Managed Funds Association

The Voice of the Global Alternative Investment Industry

Washington, D.C. | New York | Brussels

December 7, 2022

Via Electronic Submission

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers (RIN: 3235–AN13, RIN 3038–AF31; Release No. IA–6083; File No. S7–22–22)

Dear Ms. Countryman and Mr. Kirkpatrick:

Managed Funds Association ("**MFA**")[1] submits these comments to the Securities and Exchange Commission ("**SEC**") and the Commodity Futures Trading Commission ("**CFTC**" or, together with the SEC, "**Commissions**") in response to the Commissions' joint proposed rules to amend Form PF ("**Proposed Rules**").[2] While MFA has long supported the Commissions' reconsideration of Form PF to better tailor the Form for its primary intended purpose, to provide the Commissions' and the Financial Stability Oversight Council ("**FSOC**") with data to assess potential systemic risk, we believe the Proposed Rules would not achieve this objective. Instead, the Proposed Rules fundamentally rewrite Form PF in ways that will lead to the Commissions' collecting less meaningful information for the intended purpose of assessing potential systemic risk, while significantly increasing the burdens on reporting advisers. Accordingly, we strongly recommend the Commissions reconsider the Proposed Rules.

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[1] Managed Funds Association (MFA), based in Washington, DC, New York, and Brussels, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 150 member firms, including traditional hedge funds, crossover funds, and private credit funds, that collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

[2] 87 Fed. Reg. 53832 (September 1, 2022), available at: https://www.govinfo.gov/content/pkg/FR-2022-09-01/pdf/2022-17724.pdf.

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Given the Commissions' decision to provide only 30 days from publication in the Federal Register for public notice and comment on the Proposed Rules, it was not possible for MFA or its members to adequately consider the implications of the proposed fundamental rewrite of Form PF and respond by the October 11th deadline. Our members have dedicated significant resources to learning the Proposed Rules and considering the implications of the changes resulting from the proposed amendments to Form PF by assigning multiple people to that task. Despite this substantial allocation of resources, most of our members were only able to develop preliminary views on the Proposed Rules by the date the comment period formally closed. In fact, our members are still developing and refining their views on the full scope of the changes included in the Proposed Rules. We note that the short deadline for public comment appears to have limited the amount of public feedback provided to the Commissions by the deadline. Indeed, even comment letters submitted by the deadline have noted that the comment period did not provide sufficient time for review and comment and further indicated that the commenters expected to have additional feedback at a later date as they continued to analyze the Proposed Rules. Given the inadequate comment period for the Proposed Rules, we trust that the Commissions will, consistent with existing practice, give full weight and consideration to these comments as well as other public comments that the Commissions receive after the formal deadline for public comment closed.

We also note that the Proposed Rules would change the definition of cash equivalents, require advisers to look through investments in other entities or instruments to indirect exposures (such as indirect exposures to U.S. treasury securities), and seeks comment on a potential alternative definition of "hedge fund," all of which would affect certain aspects of the February 2022 Form PF proposal. The proposing release for the Proposed Rules, however, does not assess the effects of these proposed changes in light of the February 2022 Form PF proposal. As such, the Proposed Rules do not fully assess or provide an opportunity for public review and comment on those aspects of the Proposed Rules that would affect the February 2022 Form PF proposed rules. The Commissions should remedy this gap in the analysis of the effects of the Proposed Rules and provide an opportunity for public review and comment on that analysis before proceeding to any final rules.

I. EXECUTIVE SUMMARY

A. The Commissions should amend the Proposed Rules to permit aggregated reporting for master funds, feeder funds, and trading vehicles because reporting on a disaggregated basis will provide misleading information to the Commissions and FSOC for risk assessment purposes.

B. The Commissions should amend the Proposed Rules to focus Form PF data collection on information relevant to potential systemic risk assessment.

C. The Commissions should eliminate questions, such as certain exposures, or that would require reporting on a look-through basis, which is unlikely to provide meaningful information to the Commissions or FSOC.

D. The Commissions should narrow the scope of information collected on Form PF in light of the risks that could result from inadvertent disclosures of Form PF information.

E. The Commissions should reassess the cost-benefit analysis in the Proposed Rules, which significantly underestimates the current costs to complete Form PF and the expected costs to complete amended Form PF.

F. The Commissions should provide an implementation period of at least 24 months from the later of the adoption of the Proposed Rules or the February 17, 2022 proposed amendments to Form PF[3] because of the intertwined nature of both proposals.

G. The Commissions should amend the Proposed Form PF to address the specific comments and requests for clarification set out in Section III of this letter.

II. KEY ISSUES WITH AMENDED FORM PF

A. The Commissions Should Permit Aggregated Reporting and Better Align Data Requests with Risk Management Practices to Collect Meaningful and Accurate Data

We believe the Proposed Rules fail to balance the dual objectives of collecting meaningful, accurate data and collecting data that facilitates comparisons of that data across different advisers, and may ultimately undermine the Commissions' and FSOC's ability to accurately identify and assess potential systemic risk. MFA appreciates the need for the Commissions and FSOC to be able to compare data reported by different advisers. That data needs to be meaningful and accurate for it to serve any legitimate policy purpose. Given the diverse and dynamic nature of the private fund industry (as the Commissions acknowledge in the proposing release), the overly prescriptive approach to data collection in the Proposed Rules will not provide data that is well suited to meaningful potential systemic risk assessment.

In particular, the proposed approach to require reporting on a disaggregated basis for many master-feeder structures and trading vehicles is likely to provide misleading information for the purpose of conducting risk assessments. Although advisers may form master-feeder structures and utilize trading vehicles to increase efficiency for investors, the broader private fund structures that those entities are part of are nonetheless managed on a consolidated or aggregated basis. Private fund advisers typically do not manage each feeder fund, master fund or trading vehicle within a private fund structure on a stand-alone basis with respect to risk management, financing, or liquidity. Rather, advisers frequently consider these matters from the perspective of the aggregated, consolidated activities of the private fund structure. Moreover, financing counterparties (such as prime brokers) also do not typically evaluate financing or liquidity risk on a disaggregated basis when transacting with a private fund. Instead, private fund advisers and counterparties view risk on an aggregated basis (in the context of master-feeder funds and trading vehicles) because the creditworthiness of the private fund is determined by factors such as the performance and composition of the overall portfolio and cross-margining and guarantee agreements. To the extent the Commissions want to better understand how

[3] 87 Fed. Reg. 9106 (February 17, 2022), available at: https://www.govinfo.gov/content/pkg/FR-2022-02-17/pdf/2022-01976.pdf.

counterparties assess bilateral exposures at an entity level, we believe that information would be better collected from fund counterparties (such as broker-dealers or futures commission merchants) pursuant to the Commissions' other existing authorities, which we believe would allow for a more meaningful and useful analysis by the Commissions.

We also highlight that assessing certain Form PF metrics at the level of an individual entity within an overall fund structure (*e.g.*, at the level of a trading vehicle) is likely to result in the Commissions receiving false or misleading signals of potential systemic risk. For example, advisers often pool unencumbered cash at the master fund level, meaning that assessing unencumbered cash at the feeder fund or trading vehicle level would be likely to present a misleading view of the unencumbered cash that is available within a particular fund structure. Portfolio liquidity is another metric that can create misleading impressions when assessed on a disaggregated basis. Portfolio liquidity risk is best measured by looking at the amount of capital that can be liquidated within a particular time frame at the widest relevant level, not on an entity-by-entity basis. In the context of private fund structures, it would be of limited utility to assess the liquidity that a master fund has with respect to its trading vehicles. Instead, what would be relevant to an assessment of potential liquidity risk is to examine alignment (or misalignment, as the case may be) between investor withdrawal or redemption terms on the one hand, and portfolio liquidity across an overall fund structure (*i.e.,* aggregated master fund, feeder fund, and trading vehicles) on the other.

We note in this regard that requesting risk metrics, liquidity and counterparty information on a disaggregated basis goes well beyond the type of pool-by-pool information that is currently required to be reported on Form CPO-PQR, such as net asset value, net income, additions to and withdrawals from the commodity pool. Unlike the information provided on a pool-by-pool basis on Form CPO-PQR, much of the disaggregated information that would be required by the amended Form PF would be misleading or difficult to analyze and is not the type of information that the Commissions likely would be able to readily and accurately re-aggregate. Reporting on a disaggregated basis also is inconsistent with other regulatory reports, such as Form ADV, which likely will create additional challenges for the Commissions in comparing data across regulatory filings by the same adviser. We discuss in more detail in Section III below our concerns with providing disaggregated data in connection with specific questions and how the Commissions could modify the questions and the instructions to Form PF with respect to disregarded feeder funds and trading vehicles to address these concerns.

