For regulators considering the question of counterparty exposure and interconnectedness, we think that a measure of uncollateralized credit exposure, for example, may be the most helpful measure of leverage risk because this metric may indicate risk that could impact a fund's counterparties and possibly convey risk outside of a fund and to other financial markets participants. Because hedge funds have little, if any, uncollateralized counterparty exposure, bankruptcy and liquidation proceedings are streamlined.

In the context of collateral posted in connection with repo transactions, we believe the ratio should include initial margin posted by the investment fund and the haircut on the repo only. It should not include the face value of the repo, which we believe would provide a distorted view of the amount of collateral posted by an investment fund.

We are aware of certain regulators' concern that collateralized borrowing can lead to systemic risk if asset values fall, requiring additional collateral to be posted. As the value of assets posted as collateral declines, borrowers may be required to liquidate other assets to meet mounting margin calls, which might put downward pressure on asset values.[35] Nonetheless, we think that it is important that this concern about "procyclicality" of collateralized borrowing not be overstated. Hedge fund managers employ various tools to manage their liquidity risk and managers employ widely differing investment strategies. Further, daily variation margin requirements, which require both counterparties to post margin if their position begins to lose money, considerably reduce the risk of a destabilizing margin call at any point in time.

Indicator 2-5 Counterparty credit exposure to the investment fund – We agree that counterparty exposure is a relevant factor for regulators to consider and we further agree that counterparty exposure should be calculated on a net basis after considering valid netting agreements and collateral/margin posted by a fund. We believe, however, that regulators considering counterparty exposure should not consider this ratio in isolation, but in connection with the counterparty's exposure to the fund relative to the counterparty's size. While a high counterparty exposure ratio may indicate that the fund poses more risk to the counterparty, systemic risk will only arise if the level of counterparty risk could potentially destabilize a systemically important creditor.

Indicator 2-6 Intra-financial system liabilities to GSIFIs -- We agree that a fund's total exposure to counterparties, especially globally systemically important counterparties, is a relevant factor for regulators to consider. Similar to the comment above, we believe that regulators should not consider the total amount of counterparty credit exposure in isolation, but in connection with whether that level of exposure could potentially destabilize a systemically important counterparty.

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[35] *See, e.g.,* Daniel K. Tarullo, Member, Federal Reserve, Liquidity Regulation (Nov. 20, 2014), *available at* http://www.federalreserve.gov/newsevents/speech/tarullo20141120a%20.htm; Lord Adair Turner, *Shadow Banking & Financial Instability*, HARVARD L. BLOG (Apr. 16, 2012; 9:12 AM), http://blogs.law.harvard.edu/corpgov/2012/04/16/shadow-banking-and-financial-instability/.

Indicator 2-7 Nature of investors of the funds –As discussed above, hedge fund investors are sophisticated investors, such as pension plans, endowments, and other institutional investors. The Consultation Paper raises potential concern about institutions that are themselves systemically important, such as banks, and that invest in investment funds. The Volcker Rule in the United States and the pending Banking Structural Reform in the European Union are designed to address perceived risks of banks and systemically important financial institutions investing in private investment funds. Given this regulatory framework, we do not believe that the nature of investors is likely to be a source of transmitting systemic risk. Indeed, we believe the institutional nature of investors in private funds and the fact that those investors do not view those investments a source of ready liquidity mitigates the potential for private investment funds to transmit systemic risk.

Substitutability

We agree with the Consultation Paper that investment funds generally have substitutes in the market. We also agree that the list of indicators in the Consultation Paper – (1) daily trading volume of certain asset classes of the fund compared to the overall daily trading volume of the same market segment; (2) fund holdings per certain asset classes compared to the overall daily trading volume of the same asset class; and (3) NAV of the fund compared to the size of the underlying market – are reasonable factors to consider in determining whether or not there are substitutes for a particular fund's investment activities, but only to the extent these indicators are measuring the trading activities of a fund compared to the relevant market and not merely measuring of the amount of turnover of a fund's portfolio. While we generally agree with the indicators discussed in the Consultation Paper, we believe that a lack of available substitutes does not raise systemic risk concerns unless the relevant market is of sufficient size or importance to be of systemic relevance. Therefore, we believe that assessments related to substitutability should be limited to market participants only in these markets. We have set out additional comments with respect to individual indicators below.

We note that at present, high-quality turnover data for OTC derivatives markets are not generally available even to regulators. As such, measuring the proposed ratios will be a significant challenge.

