Managed Funds Association
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

February 25, 2011

Via Electronic Filing:

The Honorable Timothy F. Geithner
Chairman
Financial Stability Oversight Council
1500 Pennsylvania, Ave., NW
Washington, DC 20220

Re: MFA Comments on Systemically Significant Institutions

Dear Secretary Geithner:

Managed Funds Association ("MFA")[1] appreciates the opportunity to comment on the Financial Stability Oversight Council's (the "Council") notice of proposed rulemaking (the "Proposed Rule") on the criteria that the Council should consider when determining whether to designate a nonbank financial company as systemically significant pursuant to section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2] We strongly support the goals of the Dodd-Frank Act in establishing the Council to address potential systemic risks before they arise, and mandating enhanced regulation of systemically significant financial companies. MFA also strongly supports efforts by regulators to gather data from different types of market participants, including investment advisers and the funds they manage, which is a critical component of effective systemic risk monitoring and regulation.

Overview

MFA believes that the Council should analyze financial institutions based on objective, quantitative data to determine which nonbank financial companies should be deemed systemically significant and, therefore, subject to supervision by the Board of

1 MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

2 MFA also submitted a comment letter to the Council on November 5, 2010, in response to the Council's Advance Notice of Proposed Rulemaking. A copy of MFA's letter is available at: www.managedfunds.org.

Governors of the Federal Reserve System (the "Fed"). It is also critical that the Council's determination process is transparent to the marketplace. Uncertainty regarding the criteria or designation of an overly broad set of firms could have profound unintended consequences for financial markets and the broader economy. Congress recognized the importance of avoiding an overly broad designation of systemically significant firms. The statutory text and legislative history of the Dodd-Frank Act clearly indicate Congress's intention that the Council designate as systemically significant and regulate only those financial institutions that were previously considered "too big to fail," *i.e.*, those companies that would threaten U.S. financial stability if they failed.[3]

In considering the potential systemic implications of hedge funds, we believe that it is important that the Council has a clear picture of the size, concentration, leverage and structure of hedge funds within the broader financial market. It is also vital that the Council consider the improvements made by hedge fund counterparties (banks and broker-dealers) over the last decade to risk management practices, as well as the new regulatory requirements mandated in Title IV and Title VII of the Dodd-Frank Act.

As discussed in greater detail in the sections below, hedge funds have the following characteristics, which should be considered by the Council in fulfilling its obligations under section 113 of the Dodd-Frank Act:

- The hedge fund industry – as well as individual firms and the funds they manage – are relatively small, in comparison to other financial market participants, the broader financial industry, and the financial markets in which hedge funds operate. Within the hedge fund industry, there is no significant concentration of assets under the management of any individual adviser or group of advisers.

- Hedge funds generally do not employ a significant amount of leverage and typically post collateral in connection with any leverage employed (whether it be via borrowing arrangements or derivatives contracts), thereby substantially reducing the risk to their counterparties.

- Capital invested in hedge funds is subject to limited redemption rights, which helps ensure a stable equity base and helps prevent runs on the fund's cash/assets.

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3 In a July 2007 report, the staff of the Federal Reserve Bank of New York offered a similar view of systemic risk, stating that a central element of systemic risk is "when financial shocks have the potential to lead to substantial, adverse effects on the *real* economy." See, Kambhu, John, Schuermann, Til, and Stiroh, Kevin J., *Federal Reserve Bank of New York Staff Reports: Hedge Funds, Financial Intermediation, and Systemic Risk*, July 2007, page 10. Available at: http://www.ny.frb.org/research/staff_reports/sr291.pdf.

- Hedge funds typically structure their borrowings to avoid a mismatch between their equity capital and investments on the one hand and their secured financing on the other hand.

- The enhanced regulation of hedge fund advisers and the markets in which they participate following the passage of the Dodd-Frank Act – including the substantially enhanced reporting requirements -- ensures that regulators will have a timely and complete picture of hedge funds and their activities.

Hedge Fund Industry Discussion

The Proposed Rule categorizes the statutory criteria set out in section 113 of the Dodd-Frank Act into six categories: size; lack of substitutes for the financial services and products the company provides; interconnectedness with other financial firms; leverage; liquidity risk and maturity mismatch; and existing regulatory scrutiny. Set out below is a discussion of key characteristics of hedge funds with respect to each of the categories proposed by the Council.