To the extent that the Commissions are seeking additional information about the use of feeder funds or trading vehicles and how those vehicles relate to a master fund or other similar fund, we recommend the Commissions to adopt a more tailored approach, such as by requiring advisers to report the legal entity identifier ("**LEI**") for each feeder fund and trading vehicle that is part of a reporting fund's structure, and also to describe the nature of the relationship between such feeder fund or trading vehicle and the master fund or other similar fund. Alternatively, the Commissions could seek information regarding feeder funds similar to the information currently to be reported on Form CPO-PQR, such as withdrawal rights, without requiring reporting advisers to provide additional metrics at the feeder fund or trading vehicle level. This type of information would enable the Commissions to better understand the use of feeder funds and

trading vehicles, providing greater insight and clarity into the broader fund structure, without collecting data that is likely not to be meaningful or useful to the Commissions or FSOC when analyzing the data or imposing significant costs on advisers to create and report data on a disaggregated basis.

Further, we are concerned that certain of the questions on the amended Form PF would require advisers to report data in a manner that is inconsistent with prevailing industry practices, reflected, for example, in audited financial statements and reports to investors or counterparties. We believe that requiring advisers to report data on Form PF in ways that are inconsistent with industry practice is likely to increase the number of errors in reported data because advisers would be forced to maintain multiple data sets for the same funds and fund structures with Form PF data sets not being used in the ordinary course of the adviser's business. We discuss this concern further with respect to individual questions in Section III below. We recommend the Commissions better align the data requested on amended Form PF with standard industry practices regarding similar data, which we believe would provide more meaningful and consistent information to the Commissions.

Accordingly, the Commissions should permit aggregated reporting and better align data requests with risk management practices to collect meaningful and accurate data.

B. The Commissions Should Revise the Proposed Rules to Better Focus Form PF on Data that is Relevant to Assessing Potential Systemic Risk

The primary purpose of Form PF is to provide regulators with information to assess potential systemic risk and the Commissions should therefore revise the Proposed Rules to better focus Form PF on data that is relevant to assessing potential systemic risk. The proposal goes well beyond this primary purpose, seeking information that is not relevant to potential systemic risk assessments. We believe that, although the statutory language that is the basis for Form PF was not meant to unduly bind the Commissions with respect to their collection or use of Form PF data, Congress did not intend investor protection to be a principal focus of Form PF.[4] We believe that this interpretation is consistent with the fact that, at the time the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted, the Commissions already possessed authority under Section 204(a) of the Investment Advisers Act of 1940 ("**Advisers Act**") and Section 4n of the Commodity Exchange Act ("**CEA**") to collect information from registered investment advisers, commodity trading advisors, and commodity pool operators, respectively, for other regulatory purposes, including requiring reports for the purpose of investor protection or as appropriate in the public interest.[5] Accordingly, while the Commissions may have the authority

[4] We recognize that the statutory language includes the language "as necessary and appropriate in the public interest and for the protection of investors."

[5] Section 204(a) of the Advisers Act provides -- Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as

to collect data on Form PF for investor protection purposes, they should design Form PF for its intended primary purpose, which is to collect data to assess potential systemic risk.

The Commissions should utilize other regulatory tools already at their disposal to address investor protection and other regulatory considerations. At a minimum, the Commissions should amend the Proposed Rules to clearly identify which questions are intended to provide information for potential systemic risk assessments and which questions are intended to provide data for investor protection purposes and specify what those purposes are. These clarifications are important to properly assess whether particular questions are well designed to achieve their intended objectives.

As a general matter, we also recommend the Commissions modify questions in the proposed Form PF related to derivatives to eliminate reporting on a gross notional basis. Reporting gross exposures or gross notional values for derivatives is fundamentally misleading as those metrics do not represent the amount of leverage or risk with respect to a fund's positions.[6] The Commissions should instead require advisers to report data regarding their derivatives exposures on a net or market value basis, which would permit regulators to assess the risks associated with a fund's derivatives positions in a more meaningful way. As discussed in more detail in Section III below, there are a number of questions in the proposed Form PF that

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the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

Section 4n of the CEA provides similar authority -- Every commodity trading advisor and commodity pool operator registered under this chapter shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

[6] *See, e.g.,* February 1, 2019 letter from MFA, the Alternative Investment Management Association ("**AIMA**"), and the Alternative Credit Council to the International Organization of Securities Commissions, IOSCO Report: Leverage, available at: https://www.managedfunds.org/wp-content/uploads/2020/04/MFA-AIMA-ACC-Comment-Letter-on-IOSCO-Leverage-Consultation-1.pdf. *See also,* March 28, 2016 letter from MFA and AIMA to the SEC, Proposed Rule on the Use of Derivatives by Registered Investment Companies and Business Development Companies, available at: https://www.managedfunds.org/wp-content/uploads/2020/04/MFA-AIMA-Comment-Letter-on-SEC-Derivatives-Proposed-Rule-Final-4.pdf.

we believe are ill suited or not relevant to assessing potential systemic risk. We recommend the Commissions modify or remove those questions as specified below.

Finally, the Commissions should eliminate questions related to risk analyses that reflect fairly routine market conditions and concentrate reporting on those events that are likely to be meaningful sources of potential systemic risk. In a comment letter to the Commission in 2018, MFA proposed changes to the market fact analyses in From PF that would focus on those significant events, and would eliminate changes that reflect common market episodes of volatility.[7] The Proposed Rules instead would require reporting of market factors that the adviser determines are not relevant to the reporting fund, add a new market factor, and propose thresholds that will continue to capture routine market events, without adequately explaining the significance of reporting these events to the assessment of potential systemic risk. Market events which may cause losses to funds and their investors are a fact of investing in capital markets and the Commissions should not mistakenly equate potential investment losses with potential systemic risk. Over the past two decades, despite several financial crises, and significant regulatory focus on hedge funds and other private funds, regulators have not identified hedge fund losses as creating systemic risk by causing contagion or otherwise uniquely exacerbating such crises.

Accordingly, the Commissions should revise the Proposed Rules to better focus Form PF on data that is relevant to assessing potential systemic risk.

C. The Commissions Should Reconsider Form PF Data that Would Provide Limited Benefit to Regulators and May Not be Available to Reporting Advisers

The Commissions should reconsider Form PF data that would provide limited benefit to regulators and may not be available to reporting advisers. As discussed in more detail in Section III below, we are concerned about questions on amended Form PF that would require advisers to report information regarding indirect exposures obtained through investments in externally managed investment funds. Private fund advisers often do not receive, and are unlikely to be able to acquire, information about the underlying exposures of an investment fund managed by a third party. Even with third-party managed funds like U.S. listed exchange traded funds ("**ETFs**") or other registered investment companies for which information about underlying exposures is available, requiring private fund advisers to track potentially thousands of securities in each such fund would provide limited value to the Commissions or FSOC and would be overly burdensome for reporting advisers. The Commissions should clearly state in the instructions to amended Form PF that an adviser is not required to provide indirect exposures unless the adviser otherwise obtains and maintains such information in the course of its ordinary business.

The proposed reporting of certain exposures, such as currency, turnover, and country exposures is likely not to be meaningful for purposes of potential systemic risk assessment and

[7] *See*, September 17, 2018 letter from MFA to the SEC,A Streamlined Form PF: Reducing Regulatory Burdens, available at: https://www.managedfunds.org/wp-content/uploads/2020/04/MFA.Form-PF-Recommendations.attachment.final_.9.17.18.pdf.

will be difficult, if not impossible, for advisers to obtain with respect to all of their investments, even direct holdings. Providing these exposures also would require reporting advisers to provide information that they may not currently have. This would require advisers to incur additional costs to acquire such data, for example, geographic information about multi-national portfolio companies. With respect to industry exposures, for example, advisers would need to pay to acquire the North American Industry Classification System ("**NAICS**") code for individual companies, which for funds with a large number of positions would be both costly and administratively burdensome.[8]

Many reporting advisers rely on external administrators and other service providers to compile information to be reported on Form PF. As discussed in more detail in Section III below, several of the proposed questions would require service providers to have or obtain data that advisers typically do not provide to service providers. Third party service providers would have to build new systems to process that data and, in some circumstances, may have difficulty developing systems for the private fund industry, given the different interpretations and risk tolerances that advisers have with respect to their data.[9]

Accordingly, the Commissions should reconsider Form PF data that would provide limited benefit to regulators and may not be available to reporting advisers.