Indicator 3-2 Fund holdings per certain asset classes compared to the overall daily trading volume of the same asset class – While we generally agree that this is a relevant indicator for regulators to consider, we believe the indicator should take into account factors that reduce the likelihood that a fund would need to sell a significant portion of its assets in a distressed market as well.

From a risk management perspective, hedge funds are well positioned with regard to redemptions because they are not subject to regulations requiring prompt redemption,[36] and the contracts their investors enter into in connection with investing in a fund limit the investors' ability to redeem their interests in the fund to specific periods and with advance notice. These measures enable hedge fund managers to match the term or expected liquidity of their funds' assets with the

[36] For example, in the U.S., hedge funds are not subject to the Investment Company Act of 1940. Accordingly, hedge funds are not subject to Section 22(e) of that Act, which requires open-end registered funds to provide for redemptions within seven days, subject to a number of exceptions.

term of the funds' capital from equity investors. When making portfolio allocations, investors recognize that hedge funds are not sources of immediate liquidity. Hedge fund investors receive detailed disclosures outlining the limitations on their ability to exit hedge funds.[37]

Because hedge funds are not required under applicable law to offer prompt redemptions, they specify the terms on which investors may redeem their interests in their organizational documents and design redemption terms that accommodate their investment strategies and reflect the liquidity of their portfolios. Hedge funds use a variety of contractual redemption restrictions to manage orderly outflows of investor funds, which helps reduce the likelihood that redemptions of investor capital will be disruptive to a fund or to markets. Such redemption restrictions include: limited periods of redemption; lock-up periods; advance notice requirements, fees for early redemptions; side pockets; fund and investor level gates; limited suspensions of redemptions; and redemptions in kind. Hedge funds, to various degrees, have implemented the tools described above to address liquidity risks related to investor redemptions, including the use of such tools by some funds during the financial crisis.[38]

Indicator 3-3 NAV of the fund compared to the size of the underlying market –We note that indicators 3-1 and 3-2 both compare trading of a particular asset within an investment fund to the trading in the market for that asset class. It is unclear why this indicator compares the NAV for the entire fund to the size of the corresponding underlying market, instead of comparing the NAV of an investment fund represented by the relevant asset class to the underlying market. It also is unclear how regulators would determine what an underlying market is. We believe that indicators based on asset classes provide greater clarity and would provide a more useful reference than comparing a fund's assets to underlying markets. Further, we believe that any thresholds would need to be dynamic in nature and set at levels that are appropriate to the size and liquidity of the particular market, as well as taking into consideration whether the particular market is of sufficient size to be systemically important.

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[37] Regulators have acknowledged that because hedge fund investors are sophisticated, they may be less likely to withdraw funds during times of stress. As an August 2008 publication from the Federal Reserve Bank of Dallas explained, "[h]edge funds typically require a minimum investment, sometimes $1 million or more. The restriction usually limits participants to relatively sophisticated investors who would conduct considerable due diligence before investing and be unlikely to withdraw their funds on a whim." Jeffery W. Gunther & Anna Zhang, *Hedge Fund Investors More Rational Than Rash*, 2 ECON. LETTER—FED. RESERVE BANK OF DALLAS 3, Aug. 2007, *available at* http://www.dallasfed.org/assets/documents/research/eclett/2007/el0708.pdf. Despite the fact that their investors are sophisticated and are unlikely to withdraw their funds on a whim, hedge funds did face significant redemptions during the financial crisis in 2008. *See* International Financial Services London, *Hedge Funds 2009*, at 1 (Apr. 2009), *available at* http://www.finalternatives.com/node/7511 ("Hedge funds returned 13.2% of investors' assets in 2008. . . . This is only the second time over the past two decades that the industry has suffered an annual net outflow of funds."). Importantly, however, these net outflows did not have any systemic effect on the wider financial system. Rather, hedge funds were able to manage redemption requests by using their contractual tools, such as gates and suspensions. Those funds that were unable to meet their redemptions requests uneventfully liquidated or merged into other funds.

[38] Though hedge funds faced an increase in redemptions during the financial crisis, there was no systemic risk associated with the redemptions that occurred and no widespread "run" on hedge funds. We believe this is because investors understand that hedge fund liquidity management tools limit any first mover advantage with regard to redemptions that may otherwise exist. For example, if an investor wanted to redeem its investment in a hedge fund that had adopted a gate, submitting an early redemption request would not guarantee that the investor would be able to redeem its interest at the end of the period, as redemption requests would be granted *pro rata* in the event that redemption requests in that redemption period exceeded the gate threshold. Hedge fund investors are sophisticated and understand these mechanics.

