Alternative Investment Management Association

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Send via e-mail to: rule-comments@sec.gov

File No. S7-09-15

6 August 2015

Dear Mr. Fields,

AIMA's Response to the SEC's Proposed Rule Amendments to Form ADV and Investment Advisers Act Rules

The Alternative Investment Management Association (AIMA)[1] welcomes the opportunity to respond to the Securities and Exchange Commission ('Commission' or 'SEC') Release No. IA-4091; File No. S7-09-15 entitled "Amendments to Form ADV and Investment Advisers Act Rules" (the 'Release').

AIMA supports the SEC's stated aims of improving the depth and quality of the information the SEC collects on investment advisers and to facilitate the SEC's risk monitoring initiatives, establishing a more efficient method for the registration of multiple private fund adviser entities operating a single advisory business on one Form ADV ('umbrella registration') and making the form easier to understand and complete.

Whilst we welcome many of the proposed amendments to the Form ADV and the rules under the Investment Advisers Act of 1940, as amended ('Advisers Act'), we have a few concerns with respect to what is being proposed and some suggestions for improvements, which we elaborate on in the annex to this response. Our concerns relate to the following high-level points:

- **Umbrella Registration for Non-U.S. Filing Advisers:** We welcome that the proposed revisions to Form ADV would incorporate 'relying adviser' registration first contemplated in the no-action letter the staff of the SEC ('Staff') sent to the American Bar Association in January 2012 (the '2012 ABA Letter')[2] directly into Form ADV for private fund advisers. However, we are concerned that the new umbrella adviser registration would not be available for registered investment advisers whose principal office and place of business is outside the United States and could pose unintended consequences;
- **Umbrella Registration for Exempt Reporting Advisers:** We generally support the proposal to introduce a new 'umbrella registration' regime designed to permit multiple advisers that operate a single advisory business to register with the SEC on a single Form ADV. However, we recommend that the Commission reconsider the position taken in relation to groups of exempt reporting advisers operating a single advisory business. The position set out in the Release conflicts with the Commission's stated goals of making Form ADV filing and reporting less distortive, burdensome, and confusing. It also contradicts existing Staff guidance that our member firms have relied on for over three years;
- **Information on Separately Managed Accounts:** The Release proposes the disclosure of certain information related to Separately Managed Accounts ('SMAs'). Under the Release, an adviser

[1] As the global hedge fund association, the Alternative Investment Management Association (AIMA) has over 1,500 corporate members (with over 9,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors.

[2] *American Bar Association, Business Law Section*, SEC No-Action Letter (Jan. 18, 2012).

with regulatory assets under management ('RAUM') of less than $150 million attributable to SMAs would be required to disclose certain information relating to that adviser's SMAs. We have a number of concerns with this proposal which we raise in the annex to this letter. In particular, we consider that this new information should remain confidential or, if that is not possible, this information should not be requested. In any event, registered investment advisers whose principal office and place of business is outside the United States should not be required to report regarding SMAs for non-U.S. clients;

- **Other Concerns:** We would welcome the SEC ensuring that there is greater alignment between Form ADV and Form PF where questions are asking for similar data points. In particular we would welcome the SEC aligning the investment strategies set out in the SMA section of the proposed amendments to Form ADV with the strategies set out in question 20 of Form PF. This is because creating new categories can be unnecessarily burdensome for advisers and investment companies and also makes it more difficult for the SEC to compare the data on Form ADV with Form PF.

We hope you find our comments useful and would be more than happy to answer any questions you may have in relation to this submission.

Yours sincerely,

Jiří Król
Deputy Chief Executive Officer
Global Head of Government Affairs

Annex

AIMA's response to the Release

AIMA supports the SEC's stated aims of improving the depth and quality of the information the SEC collects on investment advisers and to facilitate the SEC's risk monitoring initiatives, establishing a more efficient method for umbrella registration and making the form easier to understand and complete. We welcome many of the proposed amendments to the Form ADV and the rules under the Advisers Act, but we have a few concerns with the Release and some recommendations for improvements which we elaborate on in this annex.