D. The Commissions Should Narrow the Scope of Information Collected on Form PF in Light of the Risks that Could Result from Inadvertent Disclosures of Form PF Information

Ensuring the confidentiality and protection of Form PF information is of paramount importance to reporting advisers. It also is of primary importance to the Commissions because of the systemic consequences that could result if Form PF information were inadvertently disclosed. The strong confidentiality protections included in Section 204(b) of the Advisers Act reflect the importance of protecting Form PF data from a systemic perspective.

The Commissions frequently have discussed the cybersecurity risks that advisers and other market participants face, and the consequences for investors and for markets if an adviser's sensitive and proprietary information were to be stolen in a cybersecurity incident. The Commissions face even greater cybersecurity risk given the information that they collect, and those risks are magnified by the increasingly detailed information that the agencies would collect pursuant to the Proposed Rules.

While we appreciate the processes that the Commissions have in place to reduce the risk of unintended disclosure of Form PF information, that risk can only be mitigated, not eliminated.

[8] We believe this would create a regulatory monopoly for advisers to use NAICS, similar to the regulatory monopoly with respect to charging fees for market participants to use CUSIP numbers.

[9] To the extent that amended Form PF would require advisers to rely on service providers that are likely to experience the difficulties described above, that result seems inconsistent with the SEC's recently proposed rules that would require registered advisers to conduct due diligence and perform ongoing oversight with respect to the nature and quality of services provided by certain service providers.

The Commissions also should implement additional processes, such as the use of alphanumeric identifiers instead of entity names or other widely known identifiers to provide an additional level of protection if a reporting adviser's information were to be unintentionally disclosed.

Accordingly, we recommend the Commissions reconsider the scope of information they seek to collect on amended Form PF to focus on information that the Commissions and FSOC need to assess potential systemic risk and to eliminate questions that seek data that may be merely of regulatory interest, are superfluous, or only of limited use, in light of the risks associated with Form PF data being unintentionally disclosed, for example, as a result of a cybersecurity incident.

E. <u>The Commissions Should Reassess the Cost-Benefit Analysis in the Proposed Rules, which Significantly Underestimates the Current and Expected Costs to Complete Form PF</u>

We believe the Commissions have significantly underestimated the current costs to complete Form PF and the expected costs to complete amended Form PF. Consistent with the concerns discussed below, the Commissions' estimate of the costs associated with completing Form PF and the additional costs associated with the Proposed Rules are substantially lower than our members' experience in completing Form PF and substantially lower than our members' expectations for the costs associated with completing the new Form PF as proposed, respectively. As discussed in Section III below, our members estimate that certain questions will require advisers to spend substantially more time to provide the data being requested, particularly with respect to data that advisers do not use for their internal operational or risk management purposes or data that needs to be reported using multiple alternative methodologies.

Importantly, the costs associated with the Proposed Rules are so significant that we believe they are likely to act as a barrier to entry to smaller and newer advisers, thereby limiting investor choice and creating additional economic costs that the Proposed Rules fail to consider.

With respect to larger advisers, we believe the Commissions underestimate the costs associated with completing the amended Form PF, as proposed. The Commissions estimated the cost for large hedge fund advisers to file an initial amended Form PF to be $118,680. In a survey of MFA members, the majority of responding members estimated the cost of filing an initial amended Form PF would exceed the Commissions' estimate, with a median estimated cost of between $250,0001 and $400,000, between 2.1 times to 3.4 times the Commissions' estimated cost. For large private equity fund advisers, the Commissions estimated the annual cost to file an initial amended Form PF to be $72,240. In the survey of MFA members, all responding members estimated the costs of filing an initial amended Form PF would exceed the Commissions' estimate, with a median estimated cost of $250,000, 3.5 times the Commissions' estimated cost. We believe that the feedback provided by members demonstrates that the Commissions have underestimated the time and resources needed to complete the amended Form PF, as proposed. Therefore, we recommend the Commissions reassess the cost-benefit analysis in the Proposed Rule accordingly.

The basis for a number of proposed amendments to Form PF, including the thresholds that would trigger certain reporting requirements, seems to be hypothetical risks arising from multiple private funds having similar exposures. In that regard, the Commissions appear to assume, without providing meaningful analysis, that exposures at multiple private funds is reasonably likely to be a cause of a systemic market event, rather than considering that multiple private funds (along with other market participants) with similar exposures are likely to be affected by such a market event. We reiterate that, in light of the structure of hedge funds, and the market and regulatory changes regarding counterparty risk management, it is highly unlikely that any hedge fund poses systemic risk.[10] Prior to imposing significant and costly reporting obligations on private fund advisers, the Commissions should provide more than a hypothetical basis for why private funds present a unique or particular risk of causing a market event that could have systemic implications. Indeed, a more likely outcome is that the Commissions' proposed reporting framework will make it harder for the Commissions and FSOC to discern potential risks for the reasons described in more detail below.

As discussed in more detail in Section III below, a number of the questions added or modified by the Proposed Rules would be extremely difficult for advisers to compute and do not reflect how investment portfolios are managed and hedged for investment or risk management purposes. In particular, we note that the resources needed to compute and review amended Form PF would be dramatically increased by, among others, the proposals to require a "pair wise" calculation of correlation between all securities in a hedged portfolio; to "look through" and compute indirect exposures to reference assets; and to report additional dimensions of counterparty exposure. Proposals that would require managers to (1) report data using multiple alternative methodologies and/or (2) create and report data using methodologies that advisers (and indeed the industry in general) do not use will require extensive data analytics and expensive, experienced risk managers to review and verify the information. Such information will have limited utility to regulators and potentially distract valuable resources from other critical risk management tasks or initiatives in addition to increasing costs.

Accordingly, the Commissions should reassess the cost-benefit analysis in the Proposed Rules, which significantly underestimates the current and expected costs to complete Form PF.

F. The Commissions Should Provide an Implementation Period of at Least 24 Months from the Later of the Adoption of the Proposed Rules or the February 17, 2022 Proposed Amendments to Form PF because of the Intertwined Nature of Both Proposals

We believe the implementation of the Proposed Rules will require a significant amount of time. The Proposed Rules will require significant changes to advisers' systems as well as service providers' systems that help many advisers prepare their Form PF filings. The need to develop, build, and test those systems will require significant time, especially because the Proposed Rules significantly change and expand the scope of information on Form PF. In many instances,

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[10] *See generally,* letter from MFA to the Commissions, Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF (Apr. 8, 2011), available at http://www.managedfunds.org/wp-content/uploads/2011/06/4.8.11-MFA.Form_.PF_.Comments.4.8.11.pdf.

especially with respect to smaller advisers, the adviser will likely need to renegotiate service contracts with administrators and other third party service providers that assist with Form PF preparation and filing. This is a process that will be time consuming, partially beyond the control of reporting advisers, and costly.

Unlike the initial adoption of Form PF, advisers will be required to develop, build and test systems for the new reporting requirements while complying with their existing Form PF requirements. Further, the SEC's proposal from February 2022 to amend Form PF to gather significantly more information from private fund advisers also would fundamentally change the nature of Form PF, but in a different way than the Proposed Rules, to make Form PF effectively a daily report. This is because, under the February 2022 proposal, private fund advisers would need to monitor and track a wide range of financial and operational metrics and events on a daily basis to determine whether any of the proposed reporting events has occurred and thereby triggered the one-business day filing requirement. Those proposed changes would impose their own significant new operational burdens on private fund advisers as they also have to build or modify systems to gather the information that would be required by the Proposed Rules. At many advisers, the individuals responsible for current Form PF filings will be responsible for implementing two distinct sets of fundamental changes to Form PF, creating new and additional implementation challenges relative to the adoption of the initial Form PF.