Size

Although the hedge fund industry is important to capital markets and the financial system, it is relatively small in size when considered in the context of the broader financial markets.[4] For example, the hedge fund industry is significantly smaller than both the global mutual fund industry and the U.S. banking industry. The global mutual fund industry managed $23.7 trillion in assets, as of September 30, 2010.[5] The top 50 U.S. bank holding companies alone had $14.4 trillion in assets, as of September 30, 2010.[6] By comparison, the global hedge fund industry had an estimated $1.9 trillion in assets under management, as of September 30, 2010.[7]

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4 Our comments are intended only to provide perspective regarding the size and concentration of the hedge fund industry; we are not commenting on the systemic significance of other financial market participants or industries.

5 Source: Investment Company Institute, available at: http://www.ici.org/research/stats/worldwide/ww_06_10.

6 Source: Federal Financial Institutions Examination Council, available at: http://www.ffiec.gov/nicpubweb/nicweb/Top50Form.aspx.

7 Source: http://www.marketwire.com/press-release/Combined-Assets-Billion-Dollar-Hedge-Funds-Nearly-Flat-First-Half-2010-AR-Magazine-Survey-1327660.htm, citing *AR* Magazine, available at: http://www.absolutereturn-alpha.com/.

Lack of substitutes for the financial services and products the company provides

In addition to the relatively small size of the hedge fund industry as a whole, hedge fund assets are not heavily concentrated in any individual adviser or group of advisers, as illustrated by the fact that the largest hedge fund adviser manages assets equal to only approximately 3% of the entire hedge fund industry.[8] Considering the fact that many advisers manage multiple funds, assets are even less concentrated when looking at asset concentration on a fund-level basis. The dispersion of assets among a broad group of advisers and funds significantly reduces the risk that the failure of any one fund or manager would create systemic risk due to a lack of substitutes. Indeed, each year, many hedge funds dissolve or fail for reasons as diverse as extended poor performance reducing their attractiveness to investors, the retirement or departure of senior personnel, or an investment strategy that no longer excels in a changed market environment. The fund's assets are sold, sometimes gradually over many months by the manager and sometimes suddenly in a "liquidation" mode by the prime brokers and exchanges with which the fund traded and that hold its collateral. This market discipline is a hallmark of the industry as funds and firms fail and other funds (existing or new) emerge.[9] Moreover, because hedge funds are one of many different types of asset management structures, other investment managers also replace the services of failed hedge funds.

Interconnectedness with other financial firms

In considering the interconnectedness of financial institutions, we understand that Council members are looking at a firm's relationships within a structure of related businesses (sometimes referred to as "intraconnectedness") and the firm's relationships with third party institutions ("interconnectedness"). In considering the intraconnectedness of hedge funds, there are important structural factors to consider. The advisers (also frequently referred to as the managers) do not have substantial assets; though the principals of the adviser have personal capital invested the funds they manage. It is the funds that hold the financial assets, that transact with trading counterparties on a collateralized basis, and to which investors commit capital. Accordingly, the risks and rewards of the funds' investment portfolios are borne by a diverse group of underlying sophisticated investors, institutions or ultra-high net worth individuals, who typically invest in hedge funds as part of a diversified portfolio. (Hedge funds neither transact with retail investors nor do they take in investments or deposits from retail investors.)[10]

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8 Source: http://www.finalternatives.com/node/14018, citing *AR* Magazine's Billion Dollar Club, available at: http://www.absolutereturn-alpha.com/.

9 According to a recent report from Hedge Fund Research, Inc., 945 hedge funds were formed in the most recent twelve-month period. Source: http://www.reuters.com/article/2010/12/15/us-hedgefunds-launches-idUSTRE6BE48120101215.

10 The MFA has consistently urged Congress and the SEC to raise investment thresholds to address the effects of inflation and to prevent hedge funds from becoming accessible to retail investors.

The adviser typically is not liable for the obligations of the fund, nor does the fund have responsibility for the liabilities of the adviser. This is one reason why, as recognized in the Dodd-Frank Act, the extent to which a financial institution manages assets owned by others rather than managing assets owned by the institution itself is a key consideration in whether a financial institution should be designated as systemically significant.