I. Umbrella Registration for Non-U.S. Filing Advisers

We welcome that the proposed revisions to Form ADV would incorporate 'relying adviser' registration first contemplated in the 2012 ABA Letter directly into Form ADV for private fund advisers.

However, we are concerned that the new umbrella adviser registration would not be available for certain types of investment advisers and could pose unintended consequences. Accordingly, we are responding to the SEC's staff question: "Are there additional or different conditions we should consider for umbrella registration?"

In response to the Staff's request for comment on whether there should be additional or different conditions for umbrella registration, we would request that the conditions be changed such that non-U.S. filing advisers would be able to avail themselves to umbrella registration if they so choose.

We understand that, as in the 2012 ABA Letter, the proposed revision to Form ADV requires that the filing adviser have its principal office and place of business in the United States (such requirement, the 'U.S. Condition'). We appreciate that this requirement is based on the Staff's position that:

> "(i) most of the substantive provisions of the Advisers Act are not applied to the non-U.S. clients of a non-U.S. adviser registered with the Commission, but (ii) non-U.S. advisers registered with the Commission must comply with the Advisers Act and the Commission's rules thereunder with respect to any U.S. clients (and any prospective U.S. clients) they may have)."[3]

We also appreciate the Staff's concern that "… absent this condition, a group of related advisers based inside and outside of the United States could designate a non-U.S. adviser as a filing adviser, and assert that the Advisers Act's substantive provisions generally would not apply to the U.S.-based relying advisers' dealings with their non-U.S. clients."[4]

Accordingly, we believe that if a filing adviser and its relying advisers were to address the concerns noted by the Staff, an umbrella registration should be available. In order for a non-U.S. filing adviser and its relying advisers to avail themselves to an umbrella registration, we would propose the following conditions:

(a) each non-U.S. relying adviser of a non-U.S. filing adviser will conduct its investment advisory activities with respect to U.S. clients as if it were itself so registered with the SEC;

(b) each U.S. relying adviser of a non-U.S. filing adviser will conduct its investment advisory activities with respect to all clients, whether U.S. or non-U.S. clients, as if it were itself so registered; and

(c) all conditions set forth in the Release (other than the U.S. condition) are satisfied.

[3] *See* footnote 9 of the 2012 ABA Letter.

[4] *See id.*

Assuming a non-U.S. filing adviser and its relying advisers would meet the above conditions, we believe that an umbrella registration would (i) provide the same substantive results as if the advisers were separately registered, (ii) create a clearer picture for the public in relation to groups of advisers operating as a single business, and (iii) establish a more efficient method for the registration of multiple advisers operating a single advisory business on one Form ADV.

First, with respect to the above conditions, a non-U.S. filing adviser and its relying advisers would conduct its investment advisory activities as if it were itself so registered directly with the SEC. We believe that the above conditions would ensure that the SEC's intentions would be applied to non-U.S. filing advisers and achieve the same result as with U.S. filing advisers.

Additionally, with non-U.S. filing advisers being able to avail themselves of the uniform filing requirements of umbrella registration, we believe that such umbrella registration would help further the Staff's intention of providing consistent data about, and creating "a clearer picture of, groups of advisers that operate as a single business by grouping Form ADV data for each legal entity registered under the umbrella."[5] We believe that this intention would apply in the same manner to non-U.S. filing advisers as it does with U.S. filing advisers. In fact, without an umbrella registration available to non-U.S. filing advisers, we are concerned that multiple registrations may be confusing to the public researching a non-U.S. adviser on the IAPD website.[6] We believe that a single registration would help alleviate this concern.

Lastly, like the proposed umbrella registration for U.S. filing advisers, we believe that an umbrella registration with respect to a non-U.S. filing adviser will promote a more efficient method for registration of multiple advisers. We are concerned that if non-U.S. filing advisers are not able to avail themselves of umbrella registration, the registration of multiple of entities will be less efficient and more costly for such advisers.

While amending the form to accommodate the 2012 ABA Letter would certainly be welcome, it is to be hoped that the final version of the amendments will make this approach more widely available than the Release currently contemplates.