Advisers also will need to build and implement systems and policies and procedures in response to the numerous other rules that the SEC, in particular, has proposed in the past 12 months. That list of proposed rules includes, among others: (1) Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers; (2) Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange"; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities; (3) Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews; (4) Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies; (5) Modernization of Beneficial Ownership Reporting; (6) Short Position and Short Activity Reporting by Institutional Investment Managers; (7) Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer; (8) Special Purpose Acquisition Companies, Shell Companies, and Projections; (9) Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions; (10) Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies; (11) Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities Fund Advisers; and (12) Outsourcing by Investment Advisers.

In light of the significant challenges involved with implementing amended Form PF, and the relationship between the Proposed Rules and the February 2022 Form PF proposed rules, we recommend the Commissions provide an implementation period of at least 24 months from the

later of the adoption of the Proposed Rules or the adoption of the proposed Form PF rules from February 2022 as these two proposals are intertwined.

III. Comments on Specific Questions

A. Glossary and General Instructions

Glossary, Definition of Cash and Cash Equivalents. The Commissions should define "cash and cash equivalents" to include Treasury securities with maturities of 90 days or less as cash equivalents, to the extent that an adviser treats those securities as cash equivalents for its own business purposes, including risk management.

The proposed change to the definition to exclude all Treasury securities from the definition of cash equivalents is inconsistent with how financial markets generally and our members treat short-term Treasury securities for risk management and cash management purposes. It also is inconsistent with U.S. Generally Accepted Accounting Principles, which treat short-term Treasury securities as cash and cash equivalents.[11] Finally, excluding short-term Treasury securities from cash equivalents is inconsistent with U.S. regulations that effectively require all market participants to post short-term U.S. Treasury securities for initial margin and variation margin under recently implemented swaps rules. That inconsistency will make reporting of margin posted for uncleared derivatives much less meaningful, and make reporting less meaningful more broadly given the general treatment of short-term Treasury securities as cash equivalents and their use as collateral for myriad other transactions outside of amended Form PF. Thus, MFA recommends that the Commission amend the definition of "cash and cash equivalents" to include Treasury securities with maturities of 90 days or less as cash equivalents, to the extent that an adviser treats those securities as cash equivalents for its own business purposes, including risk management.

Glossary of Terms, Definition of Digital Asset. The Commissions should clarify that, with respect to an asset that may reasonably be included in multiple categories, a reporting adviser may make a reasonable determination regarding the category in which it will report an asset. The definition of "digital asset" potentially could include other types of assets that would otherwise be required to be reported elsewhere on the amended Form PF. For example, a money market fund that is sold through distributed ledger technology could be determined to fit within multiple categories. Thus, MFA recommends that with respect to the definition of "digital asset" the Commissions clarify that a reporting adviser may make a reasonable determination regarding the category in which it will report an asset.

Glossary of Terms, Definition of Hedge Fund. The Commissions should revise the definition of hedge fund to remove the default treatment of a commodity pool as a hedge fund to permit advisers to report information on Form PF in a manner that they believe best represents the type of fund and the type of reporting that is most relevant to the fund. We think that the amended Form PF should permit reporting advisers to categorize a commodity pool in a manner that is consistent with the private fund categories in the Form (*e.g.*, if a commodity pool meets the definition of private equity fund, a reporting adviser should be permitted to treat the pool as a

[11] *See,* definition of "Cash Equivalents" in Accounting Standards Codification Topic 230.

private equity fund, instead of a hedge fund, for purposes of Form PF). This consistency will promote the accuracy of adviser reporting on Form PF. Thus, MFA recommends that the Commissions amend the proposed definition of "hedge fund" by eliminating the requirement that a commodity pool be categorized as such for purposes of Form PF.

Glossary of Terms, Definitions of Synthetic Long Position and Synthetic Short Position. The Commissions should establish a threshold at which a position is to be treated as deep-in-the-money. For example, the Commissions could define "deep-in-the-money" based on the marked delta of the options contract. In defining synthetic long position and synthetic short positions, which terms affect reporting on proposed Questions 26, 41, and 42, proposed Form PF instructs advisers to report certain "deep-in-the-money" positions and to exclude certain other "deep-in-the-money" positions. Neither the Glossary nor other parts of the proposed Form PF define or provide a threshold for a position that is deep-in-the-money, creating uncertainty. Thus, MFA recommends that the Commissions in defining "synthetic long position" and "synthetic short position" include a threshold for when a position is deep-in-the-money.

General Instruction 6. We believe the proposed definition of "disregarded feeder fund" (a feeder fund that invests all of its assets in (i) a single master fund, and/or (ii) cash equivalents) is too narrow in scope and would not provide meaningful information to the regulators while unnecessarily requiring advisers to disaggregate feeder funds with a *de minimis* amount of other assets.

The Commissions should permit disregarded feeder funds to include a de minimis level of other investments. The Commissions should revise the definition to permit a "disregarded feeder fund" to invest up to 10 percent of its capital in other investments that are not a single master fund or cash equivalents. A disregarded feeder fund should be defined as a "feeder fund that invests substantially all of its assets in (i) a single master fund, and/or (ii) cash equivalents" because the proposed definition is too narrow in scope and would not provide meaningful information to the regulators. The Commissions also should clarify in the instruction that "substantially all" for purposes of this definition means at least 90 percent of the feeder fund's capital. We believe that a "substantially all" test would better distinguish between a fund that economically reflects a feeder fund from other funds that primarily serve as a feeder fund, but also take meaningful economic or market risk through other investments. We further note that a "substantially all" test for purposes of the definition of a disregarded feeder fund would be consistent with General Instruction 7 with respect to private fund investments in other private funds and is consistent with the definition of "feeder fund" itself in the Glossary of Terms. Thus, MFA recommends that the Commissions revise the definition of "disregarded feeder fund" to allow a fund to invest up to 10 percent of its capital in other investments, excluding a single master fund or cash equivalents.

The Commissions should permit disregarded feeder funds to invest in multiple master funds. We also believe the Commissions should permit feeder fund structures in which an internally managed feeder fund invests substantially all of its assets in two or more master funds that are managed by the same adviser as a "disregarded feeder fund." Form PF should be designed to be agnostic as to how advisers structure their funds; an adviser should not be

required to complete a separate Form PF for each feeder fund simply because an adviser organizes its feeder arrangements using a one-to-many structure instead of a many-to-one structure. Thus, MFA recommends that the Commissions define a "disregarded feeder fund" to include a feeder fund structure in which an internally managed feeder fund invests substantially all of its assets in two or more master funds that are managed by the same adviser.

General Instructions 6 and 7. The Commissions should expressly state in General Instruction 6 and 7 that advisers are permitted to report funds and all of their wholly-owned entities, including trading vehicles, on a consolidated basis. For the reasons discussed in Section II, the Commissions will collect less meaningful information through Form PF if they require advisers to report wholly-owned funds on a disaggregated basis. Thus, we recommend that the Commissions permit advisers to report funds and their wholly-owned entities on a consolidated bases. We further recommend the Commissions clarify that, if an adviser is required to report a vehicle on amended Form PF that is not required to be reported on Form ADV, the adviser will not be required to add that vehicle to its Form ADV.

General Instruction 7, Trading vehicles. The Commissions should amend the definition of "trading vehicle" to delete the language "on behalf of" and instead provide that a trading vehicle owned 90 percent or more by one reporting fund can be aggregated with such reporting fund. Like the definition of disregarded feeder funds, the proposed definition of "trading vehicle" will cause certain fund structures to report unhelpful and misleading information on a disaggregated basis. The combined effect of the definitions of trading vehicles and disregarded feeder fund would lead to even greater concerns in this regard (*i.e.,* the possibility that feeder funds will not be treated as disregarded feeder funds increases the likelihood that trading vehicles would have to be reported separately because the trading vehicle would hold assets or incur leverage on behalf of more than one reporting fund). There could be many reasons that a given trading vehicle might hold assets or incur leverage for more than one reporting fund, even though substantially all of the trading vehicle's assets or leverage are held or incurred for the benefit of a single fund.

Absent an amended definition of trading vehicle, the Commissions will no longer have the information necessary to assess a fund holistically when such an assessment would be most meaningful and accurate. Instead, the Commissions will have information about component parts of what is economically a single fund structure. For certain metrics reported on a disaggregated basis, we believe that it would be difficult or impossible for the Commissions to re-aggregate those metrics correctly to provide for any meaningful or useful analysis. As a result, the Commissions would likely have less useful data that may lead to them wasting resources on false risks or make it more difficult for the Commissions to assess the risks the data is intended to identify. Thus, MFA recommends that the Commissions amend the definition of "trading vehicle" to delete the language "on behalf of" and instead provide that a trading vehicle owned 90 percent or more by one reporting fund can be aggregated with such reporting fund.