Another structural aspect of hedge funds is the legal separation of different funds managed by the same adviser. These legally distinct funds even when managed by the same adviser, often have different investors and can engage in entirely distinct trading activities in different assets and markets. Any losses at one fund are borne exclusively by the investors in and counterparties to that fund (though counterparty losses are typically limited for the reasons discussed below) and do not subject other funds managed by the same adviser directly to losses. Further, unlike related entities in a holding company or other similar structures prevalent elsewhere in the financial services industry, the different funds managed by a common adviser do not typically have the kind of intercompany loans or transactions that can create intraconnectedness and tie the risks associated with one company to other companies in the same ownership structure. Unlike bank holding companies and other nonbank financial institutions such as insurance companies, hedge funds engage in one distinct business – namely, making investments for investors in that specific fund, reducing the risk of contagion substantially.

The interconnectedness of hedge funds predominantly arises from the relationships between a hedge fund and its prime brokers or similar financial counterparties. It is through these relationships that hedge funds typically receive financing. Such financing is generally obtained from large, sophisticated financial counterparties, such as global banks or broker-dealers, that conduct substantial due diligence and engage in ongoing risk monitoring. Hedge fund borrowings are done almost exclusively on a secured basis (*i.e.,* secured by each fund's overall assets or specifically posted collateral), which limits the amount of leverage that any fund may obtain.[11] In addition, this posting of collateral by hedge funds reduces the credit exposure of counterparty financial institutions to those funds. Consequently, hedge funds are substantially less likely to contribute to systemic risk by causing the failure of a systemically significant counterparty, such as a major bank. Given the limited leverage and the collateral posted by hedge funds, any losses that hedge funds incur are almost exclusively borne by their investors, not their creditors, counterparties, the general financial system, or taxpayers. Moreover, it is important to note that hedge funds often diversify their exposures across many counterparties, mitigating the risk that a fund poses to any one counterparty. For example, following the collapse of Lehman Brothers, many

[11] Various rules, for example, Regulations T, U and X with respect to securities, and regulations mandated under Title VII of the Dodd-Frank Act with respect to derivatives (discussed in more detail below), impose margin or collateral requirements, thereby restricting the amount of credit that a financial institution can extend to counterparties, including hedge funds.

large hedge funds increased the number of prime brokers they use, thus reducing their exposure to any individual prime broker.

Leverage

Though hedge funds are often mischaracterized as being highly leveraged financial institutions, the industry is, and has been, significantly less leveraged than other financial market participants. According to a recent Columbia University study, the leverage ratio of investment banks during the period from December 2004 to October 2009 was 14.2, with a peak of 40.7 for investment banks in 2009, and the leverage ratio of the entire financial sector during that period was 9.4.[12] By comparison, this study found that the leverage ratio for the hedge fund industry was 1.5 as of October 2009, with an average ratio of 2.1 from December 2004 to October 2009, and a high of 2.6.

The findings of the Columbia University study with respect to the leverage ratio of the hedge fund industry are consistent with other studies, which report leverage ratios below 3.0 for an extended period of time. The United Kingdom's Financial Services Authority (the "FSA") has conducted several studies on the hedge fund industry, most recently finding a leverage ratio of 272% [2.72], as of April, 2010 and a leverage ratio of 244% [2.44], as of October, 2009.[13] A 2009 study by Lord Turner, then Chairman of the FSA, found that the leverage ratio of the hedge fund industry since 2000 has been two- or three-to one.[14] A Bank of America Merrill Lynch study found the leverage ratio for the industry was 1.16 as of July, 2010.[15] Each of these studies demonstrates that the hedge fund industry has consistently employed relatively low levels of leverage.

Liquidity risk and maturity mismatch

Unlike many other financial market participants, hedge funds do not rely on unsecured, short term financing to support their investing activities. Instead, hedge funds rely on secured borrowings, which are designed to more closely match the term or

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12 Hedge Fund Leverage, available at: http://www2.gsb.columbia.edu/faculty/aang/papers/HFleverage.pdf.

13 FSA studies, Assessing possible sources of systemic risk from hedge funds, February 2010 and July 2010 (the "FSA Hedge Fund Studies"), available at: http://www.fsa.gov.uk/pages/search/index.shtml?cx=007702012814746907219%3An6pltugvaoc&cof=FORID%3A9&ie=UTF-8&q=hedge+fund#1327.

14 The Turner Review, A regulatory response to the global banking crisis, March 2009, available at: http://www.fsa.gov.uk/pubs/other/turner_review.pdf.