II. Umbrella Registration for Exempt Reporting Advisers

The Release proposes a new 'umbrella registration' regime designed to permit multiple advisers that operate a single advisory business to register with the SEC on a single Form ADV. While we generally support the proposal as consistent with prior interpretations and Staff guidance, we recommend that the Commission reconsider the position taken in footnote 56 of the Release. Footnote 56 states that groups of exempt reporting advisers operating a single advisory business may not make an umbrella filing of Form ADV. This position conflicts with the Commission's stated goals of making Form ADV filing and reporting less distortive, burdensome, and confusing. It also contradicts existing Staff guidance that our member firms have relied on for over three years.

A. Background

For tax, legal, regulatory, and other reasons, firms that manage private funds may choose to conduct a single advisory business through a number of separate legal entities. Prior to 2010, many non-U.S. investment management firms with multi-entity advisory structures ('non-U.S. investment managers') relied on the Advisers Act's 'private adviser exemption' to avoid registering numerous entities within their structures as investment advisers with the SEC.[7] The Dodd-Frank Wall Street Reform and Consumer Protection Act (the 'Dodd-Frank Act') resulted in the repeal of the private adviser exemption and its replacement by an exemption regime including a complete exemption for 'foreign private advisers' and a conditional exemption for investment advisers that act solely as advisers to private funds, and who have less than $150 million of assets under management in the United States.

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[5] *See* page 7 of the Release.

[6] *See* page 27 of the Release.

[7] The private adviser exemption allowed advisers with less than 15 clients not to register with the SEC as investment advisers. In the private adviser exemption context, a "client" referred to the private fund itself and not its underlying investors.

Many entities within non-U.S. investment managers do not qualify for the foreign private adviser exemption because they advise private funds with more than $25 million in assets, or with more than 15 U.S. investors.[8] These entities do, however, satisfy the conditional exemption for advisers solely to private funds, because private fund advisers with their principal office and place of business outside the United States must only count the assets they manage from a place of business within the United States towards the $150 million limit. Advisers who rely on the conditional exemption are referred to as 'Exempt Reporting Advisers' or 'ERAs.'

ERAs are "exempt" from most provisions of the Advisers Act, but they must complete and file portions of Form ADV. As the initial ERA filing date loomed at the end of March 2012, many non-U.S. investment managers asked if the thousands of entities within their multi-entity structures—many of which exist only on paper—would be required to file separate Forms ADV with the SEC as ERAs.

On 19 March 2012, the Staff published FAQs partially answering this question (the 'ERA FAQs).[9] The ERA FAQs permit ERAs that are part of multi-entity structures to file a single Form ADV with information about themselves and certain special purpose entities (or 'SPEs').[10] ERAs and SPEs relying on this guidance must satisfy one of two tests. An SPE *without* discretionary authority over a private fund's investments must act as an SPE to private funds only, and the only "advisory" functions that the SPE can perform are overseeing and potentially terminating an ERA's advisory mandate.

An SPE *with* discretionary authority over a private fund's investments and that delegates its authority to an ERA must: (i) act as the SPE only for private funds or other pooled investment vehicles advised by the ERA; (ii) be controlled by the ERA; (iii) be subject to the Advisers Act in connection with its investment advisory activities;[11] (iv) have no employees or other persons acting on its behalf other than officers, directors, partners, or employees of the ERA; and (v) subject its officers, directors, partners, employees, and persons acting on its behalf to the ERA's supervision and control. The ERA FAQs were not limited to ERAs whose principal office and place of business is located within the United States. Thus, many non-U.S. investment managers chose to rely on this guidance in 2012 and they restructured their advisory operations and agreements accordingly.

The limitations for SPEs with discretionary authority closely resemble those discussed in interpretive guidance issued in the 2012 ABA Letter. The 2012 ABA Letter reaffirmed prior guidance exempting certain special purpose vehicles from registration as investment advisers (*e.g.*, certain general partners to private funds controlled by an SEC-registered adviser). It also created a new way for multi-entity managers to register with the SEC, permitting a single 'filing adviser' to register with the SEC on behalf of affiliates deemed 'relying advisers.' The 'umbrella registration' approach discussed in the Release stems directly from the approach taken in 2012 ABA Letter.