Complexity

We agree that the complexity of a fund's structure and its investment strategies are relevant factors for regulators to consider.

Indicator 4-1 Non-centrally cleared derivatives trade volumes of the fund / Total trade volumes of the fund – Given the Consultation Paper's view that trading in OTC derivatives could expose a fund to higher counterparty risk, we believe that the FSB and IOSCO should make clear that derivatives traded on an exchange or that are otherwise centrally cleared would not be considered as part of a fund's OTC derivatives trading volume.

Indicator 4-2 Ratio of collateral posted by counterparties that has been reused by the fund – As an initial matter, we believe concerns regarding funds reusing collateral posted to them have relatively limited application to hedge funds because they much more frequently borrow securities rather than lend them. When hedge funds do lend securities, they generally do not reinvest the cash in a separate reinvestment vehicle managed by the fund's manager (although they may hold the cash in the lending fund).

In the infrequent instances when a hedge fund is the securities lender rather than borrower, the termination of a securities lending transaction would generally cause the securities lender to unwind cash collateral reinvestment positions or return securities posted as collateral. Securities lenders, however, are generally not exposed to significant risk of loss, as collateral posted for securities loans is marked-to-market daily and lenders are able to manage liquidity and maturity/term risks. In addition, managers typically adopt policies and procedures that seek to ensure that their investments of any cash collateral have terms commensurate with the corresponding loan, that their funds have sufficient liquidity to meet their obligations as they become due, and that they appropriately manage their portfolio risk. These procedures may include periodic stress testing. For non-cash collateralized loans, the manager will assess the types of collateral that it will accept from counterparties. These assessments include using applicable "haircuts" to ensure that there is a sufficient collateral buffer in place and assessing daily the risk of each asset and counterparty to ensure the collateral continues to be sufficient.

We generally support this indicator, but believe it should exclude cash and should be limited to initial margin only, as initial margin represents what creditors would be entitled to recover in the event of a fund's closure. For example, we do not believe this indicator should include sales of securities in reverse repurchase transactions (as this would be picked up in a leverage ratio) or the sale of borrowed securities. While securities sold pursuant to such transactions are technically collateral under the reverse repurchase or short selling arrangement, we do not believe that treating such transactions as a "re-hypothecation" of collateral is appropriate in light of the concern that regulators are trying to address by including re-hypothecation as an indicator of systemic risk. An indicator focused on initial margin would avoid an overly broad scope, while still capturing the relevant risks associated with re-hypothecation of collateral.

Indicator 4-3 Proportion of an investment fund's portfolio using High-Frequency-Trading (HFT) strategies – We do not believe that this is an indicator of a fund's complexity, nor is it an indicator of whether a fund poses systemic risk. For example, an investment fund that trades listed equities, but does so as part of a high frequency trading strategy would not present additional

complications to the extent the fund is liquidated. This is particularly the case because high frequency trading strategies trade liquid securities, which would not present additional complications in the event a fund is liquidated. To the extent regulators are concerned about market disruptions if a high frequency trading firm were to close, we believe the indicators regarding the trading volume of a fund and the availability of other market participants as substitutes (subject to the caveat above regarding the analysis of these indicators) would already address this concern. As such, we encourage the FSB and IOSCO to delete this indicator.

Indicator 4-4 Investment fund liquidity profile -- We agree that indicator 4-4, the weighted average portfolio liquidity compared to the weighted average investor liquidity is an important factor in considering the likelihood that an investment fund could be subject to a bank-like "run." In that regard, however, investors in hedge funds are almost always required to give lengthy advance notice of redemptions and in addition are subject to redemption restrictions agreed to between funds and their investors. As such, hedge funds are not exposed to "runs" to the same extent that may be seen in financial institutions funded by demand deposits.[39] In the context of hedge funds, to the extent that risk does exist, it would be limited to funds offering liquidity to investors which is significantly greater than the liquidity of such funds' underlying assets.