15 Available at: http://www.reuters.com/article/idUSTRE67G28220100817.

The above studies use different formulas for calculating leverage ratios, which explains the slight differences in leverage ratios determined by each study. Our purpose in this letter is not to endorse any particular formula, but to demonstrate that the leverage ratios for the hedge fund industry are significantly less than the ratios for many other types of financial institutions.

expected liquidity of the asset and the financing which funds it. Without the benefit of a federal safety net, the industry has evolved carefully crafted practices to manage liquidity risk.[16] The FSA Hedge Fund Studies confirm these practices, finding that the assets of the surveyed hedge funds could be liquidated in a shorter timeframe than the period after which their liabilities (to investors and finance providers) would become due.[17]

There are two sources of funds for a hedge fund: its investors and its bank/broker counterparties. As discussed above, the financing from counterparties is secured by collateral and inherently limited both by regulation and by the sophisticated counterparties' risk analysis. Most hedge funds build strong liquidity protections into their contractual relationships with investors who are subject to a variety of restrictions, including: limited periods of redemption (sometimes monthly, but more often quarterly, annual, or longer); significant advance notice requirements (often 30 to 90 days) prior to the requested withdrawal dates; the right of advisers to impose gates to manage outflows or even suspend redemptions (at the investor and/or the fund level), if deemed necessary; and side pocket vehicles for highly illiquid assets that allow redemptions only when realizations occur. These liquidity provisions help reduce the likelihood that redemptions of investor capital will be disruptive to a fund or to markets over extremely short periods of time, because they allow advisers to better match the assets and liabilities of the funds they manage and to manage orderly outflows of investor funds.

Moreover, the principals of hedge fund advisers also typically invest significant amounts of their own capital in the funds they advise, which provides an even greater capital cushion for the fund's business and promotes an alignment of interests between management and investors. The structure of performance incentives earned by hedge fund advisers, in which advisers earn a significant portion of their income by receiving a percentage of the gains of the funds they manage, also serves to align the interests of the adviser and the investors by encouraging the adviser to manage the funds with the objectives of generating attractive risk-adjusted returns over time and discouraging excessive short-term risk taking.

Existing regulatory scrutiny

The Dodd-Frank Act imposes a variety of regulations to ensure appropriate oversight of hedge funds and their advisers. Following passage of the Dodd-Frank Act, all hedge fund advisers with at least $150 million in assets under management will be required to register with the Securities and Exchange Commission (the "SEC").[18]

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16 See, MFA's Sound Practices for Hedge Fund Managers, available at: www.managedfunds.org; see, also, the President's Working Group on Financial Markets' Asset Managers' Committee report: Best Practices for Hedge Fund Managers, available at: http://amaicmte.org/Public/AMC%20Report%20-%20Final.pdf.

17 See, FSA Hedge Fund Studies.

18 See sections 403 and 408 of the Dodd-Frank Act.

Registered advisers are required to maintain books and records, make reports to the SEC, and are subject to examination by the agency. Congress specifically amended the Investment Advisers Act of 1940 to provide that the recordkeeping and reporting requirements for hedge fund advisers apply to the funds as well as the adviser.[19] The Dodd-Frank Act also explicitly provides that data collected by the SEC for systemic risk purposes will be shared with the FSOC. The SEC and the Commodity Futures Trading Commission (the "CFTC") recently proposed joint rules creating new Form PF to implement very detailed reporting requirements for private fund advisers and commodity pool operators.[20] As a consequence, the SEC, CFTC, and the Council will have comprehensive access to information about hedge fund advisers and the funds they manage.

The Dodd-Frank Act also creates a comprehensive regulatory regime for over-the-counter derivatives where none existed previously. These new regulations: (1) require certain standardized transactions to be cleared and exchange traded;[21] (2) require "Swap Dealers" and "Major Swap Participants" to register with the SEC and CFTC, and subjects them to significant requirements; (3) impose initial and variation margin requirement on both cleared and uncleared transactions; and (4) provide for significant incremental transparency, including transaction reporting, to market participants and regulators. These rules will significantly reduce the potential for systemic risk involving the derivatives markets and their participants, such as hedge funds. For cleared swaps, central counterparties possess the ability to manage their risks by imposing margin requirements and other risk mechanisms that limit their exposure to potential losses from defaults by members and participants. The margin requirements must be sufficient to cover potential exposures in almost all market conditions. These provisions are well designed to ensure that central counterparties' operations would not be disrupted and non-defaulting members would not be exposed to unexpected losses.