B. The Release's Conflicting Interpretation in Footnote 56

Footnote 56 of the Release states that "[t]he filing of a single Form ADV for exempt reporting advisers in a manner similar to the filing of an umbrella registration for registered advisers would not be available . . . ." On its face, this statement directly contradicts the ERA FAQs, which permit an ERA to file a single Form ADV reflecting information about itself and "all of the information that would be included if each SPE filed a separate report on Form ADV." The Release compounds this confusion by failing even to mention the ERA FAQs. Instead, the Release concludes that the "conditions of a single advisory business," including adoption of supervisory policies and procedures,

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[8] A foreign private adviser must: (i) have no place of business in the United States; (ii) have fewer than 15 clients and investors located in the United States in the private funds that it advises; (iii) have less than $25 million of aggregate assets under management attributable to such clients and investors; and (iv) not hold itself out generally to the public in the United States as an investment adviser or advise mutual funds or business development companies.

[9] *Frequently Asked Questions on Form ADV and IARD, Reporting to the SEC as an Exempt Reporting Adviser* (available at https://www.sec.gov/divisions/investment/iard/iardfaq.shtml).

[10] SPEs include a "general partner, managing member, or similar special purpose entity . . . formed for local legal or regulatory requirements or for tax reasons."

[11] ERAs are subject to the anti-fraud provisions of the Advisers Act, but not many of the Advisers Act's other requirements (*e.g.*, registration). The industry interprets this guidance to extend the same degree of regulatory coverage to SPEs filing with the ERA.

are designed, in part, to reflect requirements that only apply to SEC-registered advisers. This conclusion does not articulate a clear policy reason for rescinding the ERA FAQs, or for prohibiting multi-entity ERAs from filing a single Form ADV.

C. Policy Reasons Supporting Umbrella Filings for ERAs and SPEs

Numerous policy reasons can be presented, however, for continuing to take the approach originally adopted in the ERA FAQs. Non-U.S. multi-entity ERAs exhibit many characteristics of a single advisory business. For example, they typically: (i) advise private funds only; (ii) subject employees to a compliance structure under the laws of one or more other countries; (iii) are subject to examination by other regulatory authorities; (iv) use the same or similar names in marketing and other materials; and/or (v) hold themselves out to current and prospective private fund investors and advisory clients as conducting a single advisory business by, for example, sharing personnel and resources.

It is true that ERAs do not adopt supervisory policies and procedures designed to comply with the Advisers Act and the rules thereunder, as discussed in the 2012 ABA Letter. In the Dodd-Frank Act, however, Congress specifically directed the Commission to exempt ERAs from both the rules requiring advisers to adopt supervisory policies and procedures, and from most of the provisions on which those procedures are based.[12] The SEC then exercised its own authority to interpret the scope of the private fund adviser exemption, by, for example, only requiring non-U.S. advisers to count assets managed from a "place of business in the United States" towards the $150 million threshold. Congress and the Commission have thus placed meaningful limits on the extraterritorial effect of the new exemption regime. To burden non-U.S. ERAs with duplicative Form ADV filing requirements—on the grounds that ERAs do not comply with rules that are expressly inapplicable to them—undermines these attempts to limit the extraterritorial reach of the Advisers Act's registration requirements.

It is also unclear what additional information or clarity the SEC expects to gain from requiring multi-entity ERAs to make duplicative Form ADV filings. The ERA FAQs already require ERAs' Forms ADV to reflect information about themselves and "all of the information that would be included if each SPE filed a separate report on Form ADV." This includes identifying information (Item 1), ERA exemption data (Item 2), organizational information (Item 3), business activities (Item 6), financial industry affiliations (Item 7), control persons (Item 10), and disciplinary disclosures (Item 11). We see no value in requiring every general partner and every other SPE in a private fund's advisory structure, as well as each ERA advising the private fund, to submit the same information to the SEC on separate Forms ADV.

We see a great deal of value, however, in avoiding excessive, duplicative and unnecessarily burdensome filings. The Release itself explains that "[m]ultiple Form ADVs for a single advisory business may distort the data we [the SEC] collect on Form ADV and use in our regulatory program, be less efficient and more costly for advisers, and may be confusing to the public researching an adviser on our website."[13] Clearly, multiple Form ADV filings by ERAs that conduct a single advisory business would be every bit as distortive, inefficient, and confusing as multiple filings by registered investment advisers in analogous circumstances.