General Instruction 7 – Funds that invest substantially all of their assets in other private funds. The Commissions should amend this paragraph to provide that a fund-of-funds can invest

up to 10 percent of its capital in investments other than investments in other funds, cash and cash equivalents, and instruments to hedge currency exposures.

The Commissions should permit de minimis investments in other assets. This instruction provides that a private fund that invests substantially all of its assets in the equity of private funds are only required to complete Section 1b of Proposed Form PF for that fund. The instruction also says, however, that aside from such private fund investments, the fund-of-funds holds only cash and cash equivalents and instruments for the purpose of hedging currency exposure. Similar to the suggested changes to the definition of "disregarded feeder fund" discussed above, we believe that a fund-of-funds should be permitted to invest a *de minimis* amount (up to 10 percent of the fund-of-fund's capital) in other investments. Thus, MFA recommends that the Commissions amend General Instruction 7 to provide that a fund-of-funds can invest up to 10 percent of its capital in investments other than investments in other funds, cash and cash equivalents, and instruments to hedge currency exposures.

The Commissions should permit disregarded feeder funds to invest in multiple master funds. The Commissions should broaden the definition of a disregarded feeder fund so that an adviser is not required to make separate Form PF filings. We do not believe that an adviser should be required to complete a separate Form PF for each feeder fund simply because an adviser organizes its feeder arrangements using a one-to-many structure instead of a many-to-one structure. Thus, MFA recommends that the Commissions permit feeder fund structures in which an internally managed feeder fund invests substantially all of its assets in two or more master funds that are managed by the same adviser to be treated as a "disregarded feeder fund" and not as a reporting fund for purposes of General Instruction 7.

General Instruction 7, Responding to questions. The Commissions should not require advisers to include the value of a reporting fund's investments in other private funds. It will be difficult to comply with a requirement for advisers to include investments in other private funds, particularly private funds managed by a third party, in responding to questions on amended Form PF, as the reporting adviser likely will not have sufficient information from the external private fund adviser to report information beyond the value of the reporting fund's equity investment in the external private fund as required by Question 10 on the current Form PF. Thus, we recommend that the Commissions delete the proposed changes to Instruction 7 and permit advisers to disregard equity investments in other external private funds, other than in responding to proposed Question 15 on the amended Form PF.

Instruction 15. The Commissions should balance the level of reporting granularity required with additional costs and burdens to an adviser. While we acknowledge the Commissions' view that rounding to the nearest one percent may lead to small changes not being reflected in information reported on the Form, the Commissions fail to explain why such small changes are sufficiently meaningful from a regulatory perspective to require advisers to report data with the additional granularity. The requirement to report information expressed as a percentage to the nearest one hundredth of one percent will significantly increase the costs and additional burdens for reporting advisers. Accordingly, we recommend the Commissions not amend the current language in Instruction 15, which requires advisers to round information expressed as a percentage to the nearest one percent or, if the Commissions provide a basis for requiring additional granularity, amend the Instruction to require reporting to the nearest one tenth of one percent.

B. Section 1b Questions

Question 10(b). The Commissions should revise proposed Question 10(b) to permit an adviser to select more than one option regarding withdrawal or redemption rights, if applicable for a particular fund. The proposed question requires advisers to select one option from the checklist for the withdrawal or redemption rights provided in the ordinary course to investors in a private fund. It is unclear how an adviser should respond to this proposed question with respect to a fund that includes different withdrawal or redemption rights to investors in the ordinary course, which we believe would be addressed by permitting advisers to select multiple options. Accordingly, MFA recommends that the Commissions revise proposed Question 10(b) to permit an adviser to select more than one option regarding withdrawal or redemption rights, if applicable for a particular fund.

Questions 11 and 12. The Commissions should revise proposed questions 11 and 12 to permit advisers to report gross asset value on a quarterly basis. Providing gross asset value on a monthly basis will create additional burdens for many advisers, which only calculate that metric for reporting on Form PF. Thus, MFA recommends that the Commissions allow advisers to report gross asset value on a quarterly basis.

Question 20. The appropriate date to be used for reporting a fund's liabilities should be the end of the reporting period. We believe that requiring advisers to report liabilities on an end-of-period basis would provide sufficient information to the Commissions and FSOC without creating the unnecessary burdens that would result from requiring advisers to report this information on intra-period basis. Thus, we recommend that the Commissions provide clarifying instructions that the appropriate date to be used for reporting a fund's liabilities is the end of the reporting period.

Question 22. The Commissions should continue to allow advisers to report beneficial ownership based on good faith estimates from data they have from investors.

The Commissions have not provided a reasonable justification for requiring advisers to report more granular information about the investors in every fund than what is already collected on current Form PF. The categories used in the current From PF are widely used in the industry

and well understood, so the Commissions can readily aggregate across filings to detect industry trends.

Private fund advisers rely on the information provided by investors in subscription documents to respond to this question. In practice, this can be challenging. For example, an entity legally structured as a private fund could be for the benefit of individuals as part of an estate plan or for the benefit of employees of a private company (which could be inside or outside of the U.S.). Such an entity could be classified as a private fund, a trust, a pension plan, or other, and investors are not always willing to provide the information that would permit an adviser to select a category except "other." Updating subscription agreements to reflect the new categories and getting investors to provide all of the relevant information to complete the proposed question is likely to add further time and costs to this process, while it is unclear how the additional information will assist the Commissions or the FSOC in assessing potential systemic risk. Providing this information will also burden the underlying investors in hedge funds and increase their costs. Thus, we recommend that the Commissions not amend the beneficial ownership reporting and to provide guidance that advisers can use good faith estimates based on the data they have from investors.

Question 23(c). The Commissions should require advisers to report additional market value information only if the adviser reports daily market values to third parties. We believe that the trigger for providing the additional information in proposed Question 23(c) is too broad. Calculating a market value daily on *any position* does not mean that the adviser has or can easily create the data necessary to calculate daily rates of return, drawdowns, or other data points that proposed Question 23(c) would require. More fundamentally, we do not believe that internal estimates should be required to be reported to the Commissions because, even in the best case scenario, internal estimates are subject to revision on a regular basis. Daily return estimates may be used for internal purposes including risk management, portfolio management, posting of margin and collateral, and evaluation of strategy and even individual performance, but they are not subject to the same level of scrutiny and review that returns provided to investors or regulators would need to be. In addition, the pricing of less liquid assets and assets not traded on an exchange entails substantial analyses which few mangers carry out on a daily basis. Requiring managers to calculate approximately 255 data points will be very expensive for managers, a cost that will be passed to the investors in the funds.

Thus, we recommend the Commissions revise proposed Question 23(c) to require advisers to report additional information only if the adviser reports daily market values to third parties, such as investors or counterparties, and that the additional reporting should only be required with respect to the portion of the portfolio, if applicable, that is reported to third parties.

Current Question 21. MFA supports the proposal to remove current Question 21 on Form PF regarding the percentage of a hedge fund's net asset value that was managed using high frequency trading strategies.

C. Section 1c Questions

Question 25.

The Commissions should better align strategy categories with industry conventions. We think the Commissions should revise the strategy categories to better track industry conventions. This will have the added benefit of making it easier for regulators to compare its data with information collected and analyzed by third parties, including academics, prime brokers, and industry analysts. We believe the revised strategy categories in proposed Question 25 will provide less useful information to regulators than the current question. Instead, it is more likely to cause confusion as the list does not track to industry conventions. Most notably, there is no strategy category for long/short equity, which is one of the largest, most common strategies for hedge funds.[12] We believe that excluding long/short equity as a strategy could lead to a long/short equity adviser reporting changes in strategies for different reporting periods because of changes to particular facts and circumstances that would not otherwise lead to a reporting change if long/short equity were included in the amended Form PF. The likelihood of regular changes in how an adviser reports its strategy (when the adviser is fundamentally managing long/short equity strategy across reporting periods) will make it more difficult for the Commissions to compare data across reporting periods.

Accordingly, MFA recommends that the Commissions revise the strategy categories to better track industry conventions.