In addition, the Dodd-Frank Act mandates increased supervision of banks and broker-dealers, incorporating enhanced review of counterparty exposure and other risks associated with the prime brokerage and over-the-counter derivatives businesses. This provides regulators with critical information regarding an institution's aggregate exposure to individual hedge funds as well as the hedge fund industry as a whole.

Changes in the Industry since 1998

The failure of Long Term Capital Management ("LTCM") in 1998 is often cited as an example of a hedge fund that created a systemic risk to the financial system. First, it is important to note that the failure of LTCM did not result in any use of taxpayer

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19 See section 404 of the Dodd-Frank Act, amending Section 204 of the Investment Advisers Act.

20 Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, available at: http://sec.gov/rules/proposed/2011/ia-3145.pdf.

21 See *e.g.*, section 723 of the Dodd-Frank Act.

funds. Regulators helped coordinate LTCM's financial counterparties, who worked out a private sector resolution of the firm's liabilities. But at no point were government funds offered or used. Lessons were learned, however, by both market participants and regulators, which have led to sounder practices. The resulting changes may be one of the reasons that hedge funds were not substantial contributors to the recent global financial crisis.

LTCM's excessive position size and leverage, along with its counterparties' inadequate risk management were the primary underlying causes of LTCM's failure. The seminal analysis of the matter, conducted by the President's Working Group on Financial Markets (the predecessor to the Council), found that LTCM, as of January 1, 1998, was leveraged more than 25-to-1,[22] as compared to the 2.6-1 peak leverage ratio for the hedge fund industry during the period from December 2004 to October 2009.[23] Perhaps most importantly, the President's Working Group found that LTCM was able to get such leverage because its counterparties did not require LTCM to post initial margin on its OTC derivatives trades.

Since the failure of LTCM, however, there have been significant changes in the market with respect to counterparty risk management. Counterparties now consistently limit the amount of leverage used by hedge funds by requiring the use of collateral to secure financing to hedge funds. Also, as a result of improvements to counterparty risk management best practices, financial institutions today conduct more in-depth due diligence on and have a much greater degree of transparency with respect to their hedge fund clients' overall portfolios. Many of these changes have been brought about by the work done by the Counterparty Risk Management Policy Group.[24] In 2006, Federal Reserve Chairman Bernanke noted the improvements in the market place:

> Since the LTCM crisis, ongoing improvements in counterparty risk management and the resultant strengthening of market discipline appear to have limited hedge fund leverage and improved the ability of banks and broker-dealers to monitor risk, despite the rapidly increasing size, diversity, and complexity of the hedge fund industry. Many hedge funds have been liquidated, and investors have suffered losses, but creditors and counterparties have, for the most part, not taken losses.[25]

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22 Hedge Funds, Leverage and the Lessons of Long-Term Capital Management, Report of The President's Working Group on Financial Markets, April 1999 available at: http://www.ustreas.gov/press/releases/reports/hedgfund.pdf.

23 See the discussion in the section above regarding the leverage of the industry.

24 Copies of the reports are available at: http://www.crmpolicygroup.org/index.html.

25 Speech by Chairman Ben S. Bernanke, *Hedge Funds and Systemic Risk*, May 16, 2006. Available at: http://www.federalreserve.gov/newsevents/speech/bernanke20060516a.htm.

In summary, MFA believes that, in considering hedge funds in light of the six categories set out in the Proposed Rule, it is unlikely that the failure of any hedge fund or hedge fund manager would have systemic implications. While we support the collection of information about hedge fund investment activity and the direct regulation of hedge fund advisors, we do not believe it would be appropriate to designate any hedge fund as a systemically significant nonbank financial company.

Process for public engagement with the Council

By grouping the statutory criteria into six categories, the Proposed Rule provides some clarity with respect to how the Council plans to analyze market participants. The Proposed Rule does not, however, discuss the risk metrics that will be used to analyze market participants or how the various criteria or categories will be weighed. We believe that both the risk metrics and weighting of the criteria are critical components of the Council's rules for implementing section 113 of the Dodd-Frank Act. As such, we believe that the metrics and weighting should be proposed by the Council for public review and comment. A public review and comment period will provide the Council with valuable feedback and, importantly, will help ensure that market participants understand how the Council will make a determination that a firm is systemically significant.