D. Proposals

We ask the staff to reconsider its position on ERA umbrella filings generally. Multi-entity ERAs and SPEs that operate as a single advisory business should be allowed to submit one Form ADV with information about the overall business for the reasons discussed above. Many of the changes to Form ADV, Part 1A proposed in the Release will facilitate umbrella reporting by ERAs and their SPEs, including new instructions clarifying which sections should be completed by filing entities versus

[12] The umbrella registration relief originally provided in the 2012 ABA Letter did not extend to advisers whose principal office and place of business was outside the United States. Without this condition, the Staff believed that a group of related advisers based inside and outside of the United States could try to designate a non-U.S. adviser as a filing adviser and then cite prior SEC guidance stating that the Advisers Act's substantive provisions generally do not apply to the dealings between advisers domiciled outside the United States and their non-U.S. clients. This concern does not exist in the ERA context, because all ERAs are statutorily exempt from Advisers Act's substantive provisions.

[13] Release, at discussion following footnote 52.

relying entities. All of proposed Schedule R could also be completed for an ERA's affiliates, save for the "basis for SEC registration" question. Adding a box permitting ERAs to identify affiliates as exempt from registration because they and the ERA conduct a single advisory business would seem to be a reasonable and easily implemented solution.[14]

At a minimum, the final release should explain that the position set forth in footnote 56 of the Release does not affect the ERA FAQs. Failure to include such an explanation may well result in a flood of precautionary ERA filings by non-U.S. multi-entity managers on behalf of their SPEs.

The result would be an exponential increase in the number of ERA filings received by the SEC and maintained by non-U.S. investment managers on an ongoing basis. The Release states that non-U.S. entities comprised 1,148 of the 2,914 ERAs that filed reports with the SEC as of April 2015. Assuming 50% (or 574) of these non-U.S. investment managers are each required to file an average of 10 new Forms ADV as a result of a rescission of the ERA FAQs, the SEC would receive 5,740 new Form ADV filings from ERAs, each containing the same general information as other Form ADV filings. We cannot see how such a system could be anything other than distortive, inefficient and confusing.

Finally, we believe the final release should address the significant economic and other burdens imposed on non-U.S. investment managers and ERAs in general if the Commission does not permit umbrella filing by ERAs and/or rescinds the ERA FAQs.

III. Information on Separately Managed Accounts

The Release proposes the disclosure on Schedule D (Section 5.K) of Part 1 of Form ADV of certain information related to SMAs. Under the Release, an adviser with RAUM of less than $150 million attributable to SMAs would be required to disclose certain information relating to that adviser's SMAs, including the percentage of certain asset types traded by that adviser, the name of any custodian that accounts for at least 10% of the adviser's SMA RAUM and the amount of that adviser's RAUM held by that custodian.[15] Additionally, an adviser with $150 million or more of SMA RAUM is required to disclose gross notional exposure ranges and the average amount of borrowings for any SMA with a net asset value of $10 million or more.[16] If the adviser manages $10 billion or more of SMA RAUM, it is also required to disclose the average derivative exposure for six types of derivatives.[17]

For the reasons discussed in section A. through D below, the proposed SMA disclosure should not be required at all, and failing that should be required to be made in a public filing. If the SEC nevertheless determines that SMA information should be included in the Form ADV, we have set forth in sections E. through I. below a number of suggested revisions to the proposed requirements which would make the requirements less burdensome and more comparable with the disclosures required regarding private funds on Form PF.

A. Confidentiality

The stated purpose of the disclosure related to SMAs is "to enhance [the] staff's ability to effectively carry out [the SEC's] risk-based examination program and other risk assessments and monitoring activities with respect to" SMAs and their investment advisers.[18] This purpose is comparable to the purpose for Form PF, which contains similar information for private funds. Form PF and its contents are confidential. This new information should similarly be granted confidentiality or, if that is not possible, this information should not be requested.