The Commissions should reconsider categorizing strategies into small buckets. Further, the requirement to categorize net asset values in many small strategy buckets is unlikely to be useful for regulators and will require extensive calculations and subjective decisions, especially for the large percentage of funds that combine more than one investment strategy. For instance, it is unclear whether a fund that invests in a market neutral fashion in emerging markets should allocate that net asset value 100 percent to a market neutral strategy, 100 percent to an emerging markets strategy, or somehow split the allocation between those two strategies. Similarly, the new category for “cash and cash equivalents (not otherwise allocated to another strategy)” will provide misleading data. All funds maintain a balance of cash and cash equivalents to meet daily margin calls, to allocate to new investments, and to manage liquidity for redemptions. It is unclear how advisers should determine how to allocate the cash and cash equivalents in a fund between the new strategy category and other categories. Thus, we recommend that the Commissions reconsider the use of these granular, inconsistent strategy buckets. In the event the Commissions determine to proceed with such buckets, the Commissions will need to provide further guidance with respect to the above interpretive issues.

Questions 26, 42, 43. The Commissions should modify these proposed questions to permit advisers to report their exposures to CCPs on an aggregate basis, rather than on an individual CCP basis. Some advisers track their exposures to central clearing counterparties

[12] *See,* IOSCO Investment Funds Statistics Report (Jan. 2022), at 13 (finding that long/short equity strategies accounted for approximately 15% of the global net asset value of hedge funds in 2020, making it one of the largest strategy categories).

("**CCPs**") in the aggregate, but not to individual CCPs. The Commissions have not explained why reporting exposures to CCPs in the aggregate is not sufficient information for purposes of Form PF reporting. For advisers that do not already track this information, tracking exposures to specific CCPs would add cost and administrative burdens. Accordingly, we recommend that the Commissions permit advisers to report their exposures to CCPs on an aggregate basis.

Questions 27, 28, 32, 33, 35, 36, 40, 42, 43, 44. The Commissions should revise the threshold in these proposed questions from five percent of a fund's net asset value to ten percent of the fund's net asset value a threshold of ten percent of a fund's net asset value would be better aligned with the magnitude of losses that could have broader effects than just losses to fund investors. A loss of the entirety of a five percent position, while rare, is unlikely to pose significant risk to a fund or to the economic system as a whole. We believe that requiring additional reporting by advisers (information about specific counterparties or exposures) based on a threshold of five percent of net asset value will provide excessive data that is not meaningful for risk assessments and will lead to substantial reporting burdens for advisers. Thus, we recommend that the Commissions revise the threshold in these proposed questions from five percent of a fund's net asset value to ten percent of the fund's net asset value.

Questions 27, 42, 43. The Commissions should amend the additional reporting on counterparties to a fund's top three counterparties instead of its top five counterparties. We believe that reporting on a fund's top three counterparties will provide the Commissions with the relevant information needed for the Commissions and FSOC to assess a fund's most significant counterparty relationship, while reducing the burdens on reporting advisers. Accordingly, we recommend that the Commissions amend the additional reporting on counterparties to a fund's top three counterparties instead of its top five counterparties.

D. Section 2 Questions

Questions 32, 33, 35, 36, 39, 40. The Commissions should delete these questions from the proposed Form PF because the proposed requirements to report currency, turnover, country and industry exposure will provide limited value and are overly burdensome.

Several of the proposed questions would require funds to "look through" their investments to determine securities and other assets to which a fund has indirect exposure and then report detailed information about those underlying securities. Funds that invest in other private funds, other pooled investment vehicles, futures, or other derivatives often will not have access to information to be able to look through those investments to calculate indirect exposures. Advisers cannot reasonably be expected to report indirect exposures through external funds or other instruments, if the adviser does not have sufficient access to the underlying exposure information. Although some additional data on underlying exposures may be available for publicly traded instruments, for example an ETF or open-ended mutual fund, a single ETF or other fund can independently own thousands of securities or investments that, under the proposed revisions, would be required to be captured in an adviser's reporting system.

Accordingly, we recommend that the Commissions delete these questions from the proposed Form PF because the proposed requirements to report currency, turnover, country and industry exposure will provide limited value and are overly burdensome.

Question 32. For the reasons discussed below, the Commissions should delete proposed Question 32 because it is overly burdensome and lacks clarity. To the extent the Commissions do not delete proposed Question 32, as suggested above, we make several recommendations the Commissions should adopt.

The proposed question would prescribe an overly prescriptive calculation methodology which the Commissions should remove. Proposed Question 32 would require advisers to report gross exposure, and netted ("adjusted") exposures using a prescriptive methodology that would require a very intensive (and, in some cases, impossible) process to look-through to underlying reference assets. Our members have indicated that preparing netted exposure data for this proposed question according to the prescribed methodology would dramatically increase both the computation time (estimated to be 8 times current computation time) and review time (estimated to be 20 times current review time). Importantly, those multiples do not include having to report this information on a disaggregated basis, which would further increase those multiples significantly. Accordingly, we recommend that the Commissions remove the overly prescriptive calculation methodology.

If the Commissions determine to adopt proposed Question 32, they should permit reasonable allocations of indirect exposures. Additionally, it is unclear how advisers should respond to certain aspects of the proposed question. For example, proposed Question 32 includes "indices on *listed equity*" as a *sub-asset class*, but it is unclear if an adviser is required to look through "positions held indirectly through entities, *e.g., ETFs, . . .*" The instructions seem to indicate, however, that for such exposures, the adviser should look through those investments and "allocate the position among sub-asset classes and instrument types." In this example, it is unclear whether a fund's position in SPY should be reported as 100 percent index on listed equity / 100 percent ETF or as a set of exposures to S&P 500 components / 100 percent ETF, or some other approach. Thus, if the Commissions determines to adopt proposed Question 32, we recommend that the Commissions clarify that an adviser may allocate its exposures using any reasonable methodology.

If the Commissions determine to adopt proposed Question 32, they should allow Advisers to report indirect exposures through instruments on a "best represents" basis. In the instructions to proposed Question 32, the proposed Form provides that advisers can report indirect exposures held through entities that "best represents" the sub-asset class exposure of the directly held entity. We believe the Commissions expand this guidance to apply to reporting exposures by instrument type, such as futures and options, as well. Accordingly, if the Commissions determine to adopt proposed Question 32, we recommend that the Commissions permit advisers to report indirect exposures through instruments on a "best represents" basis.

If the Commissions determine to adopt proposed Question 32, they should amend the instructions regarding closed-out and OTC forward positions. The instructions to proposed Question 32, state that advisers must report information about closed-out and OTC forward

positions that have not yet expired or matured. This information might not be readily available, however. We do not believe it is appropriate for the Commission to require advisers to report information for purposes of Form PF that they do not already have in connection their business operations. Accordingly, if the Commissions determine to adopt proposed Question 32, we recommend that the Commissions amend the instructions to provide that advisers must report closed-out and OTC forward positions information only if the adviser has such information.

If the Commissions determine to adopt proposed Question 32, Advisers should not be required to report on a gross basis. Reporting on a gross basis significantly overstates a fund's exposure, for example, with respect to currency forwards used in foreign exchange hedging. Accordingly, if the Commissions determine to adopt proposed Question 32, we recommend that the Commissions require advisers to report fund exposures based on a net or market value basis instead of a gross basis.

Question 33. To the extent the Commissions do not delete proposed Question 33, as suggested above, the Commissions should implement several recommendations, as discussed below.

As an alternative, the Commissions should limit currency exposure reporting to foreign exchange. First, we recommend the Commissions limit the reporting of currency exposures to foreign exchange ("**forex**"), forex derivatives and similar instruments. A fund can have foreign currency exposure in various ways, including simply by trading in foreign markets or by trading American Depositary Receipts of foreign companies that are priced in dollars. This exposure is significantly different from "currency exposure arising from *foreign exchange derivatives"* and other similar instruments. Even in the case of domestic funds trading domestic securities priced in dollars, it can be difficult or impossible to determine exactly what an instrument's currency exposure is, or for the Commissions to obtain consistent reporting. For example, if an American company is listed on a U.S. stock exchange but generates significant revenue in Europe, one fund might reasonably classify that instrument as having Euro currency exposure whereas others might not, and the level of information needed to make that assessment likely will not be available to all reporting advisers and with respect to all investments. If currency exposure reporting were to apply to other derivatives, such as interest rate derivatives, it is unclear whether an adviser would report its currency exposure in terms of a 10-year bond equivalent (which would relate to the interest rate derivative exposure, but might not be an accurate reflection of a fund's currency exposure) or in terms of the market value of the currency exposure (which might present a more accurate reflection of a fund's currency exposure, but would not relate to the exposure of the interest rate derivative).