The Proposed Rule also sets out the formal process by which a market participant can request hearings with the Council and seek judicial review prior to being subject to supervision by the Fed as a systemically significant financial institution. We understand that the time periods for this formal process were set by the Dodd-Frank Act and provide limited flexibility for the Council in implementation. We encourage the Council to provide market participants the maximum amount of time permitted under the statute and the proposed rule to exercise their rights to hearings and judicial review. We further encourage the Council to provide firms that request hearings the opportunity to provide both written and oral testimony, if they so request.

We appreciate the Council's proposal to provide a mechanism for dialogue between the Council and market participants in advance of the formal designation process. As contemplated by the Proposed Rule, market participants would have 30 days to submit written materials to the Council prior to the Council beginning the formal designation process. In addition, we encourage the Council to engage in regular dialogue with market participants regarding relevant industry and market practices and, when appropriate, firm-specific practices. Such regular dialogue will better ensure that the Council has a full and complete understanding of markets and market participants. Regular dialogue with market participants may also help avoid the potential misperception and dampen rumors that any firm that engages with the Council is likely to be designated as systemically significant.

As the Council increases its understanding of industry segments and participants, we encourage the Council to provide guidance regarding specific metrics that it believes could make a firm or a fund systemically significant. Guidance, even if not a bright line test, would provide greater certainty to market participants and allow them to proactively manage their business risks.

Coordination among member agencies

We believe it is important for the Council to coordinate the designation process with existing and proposed data collection efforts to avoid unnecessary duplication of efforts and to ensure that Council members have comprehensive information about markets and financial institutions when they undertake their monitoring and designation responsibilities. As discussed above, the SEC and CFTC have proposed extensive systemic risk reporting to collect a significant amount of information from private fund advisers and the funds they manage. We have worked with them since the passage of the Dodd-Frank Act to develop these tools, and will be submitting detailed comments to help them refine the survey tool. We support the SEC's and CFTC's data collection efforts and believe that a coordinated approach with Council members (and the Office of Financial Research) will be the most effective and efficient method for the Council and Council members to gather and analyze information about private funds. Multiple data collection reports are not only a significant burden for the industry, but likely to create duplicative or inconsistent reports, which could make it more difficult for regulators to analyze information. While we recognize that there may be circumstances when it will be necessary for regulators to collect additional information, we encourage the Council and its members to coordinate to the greatest extent possible data collection efforts.

Additionally, as the Council begins its research, we stand ready to assist in providing information about the industry and convening educational sessions for Office of Financial Research staff or staff from Council member agencies to learn more about the hedge fund industry and delve into the issues we have discussed in greater detail. Given the potential for rumors about designation of any single firm to potentially harm such a firm, we encourage the Council to conduct its research through the MFA or other similar organizations to the extent possible, particularly in these early stages.

We are happy to work with the Council to expand upon the thoughts outlined above or to discuss further any of the criteria in the Dodd-Frank Act.

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Conclusion

We believe that, in light of the structure of hedge funds and the market and regulatory changes regarding counterparty risk management, leverage and use of collateral, as described above, applying the criteria in section 113 and the six categories set out in the Proposed Rule to hedge funds should lead to the conclusion that it is highly unlikely that any hedge fund is systemically significant at this time. We recognize, however, that circumstances can change and that there is a possibility that a hedge fund may, in the future, become systemically significant.

We support robust reporting requirements to regulators (with appropriate confidentiality protections) to ensure that regulators have the information they need to assess all financial market participants, including hedge funds. Such periodic assessments, combined with oversight from the relevant regulators would help the Council assess whether circumstances have changed and that the Council should re-evaluate whether a hedge fund might have become systemically significant.

MFA appreciates the opportunity to comment on the Proposed Rule. We recognize that the Council has an ongoing responsibility to monitor and assess the systemic risk of market participants and we look forward to continuing the dialogue on this subject with the Council.

If you have any questions regarding any of these comments, or if we can provide further information with respect to these or other regulatory issues, please do not hesitate to contact Stuart J. Kaswell or me at (202) 730-2600.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker

President and CEO

CC: The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation
The Honorable Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System
Edward J. DeMarco, Acting Director, Federal Housing Finance Agency
The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission
The Honorable Debbie Matz, Chairman, National Credit Union Administration
The Honorable Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
John Walsh, Acting Comptroller of the Currency