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[14] *See, e.g.,* Item 2.B. of existing Form ADV Part 1A, which asks ERAs to explain why they are exempt from registration with the SEC as investment advisers since ERAs cannot check any boxes in the preceding SEC Registration section (*i.e.*, Item 2.A.).

[15] *See* Proposed Form ADV, Item 5.K.(1)(a), Item 5(K).(3) and Item 5(K).(4).

[16] *See* Proposed Form ADV, Item 5(K).(2).

[17] *See* Proposed Form ADV, Item 5(K).(2).

[18] *See* Release at pages 9 and 54.

B. Lack of Statutory Authority

The statutory authority for Form ADV is derived from Section 203 of the Advisers Act.[19] It is unclear whether the rulemaking authority provided to the SEC in Section 203 of the Advisers Act grants the SEC the authority to propose this type of disclosure with respect to SMAs.[20]

C. Potentially Misleading Disclosures

SMAs do not necessarily represent a specific strategy of an adviser. Rather institutional investors tend to use SMAs as bespoke investment products that are specifically tailored to their specific risks, investment restrictions and investment goals. Public disclosure in an adviser's Form ADV may skew existing or potential clients' views of that adviser and paint an inaccurate picture of that adviser's investment methodology and objectives, particularly when this information is aggregated and averaged between investors that have very different investment goals, investment restrictions and risk tolerances. For these reasons, this information should not be publicly disclosed in Form ADV.

D. Cost-Benefit Analysis

In measuring the potential cost to the asset management community of compiling the SMA disclosures requested, there is a cost that is greater than the pure cost of compliance. Public disclosure of this type of information creates reputational and marketing costs that are extraordinarily large. These costs should be weighed against the limited benefit that this information gives to the SEC, especially when such information is aggregated and presented publicly in the fashion prescribed.

E. Disclosure by Non-U.S. Advisers of Information related to SMAs Beneficially Owned by Non-U.S. Persons

Form PF's General Instructions, Item 1, states that "[i]f your principal office and place of business is outside the United States, for the purposes of this Form PF, you may disregard any private fund that, during your last fiscal year, was not a United States person, was not offered in the United States, and was not beneficially owned by any United States person."

With respect to SMAs, the Release does not contain a similar provision, which means the proposed Form ADV would require disclosure of information related to SMAs that are beneficially owned by a person that is not a United States person and managed by an adviser, whose principal office and place of business is outside of the United States (these SMAs, a 'Foreign Owned, Foreign Managed SMA'). The changes to Form ADV should be consistent with Form PF. A similar provision should be included in the General Instructions of Form ADV excluding the reporting of information related to Foreign Owned, Foreign Managed SMA.

F. Lack of *de minimis* Exemption for Advisers with less than $150 million of RAUM

As mentioned above, the Release requires an adviser with SMA RAUM of less than $150 million to disclose certain information relating to that adviser's SMAs, including the percentage of certain asset types traded by that adviser, the name of any custodian that accounts for at least 10% of the adviser's SMA RAUM and the amount of RAUM held by that custodian.[21]

Under Form PF, an adviser with less than $150 million in RAUM attributable to private funds is not required to complete the form.[22] This is important, especially for smaller advisers, because reporting requirements like those under Form PF and those proposed in the Form ADV amendment for SMAs are an additional administrative and cost burden and have a disproportionate effect on

[19] *See* 15U.S. Code §80b-3.

[20] Section 203(c)(1) of the Advisers Act enumerates certain items that Form ADV should contain. That list does not reference SMAs. Other items may be included to the extent it is "necessary or appropriate in the public interest or for the protection of investors". As currently proposed, we believe the additional required disclosure related to SMAs is neither in the public interest nor protective of investors.

[21] *See* proposed Form ADV, Item 5.K.(1)(a), Item 5(K).(3) and Item 5(K).(4).

[22] *See* the General Instructions, Item 1, Form PF.

smaller advisers. In the case of a smaller adviser, who is seeking to grow its asset management business, these disclosures will have a chilling effect on their business and raise potential privacy concerns, particularly if that adviser has a small number of institutional investors. A potential client (and in particular, an institutional investor) may not want to engage a smaller adviser if it knows that certain information related to a SMA will be disclosed publicly.