Given that funds can have foreign currency exposure in many ways, we are concerned with the reporting requirement in proposed Question 33 because advisers do not have the transparency or ability to obtain information regarding the currency exposure of all of their investments. Accordingly, to address these concerns, we recommend the Commissions limit the reporting of currency exposures to forex, forex derivatives and similar instruments.

The Commissions should not require disaggregated reporting because it would be misleading. Additionally, we note that different entities can hold directional currency exposure

that is offset or hedged by opposite direction exposure held by other entities in the same fund structure. This would be difficult for the SEC to see with disaggregated data, though it would be obvious with aggregated data. Accordingly, we recommend that the Commissions permit aggregated reporting as disaggregated reporting would be misleading.

The Commissions should not require advisers to report indirect exposures because it would be difficult or impossible. Finally, because proposed Question 33 would require reporting of indirect exposures, it will be difficult, if not impossible in some circumstances, for an adviser to determine currency exposures for each underlying exposure and then aggregate those exposures across positions and currencies (especially if individual positions have multiple currency exposures). Thus, we recommend that the Commissions amend Question 33 so that advisers would not be required to report indirect exposures.

Question 35. The Commissions should delete this proposed question because it is overly ambiguous, entirely subjective, and unclear to registrants as to how to categorize investments based on "concentration of risk and economic exposures." Further, we believe reporting indirect exposures would be difficult or impossible. At a minimum, the Commissions would need to provide additional definition or guidance on how advisers should categorize and quantify country exposures, particularly if an adviser does not already have internal methodologies for doing so.

It is unclear to advisers as to how they should categorize investments based on "concentration of risk and economic exposures." For a given stock, the economic risk of a company can be categorized as the company's place of incorporation, the place of its primary equity listing, the place where it derives most (or in many cases, a plurality) of its revenue, or the place where it holds the most assets. This uncertainty is compounded by the fact that some funds may not have internal methodologies, as contemplated by the instructions to the proposed question, for calculating this metric and the fact that some service providers simply look to where a company is listed for trading to determine geographic exposures. Accordingly, we recommend that the Commissions eliminate Question 35 and not require advisers to categorize investments based on "concentration of risk and economic exposures."

Reporting indirect exposures would be difficult or impossible. Because proposed Question 35 would require reporting of indirect exposures, it will be difficult, if not impossible in some circumstances, for an adviser to determine country exposures for each underlying exposure and then aggregate those exposures across positions. Accordingly, we recommend that the Commissions eliminate Question 35 and not require advisers to report indirect exposures.

Question 36. The Commissions should delete proposed Question 36 because data may be unavailable and costly to maintain while providing little value to the Commissions. First, funds may not have NAICS code data or track investments based on these codes. While the NAICS codes are publicly available, searching for a particular company's industry code is not publicly available. Requiring advisers to report this information would require them to pay the costs to conduct such a search. More problematically, because many advisers do not use NAICS code data in the day-to-day operations, they would have to build and maintain systems to collect, store, and input this information, which would impose significant costs on advisers, while providing little value to the Commissions. Those costs and burdens are compounded by the

requirement to provide industry data on an indirect basis. Thus, we recommend that the Commissions delete proposed Question 36 because data may be unavailable and costly to maintain while providing little value to the Commissions.

Question 37. The Commissions should issue a clarification of the meaning of proposed Question 37 so that we can provide appropriate substantive comments and feedback before a final rule is issued. As MFA members discussed this question, we were unable to determine what the Commissions were asking and thus how to appropriately respond because of the ambiguous nature of the question. It is not readily understandable what basing an adviser's estimates for liquidity "on a methodology that takes into account changes in portfolio composition, position size and market conditions over time" means. Further clarification from the Commissions is needed to determine whether there are substantive concerns with the proposed reporting requirement. Additionally, we do not think the total should be expressed as a percentage of a fund's net asset value, which we think is implicit in the parenthetical that the total may not add up to 100 percent. Accordingly, we recommend that the Commissions issue a clarification of the meaning of proposed Question 37 so that we can provide appropriate substantive comments and feedback before a final rule is issued.

Questions 39 and 40. The Commissions should clarify the treatment of reference assets for these proposed questions. For example, the definition of reference asset would indicate that a cash position and a swap position on Apple, Inc. ("**AAPL**") are two different reference assets since a reference asset is "A security or other investment asset…." However, proposed Questions 39 and 40 seem to suggest that these positions should be aggregated. Thus, we recommend that the Commissions clarify the treatment of reference assets for proposed Questions 39 and 40.

Question 40. The Commissions should delete proposed Question 40 because reporting this information will not provide meaningful information and, therefore, not be helpful to the Commissions or FSOC in assessing risk, while creating additional burdens on advisers. Further, measuring the threshold to respond on a gross basis, is likely to provide information that is not particularly useful to the Commissions or FSOC. For example, if a fund holds a largely hedged position that would be well under the percentage thresholds on a hedged basis, then this reporting will not provide information that is likely to be relevant for potential systemic risk or investor protection purposes. Accordingly, we recommend that the Commissions delete proposed Question 40 because reporting this information will not be helpful for the Commissions or FSOC in assessing risk and will create additional burdens on advisers.To the extent the Commissions determine to keep the proposed question, the Commissions should modify proposed Question 40 by measuring a fund's position size as a percentage of shares outstanding or share capital or, alternatively, request information on whether a fund has traded more than a specified percentage of average daily trading volume ("**ADV**"). Asking about position size relative to ADV does not make sense outside the context of liquidity questions, which are addressed in other parts of the Form. Accordingly, we recommend that proposed Question 40 be deleted or, alternatively, we recommend that the Commissions modify the proposed question by measuring a fund's position size as a percentage of shares outstanding or share capital or, alternatively, request information on whether a fund has traded more than a specified percentage of ADV.

Question 41. The Commissions should delete proposed Question 41 because it is overly vague, ambiguous and burdensome, and we therefore make several recommendations below to further refine and clarify this question.

The Commissions should remove the requirement to report CCP margin and additional broker margin separately. The instructions to proposed Question 41 provide that, for derivatives cleared by a CCP, advisers should report collateral posted by a fund to meet exchange requirements and separately report additional collateral collected by the prime broker. Reporting this information would be difficult for advisers that do not actively monitor exchange margin requirements distinctively from prime broker margin requirements. To the extent collateral is required to be posted with respect to a cleared derivative, the adviser relies on the broker's communication of the amount, which may not include information that would allow the adviser to determine which portion of its collateral is to meet exchange requirements and which portion of its collateral is to meet additional margin requirements of the prime broker. To the extent that the Commissions require advisers to disaggregate CCP required margin from broker-required margin, the Commissions should mandate that prime brokers provide this information in standard form and explicitly allow advisers to rely on their information provided by their prime broker. Accordingly, we recommend that the Commissions amend Question 41 to remove the requirement to report CCP margin and additional broker margin separately.

The Commissions should not consider cash received in secured lending and short sale transactions to be fund borrowings. Further, we recommend the Commissions provide clarification that cash received in connection with secured lending and short sales is not a borrowing by the fund for purposes of reporting the secured lending and short sale information in response to proposed Question 41. It is unclear from the proposed question how advisers should report information related to securities lending and short sale transactions in proposed Question 41. For example, if a fund were to lend fully paid for securities to a broker in exchange for a cash payment from the broker to the fund, it is unclear whether that transaction could be treated as a secured borrowing. It also is unclear whether the cash leg of the transaction instead could be treated as collateral received, collateral posted, a loan, or some other category. With respect to short sale transactions, it is unclear whether cash proceeds received by a fund could be treated as a borrowing. Thus, we recommend that the Commissions amend Question 41 so that cash received in secured lending and short sale transactions are not considered fund borrowings.