Hedge fund managers to larger funds report information in Form PF filings that allows the SEC (and the OFR and the FSOC) to monitor hedge fund liquidity, including the liquidity of the assets held by funds and redemption rights of fund investors. The CFTC collects similar information from commodity pool operators and commodity trading advisors in its Form CPO-PQR and Form CTA-PR, respectively. This regulatory transparency allows regulators to review the liquidity terms of hedge funds and confirm the protections that we describe above are in place. According to the SEC, data collected on Form PF showed that over 50% of hedge fund assets could be liquidated in seven days or less and 80% could be liquidated in 90 days or less,[40] suggesting that the liquidity terms commonly used in hedge fund structures are well matched to the assets in the funds.

Indicator 4-5 For leveraged funds, Ratio of unencumbered cash to gross notional exposure (GNE) – For the reasons discussed above, we disagree with the proposed use of GNE as a metric for determining risk indicators. Further, for the reasons discussed in our response to indicator 4-6

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39 Our response to indicator 3-2 above provides additional discussion of hedge fund redemption terms.

40 *See* Form PF Questions 32, 46, 48, 49, 50, 63, 64. The SEC has analyzed hedge fund liquidity information collected on Form PF in the past. The SEC staff has compiled the following chart showing the percent of aggregated qualifying hedge funds reported on Form PF portfolios capable of being liquidated within certain time periods. SEC, ANNUAL STAFF REPORT RELATING TO THE USE OF DATA COLLECTED FROM PRIVATE FUND SYSTEMIC RISK REPORTS, at Appendix A, p. 3 (July 2013).

Percent of Net Asset Value	Time Period
27%	1 day or less
53%	7 days or less
71%	30 days or less
80%	90 days or less
85%	180 days or less
89%	365 days or less
100%	365 days or more

below, we believe that using unencumbered cash is not a useful measure of comparing the relative riskiness of different investment funds.

Indicator 4-6 Ratio of unencumbered cash to the NAV of the fund – We do not agree with the rationale stated in the Consultation Paper regarding unencumbered cash, which we do not believe is a useful measure of comparing the relative riskiness of different investment funds. For example, a fund that invests in securities generally will have a low level of unencumbered cash while another fund that has exactly the same market risk profile but expressed via derivatives would have a very high level of unencumbered cash. We believe that the relationship between unencumbered cash and the potential draws on that cash is most relevant to determining risk. A distressed debt fund, for example, might be 100% invested with no unencumbered cash – but since such funds often do not use repurchase agreements or derivatives, the only significant draw on the fund's cash would be investor redemptions. Accordingly, we encourage the FSB and IOSCO to delete this proposed indicator.

Indicator 4-7 Amount of less liquid assets – We believe this indicator is already addressed in indicator 4-4 above, regarding the fund's liquidity profile (considered in the context of the liquidity offered to investors in the fund). We further believe that considering the amount of Level 2 and Level 3 assets in a fund would be misleading in determining the liquidity of the assets. For example, FX derivatives generally would be considered Level 2 assets for accounting purposes, yet represent assets in a highly liquid market. Accordingly, we encourage the FSB and IOSCO to remove the reference to Level 2 and Level 3 assets from the indicator.

Managers work diligently to ensure that those investor contributions and borrowed funds match the tenor and volatility of the assets in which they invest. Managers are particularly focused on managing risk during times of market stress and maintaining adequate liquidity by matching lending duration with expected portfolio liquidity. Because hedge funds are able to limit their investors' ability to withdraw their investments, managers can seek to ensure that the liquidity of the fund's portfolio is consistent with their funds' redemption obligations.[41] As discussed above, funds that invest in less liquid or longer maturity assets will typically allow less frequent redemptions with longer notice periods and substantial initial lock-up periods, while funds with more liquid portfolios, might provide more relatively more frequent redemptions with relatively shorter notice periods. This dynamic has been cited in reports from the SEC and the UK FCA, as noted above, which have found that hedge funds generally are able to liquidate their portfolios more quickly than their liabilities to investors and finance providers come due.