For that reason, we would respectfully request that the SEC include a *de minimis* exemption for advisers that manage less than $150 million of SMA RAUM.[23]

G. Threshold Levels

The Release requires an adviser with $150 million or more of SMA RAUM to disclose gross notional exposure ranges and the average amount of borrowings for any SMA with a net asset value of $10 million or more.[24] If the adviser manages $10 billion or more of SMA RAUM, it is also required to disclose the average derivative exposure for six types of derivatives.[25]

For our members, it is not uncommon for an adviser to have a small number of SMAs that are being managed on behalf of a small number of institutional investors (*e.g.*, endowments or pension funds), who use SMAs for a variety of reasons. We note the same privacy concerns that are set forth above. These concerns are particularly heightened with respect to certain institutional investors that may make large allocations and also constitute the sole SMA client or one of a handful of SMA clients of a specific adviser. We believe that an adviser should have a certain threshold number of SMAs before it is required to report SMA information to address the privacy concerns and the sensitivity of certain institutional and other clients.

For foregoing reasons, we would respectfully request that the SEC consider raising the proposed dollar thresholds at the adviser level and at the individual SMA level,[26] and to the extent an adviser manages only a handful of SMAs (*e.g.*, less than 15 SMAs), it should be exempt from making any disclosure.

H. References to "Exposure" in the Release versus Form PF

In the Release, the term "gross notional exposure" is defined;[27] however, such term, as defined, appears to express a net percentage instead of a gross amount. From a reporting perspective, this percentage can be easily confused with the term "exposure" as set forth in Form PF. In Questions 26 and 30 of Form PF, advisers provide "exposure" of hedge fund assets and list long and short dollar values of such exposures.

First, we believe the definition of "gross notional exposure" should be removed, or at least, expressed in terms of a net percentage (and not as "gross notional exposure" because that term connotes a dollar amount and not a percentage). Second, to the extent there is any disclosure on gross notional values of an adviser's SMAs that type of disclosure should take the same form as Form PF and list out both long and short dollar amount.

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[23] We understand that the proposed rules were, in part, prompted by Notice Seeking Comment on the Asset Management Products and Activities, 79 FR 77488 (Dec. 24, 2014) issued by the Financial Stability Oversight Council (FSOC). A stated goal of FSOC is the identification of systematically important financial institutions ('SIFIs'). While the identification of SIFIs is important, it also should be noted that additional regulatory requirements (especially for smaller institutions) have the potential to create barriers to entry and promote the further concentration of capital. The unintended consequence of which is the potential creation of SIFIs. For that reasons, we feel strongly that there should be *de minimis* exemptions for the aggregate size of accounts and the number accounts. See "Threshold Levels" below.

[24] *See* proposed Form ADV, Item 5(K).(2).

[25] *See* proposed Form ADV, Item 5(K).(2).

[26] The proposed threshold levels at the adviser level of $150 million of SMA RAUM and at the individual SMA level of $10 million are low thresholds for advisers with institutional clients.

[27] *See* proposed Form ADV, Item 5(K).(2)(b).

I. Other Concerns

We would welcome the SEC ensuring that there is greater alignment between Form ADV and Form PF where questions are asking for similar data points. In particular, Questions 20 of Form PF sets out a detailed list of strategies that are familiar to both the industry and the regulators.

We would welcome the SEC aligning the investment strategies set out in the SMA section of the proposed amendments to Form ADV with the strategies set out in question 20 of Form PF. This is because creating new categories can be unnecessarily burdensome for advisers and investment companies and also makes it more difficult for the SEC to compare the data on Form ADV with Form PF.

We would also suggest that the gross notional exposures should be disclosed as 10 year equivalents for interest rate exposures as this would align the Form ADV requirements with Form PF.

Finally, the Release also proposes in Section 5.K.(3) that certain information must be disclosed for each custodian that holds 10% or more of SMA RAUM. This seeks to address issues of counterparty risk. We would therefore suggest that the level of custody exposure should be set at 20% instead of 10%, as 20% is a typical counterparty exposure limit seen in the industry.