The Commissions should clarify reporting with respect to changes in margin. Next, the Commissions should clarify what information advisers should be reporting in response to these proposed Question 41 subparts (b)(vii); (c)(vi); (d)(vi); (e)(vi); (f)(viii), which would require an adviser to include, as of the end of each month of the reporting period, the expected increase in collateral required to be posted by the reporting fund, if required margin increases by one percent [of position size]. It is unclear exactly what information the Commissions are seeking. We note, for example, that only the language in (b)(vii) refers to position size; the other subparts refer only to required margin increasing by one percent. It also is unclear whether the Commissions are seeking information regarding changes in margin rate of one percent of the related position size or seeking information regarding a one percent increase in the amount of margin posted. If the former, we believe that information could be obtained by looking at the exposures reported in

proposed Question 32 and, if the latter, then that information seems like it could be calculated from the L/PC column of the table. Accordingly, we recommend that the Commissions amend Question 41 to clarify reporting with respect to changes in margin.

Questions 42, 43. The Commissions should explicitly state in the instructions that advisers may use their reasonable judgment in responding to these proposed questions. It is unclear how advisers should report cross-margining agreements in response to these proposed questions. Cross-margining agreements by their nature are complicated and it can be difficult for an adviser to attribute precisely the margin that has been called by a counterparty across all accounts covered by the agreement. For example, a broker may call for margin to be posted in a fund's cash account at the prime broker, rather than calling for margin across all of the different account arrangements at that broker. In this circumstance, there is a lack of precision when an adviser has to attribute that margin across different accounts. Accordingly, responding to these proposed questions will require an adviser to use reasonable judgments in determining those attributions. Thus, we recommend that the Commissions explicitly state in the instructions that advisers may use their reasonable judgement in responding to proposed Questions 42 and 43.

Question 43. The Commissions should clarify proposed Question 43, which instructs advisers to report information for counterparties that are CCPs, or "other third parties" holding collateral "in respect of cleared exposures" because it is not clear whether the Commissions intend this to mean "centrally cleared exposures." Accordingly, we recommend that the Commissions clarify this language in the instruction to proposed question 43.

Question 47. Proposed Question 47 should be deleted because the Commissions have not provided a basis for this proposed change or why advisers should be required to report information that is not material or relevant to a reporting fund's risk management. We are concerned with the proposal to require advisers to report all market factors to which their portfolio is directly exposed, rather than allowing advisers to omit a response to any market factor that they do not regularly consider in formal testing in connection with the reporting fund's risk management. The Commissions expressly rejected requiring funds to respond to all market factors in the 2011 adopting release.[13] The agencies did so acknowledging commenter concerns regarding the potential burdens of requiring funds to engage in stress tests that are irrelevant or immaterial to specific funds. Thus, we recommend that the Commissions delete proposed Question 47 because the Commissions have not provided a basis for this proposed change or why advisers would be required to report information that is not material or relevant to a reporting fund's risk management.

Question 48. The Commissions should delete proposed Question 48 because it seems to reflect a misunderstanding by the Commissions of how many private fund advisers make investment decisions and measure correlation risks for their private funds.

The Commissions should remove and replace the proposed correlation calculations with a modified version of the market facts analysis in the current Form PF. We do not believe

[13] https://www.sec.gov/rules/final/2011/ia-3308.pdf), at 89.

it is reasonable to ask managers to complete the extremely complex calculations required by this proposed question. The costs of doing so will be great, especially as most managers have diverse portfolios with hundreds and many have thousands of positions daily, which can lead to millions of correlations having to be calculated. Proposed Question 48 also creates uncertainty regarding how advisers would calculate rates of return for positions that are not in a portfolio for the three-month period contemplated by the proposed question (presumably an adviser could calculate the rate of return in a manner similar to how it calculates value at risk, but this is not clear). In addition to these burdens, the incremental benefits to regulators seem slim, if any. Proposed Question 48 would require advisers to calculate (A) pairwise correlations between all positions in the portfolio, and (B) portfolio volatility under defined correlation stress scenarios. Many advisers have numerous short and long positions each day (in some instances measuring in the thousands), and they are rarely if ever enter into such positions as "matched pairs." Based on discussions with our members, we are unaware of any private fund advisers that have risk systems that model correlation stress tests in the manner requested in the proposed question. As such, the proposed question seems to reflect a misunderstanding of how private fund advisers make investment decisions and measure correlation risks for their private funds. Because many advisers do not compute correlation or correlation stress in the manner prescribed by the proposed Form PF, the proposed question would create significant burdens for advisers and increase the likelihood that the Commissions receive inaccurate or irrelevant data for risk assessment purposes.

Accordingly, we recommend the Commissions delete this proposed question and keep the existing market factor stress scenarios, but with revised thresholds that eliminate the lower thresholds in the current Form PF for each factor. We believe a modified version of the existing reporting on market factors will be more relevant to assessing potential systemic risk than requiring advisers to report thousands, or millions, of correlation calculations. In addition, modified reporting of the effects of changes in market factors would not create the likelihood of inaccurate or irrelevant data or impose the significant burdens on advisers that proposed Question 48 would.

The Commissions should clarify that changes to correlation should be measured on an absolute basis. To the extent the Commissions do not delete or modify proposed Question 48 as suggested, we note that, for subparts (d) and (e), it is unclear whether the 20 percent reduced/increased correlation should be determined on an absolute basis (e.g., 0.7 → 0.9) or relative to the actual correlation (e.g., 0.7 → 0.84). Accordingly, to the extent the Commissions do not delete or modify proposed Question 48 as suggested, we recommend that the Commissions clarify that changes to correlation should be measured on an absolute basis.

<u>Question 49</u>. The instructions to this proposed question should explicitly state that an adviser is required to provide performance results only with respect to an investment strategy if the adviser reports performance results for that strategy to third parties. An adviser might perform internal risk calculations or other calculations that do not strictly qualify as "calculating and reporting performance results" for one or more of its strategies. Accordingly, such internal reporting for the purposes of risk management should be specifically excluded from this proposed question.

Further, the Commissions should clarify in the instructions to proposed Question 49 that an adviser providing attribution reports or other reports that are not performance returns to investors or other third parties are not required to respond to proposed Question 49. Many advisers provide attribution reports or other reports that are not performance results to investors or other third parties. Attribution reports are not the equivalent of performance reports and should not be treated as performance results. For example, attribution reports generally would not provide an indication of the level of capital committed to a particular strategy. Comparatively, performance results represent the gain or loss of a portfolio (or portion of a portfolio) relative to the capital that was used to achieve the gain or loss.

Accordingly, we recommend that the Commissions modify the instructions of proposed Question 49 to explicitly state that an adviser is required to provide performance results only with respect to an investment strategy if the adviser reports performance results for that strategy to third parties and that the Commissions clarify in the instructions that an adviser providing attribution reports or other reports that are not performance returns to investors or other third parties are not required to respond to proposed Question 49.

E. Section 4 Questions

Question 81. For the same rationale as discussed for proposed Question 35 above, advisers should not be required to report geographic exposures for private equity funds, particularly if they do not already have that information for the adviser's ordinary use. Thus, we recommend that the Commissions remove the requirement to report geographic exposures for private equity funds

IV. CONCLUSION

We strongly believe the Commissions should reconsider the Proposed Rules and implement our recommendations in this letter. While MFA has long supported the Commissions' reconsideration of Form PF to better tailor the Form for its primary intended purpose, to provide the Commissions' and FSOC with data to assess potential systemic risk, we believe the Proposed Rules would not achieve this objective. Instead, the Proposed Rules fundamentally rewrite Form PF in ways that will lead to the Commissions' collecting less meaningful information for the intended purpose of assessing potential systemic risk, while significantly increasing the burdens on reporting advisers. Accordingly, we strongly recommend the Commissions reconsider the Proposed Rules and implement our recommendations in this letter.

MFA appreciates the opportunity to work with the Commissions on the Proposed Rules. We also welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact David Lourie, Vice President & Senior Counsel, or the undersigned, at (202) 730-2600, with any questions that you, your respective staffs, or the Commissions' staff might have regarding this letter.

Very truly yours,

/s/ Jennifer W. Han
Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: The Hon. Gary Gensler, SEC Chairman
The Hon. Hester M. Peirce, SEC Commissioner
The Hon. Allison Herren Lee, SEC Commissioner
The Hon. Caroline A. Crenshaw, SEC Commissioner
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The Hon. Summer K. Mersinger, CFTC Commissioner
The Hon. Caroline D. Pham, CFTC Commissioner