Cross-Jurisdictional Activities

We respectively disagree that the proposed indicators under the section – Cross-Jurisdictional Activities – are indicative of increased potential to create systemic risk; in fact we believe each of the indicators likely would make an investment fund more diversified and, therefore, relatively less risky. Investment funds that invest in a variety of jurisdictions have geographic

[41] *See* OFR, *supra* note 21, at 94 ("[O]n average, funds with higher leverage have a lower proportion of hard-to-value assets. Hard-to-value assets represent a little more than 20 percent of the assets of funds with no leverage. For the category of funds with the highest leverage (mean ratio of debt to net asset value of about 2.8), the corresponding fraction was less than 5 percent. That suggests funds with larger leverage ratios may be choosing assets that are relatively easier to dispose of during a crisis.").

diversification, which reduces the risk that adverse events in a particular market or jurisdiction would affect the fund's entire portfolio. Further, by investing across different markets and jurisdictions, an investment fund will have a smaller footprint in each individual market than a similarly sized investment fund that concentrates its investments in a single jurisdiction. Similarly, investment funds that have investors in multiple jurisdictions have greater diversification than funds with investors from a single jurisdiction, which reduces the risk that events relevant to a particular market might cause all or a majority of a fund's investors to seek to redeem their interests and reduces the risk that a fund's failure would affect a large number of investors in a particular jurisdiction or market.

Many investment funds use multiple prime brokers and other counterparties to reduce the fund's counterparty risk. Using multiple counterparties reduces the risk that a single counterparty's failure would destabilize an investment fund. Using multiple counterparties also reduces the risk that investment funds present to their counterparties as individual counterparties would only have exposure to a portion of a fund's portfolio. Finally, when a fund uses multiple counterparties, each counterparty's exposure to that fund is reduced as compared to a fund using a single counterparty, making it less likely that losses caused by a fund's closure would destabilize any particular counterparty. As such, diversification of counterparties not only reduces the risk of a fund failing, it also reduces the risk that a fund's closure could destabilize a counterparty.

Because each of the indicators set out in the Consultation Paper under the section – Cross-Jurisdictional Activities – provide diversification for a fund, we believe those indicators are more appropriately viewed as mitigating risks rather than indicators of increased risk.

Moreover, even if the FSB and IOSCO believe that these factors may be indicative of the potential for a fund to create systemic risks because of its exposure to global markets, we do not believe that the indicators are likely to be useful for differentiating among investment funds with respect to size or risk. Many funds, including smaller funds, are likely to invest in multiple markets around the globe, have investors from multiple jurisdictions, and use multiple counterparties in various jurisdictions. As such, these factors are unlikely to provide meaningful information to regulators in differentiating among investment funds. Accordingly, we encourage the FSB and IOSCO to delete this section from the Consultation Paper.

Process

We appreciate the opportunity that the FSB and IOSCO have provided for public review and comment on the proposed assessment methodologies and we believe it is important for the process of analyzing non-bank non-insurer financial institutions to continue to be open and transparent at all levels of implementation. In that regard, we believe that it is that important for the FSB and IOSCO provide a clear process for how the FSB plans to consider initial determinations made at the national level regarding which entities should be designated as GSIFIs.

Finally, we believe it is important that regulators and the FSB not publish the names of financial institutions that are subject to heightened analysis, but which have not been designated as GSIFIs. Market participants may misinterpret the relevance of any disclosure that an institution is being analyzed by systemic risk regulators, which could lead to unintended consequences if market participants act based on such misinterpretations.

Use of fixed thresholds in U.S. Dollars

While the Consultation Paper is designed to apply to investment funds operating across all global markets, it incorporates fixed thresholds expressed in U.S. Dollars. A long-term move in exchange rates could cause the thresholds to diverge very materially from the desired level. Rather than use fixed thresholds, we would encourage the FSB to adopt thresholds that use floating exchange rates. If the FSB and IOSCO determine that fixed thresholds are necessary, then we believe they should be denominated in the same currency in all regulations.

Conclusion

MFA appreciates the opportunity to respond to the Consultation Paper. While our letter seeks to provide constructive comments on the proposed indicators set out in the Consultation Paper, we continue to believe that systemic risk is best addressed holistically, as opposed to by the designation of individual participants. Further, we believe that, before the FSB and IOSCO make any final determinations regarding designations or assessment methodologies for identifying and designating individual firms, more analysis needs to be done to provide a clear rationale for how identified risks may be systemic in nature and how the designation of individual firms, as opposed to regulation of activities, would address those identified risks. Because the FSOC and the FSB have undertaken projects to further examine market-based activities and the role of asset management, we believe the FSB and IOSCO should consider the results of those projects before making any decisions regarding designations or designation criteria.

We would be very happy to discuss our comments or any of the issues raised in the Consultation Paper with the FSB and IOSCO. If the FSB or IOSCO has any comments or questions, please do not hesitate to contact Benjamin Allensworth or the undersigned at +1 (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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