May 11, 2025

Via Electronic Mail: https://www.regulations.gov/

Russell T. Vought
Director
U.S. Office of Management and Budget
725 17th Street NW,
Washington, D.C. 20503

Re: Recommendations to Remove Regulations that Impede U.S. Economic Growth and Financial Well-Being of all Americans

Dear Director Vought:

MFA[1] appreciates the opportunity to respond to the U.S. Office of Management and Budget's ("**OMB**") request for information regarding regulations that are unnecessary, unlawful, unduly burdensome, or unsound and that stifle American businesses and American ingenuity ("**Deregulation RFI**").[2] MFA stands ready to work with the relevant administrative agencies that adopted the rules addressed in this letter to advance policies that support U.S. economic growth and the financial well-being of all Americans by ensuring that the U.S. capital markets remain the most robust in the world. The Administration has an opportunity to turn the page on the outgoing regulatory agenda and revisit the misguided policies that have harmed markets, investors, and the economy.[3]

MFA emphasizes the importance of right-sized regulations adhering to statutory authority that effectively balance oversight and innovation to support a dynamic and resilient financial ecosystem.

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1 Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, 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 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 OMB, Request for Information: Deregulation, 90 Fed. Reg. 15481 (Apr. 11, 2025), available at: https://www.govinfo.gov/content/pkg/FR-2025-04-11/pdf/2025-06316.pdf.

3 We were heartened to see the recent Presidential Executive Orders: Regulatory Freeze Pending Review (Jan. 20, 2025) ("**Regulatory Freeze EO**"), Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Feb. 19, 2025) ("**Ensuring Lawful Governance EO**"), and Reducing Anti-Competitive Regulatory Barriers (Apr. 9, 2025) ("**Anti-Competitive Regulatory Barriers EO**"). These Presidential Executive Orders require agencies to review and reevaluate rules that are unlawful or impose significant, unjustified costs and burdens on investors and other market participants with little to no corresponding benefits.

Fostering continued growth in both public and private markets is essential to maintaining investor confidence and ensuring the stability of the broader economy. It is imperative to provide market participants with clear and consistent rules, enabling them to navigate the regulatory landscape with certainty and contribute to economic growth. This may involve rescinding certain rules or adopting new rules that provide more flexibility for market participants to comply with statutory provisions. Because of this, it is important that the Administration grant agencies flexibility in revamping the U.S. regulatory landscape rather than impose strictly quantitative measures on the number of rulemakings in which agencies may engage. There are situations where rulemaking can decrease regulatory burdens and, thus, improve—not hinder—capital formation for the benefit of all investors.

Furthermore, MFA recognizes that appropriate government collection of data is an important mechanism to ensure markets are understood and well-regulated and regulators have the information they need to monitor for systemic risk. However, we are greatly concerned that several recently adopted rules require disclosure of excessive information by market participants. The immense amount of data collected by the government is out of control and largely not serving a legitimate policy objective. In many cases, recently adopted regulations are unlawful because they exceed agencies' statutory authority or were not adopted pursuant to a robust cost-benefit analysis. Many rules also require collection of significant proprietary information. The recent breaches of senior Treasury Department officials' computers[4] and the OCC's email system[5] and the hack of the Securities and Exchange Commission's ("**SEC**") EDGAR system[6] demonstrate the government's data protection shortcomings and the real dangers to investors and the economy when the government collects sensitive information.[7]

While there are other important measures that regulators should take to improve the regulatory landscape, including improving the Treasury markets ecosystem in advance of the SEC's central clearing mandate going into effect,[8] MFA is pleased to submit to OMB several actionable recommendations to improve regulation in the United States.

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4 *See* https://www.reuters.com/technology/cybersecurity/chinese-hackers-accessed-yellens-computer-us-treasury-breach-bloomberg-news-2025-01-17/.

5 *See* https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-32a.pdf.

6 *See* https://www.sec.gov/files/litigation/complaints/2019/comp-pr2019-1.pdf.

7 In addition, the U.S. Treasury announced in December that it had suffered multiple breaches in 2024, highlighting additional concerns about regulators' ability to share and protect information. Congress held these concerns prior to the breach, with the House and Senate both adopting report language last summer directing the SEC and Commodity Futures Trading Commission ("**CFTC**") to report to Congress on their data collection and protection procedures. *See* House Report 118-556, at 79: https://www.congress.gov/118/crpt/hrpt556/CRPT-118hrpt556.pdf; Senate Report 118-206, at 63: https://www.congress.gov/congressional-report/118th-congress/senate-report/206/1.

8 For example, one straightforward improvement would be for the SEC to address the unjustified narrowness of the inter-affiliate exception from the Treasury clearing mandate, which would reduce costs and streamline internal risk management within a corporate group. *See* MFA Exemption Request Letter (Dec. 18, 2024),

Executive Summary

Alternative asset managers are an important investor constituent and can be drivers of economic growth. Years and layers of inefficient and mismatched regulatory burdens have weighed down the potential benefits alternative asset managers provide to their investors, the markets, and the U.S. economy. We believe the following actions will promote capital formation, improve regulatory efficiency, and reduce waste (actions in red indicate rules or guidance that should be rescinded):

- Rescind and Revert FSOC Designation Guidance to the 2019 Standards
- Rescind the 2023 and 2024 SEC Form PF Amendments and Revamp Form PF to Make it Consistent with its Intended Purpose—Monitoring Systemic Risk
- Rescind the 2023 SEC Short Position and Securities Lending Reporting Rules
- Enhance Capital Raising by Ensuring Enforcement of Rule 105 of Regulation M as Originally Intended
- Eliminate Reporting by Buy-Side Firms in the OFR Repo Reporting Rule
- Enhance Investment Opportunities for Investors: Streamline Regulatory Approval Processes and Diversify Retirement Investment Options
- Boost U.S. Competitiveness: Eliminate Duplicative Regulation; Remove Unnecessary Trading Barriers; Streamline and Simplify Cross-Border Regulation
- Extend the AML Compliance Date; Provide Additional Guidance as Needed
- Stop the Unlawful Interpretation of the Dealer Definition; Adopt an Interpretation Consistent with the Statute and Avoid Over-Regulation
- Rescind 2023 SEC Schedule 13G Beneficial Ownership Reporting Amendments; Modify to Eliminate Duplicative Filing by Allowing Filers to Rely on Form 13F

MFA Recommendations

I. Rescind and Revert FSOC Designation Guidance to the 2019 Standards

Alternative asset managers do not pose a systemic risk and are already subject to the SEC's robust regulatory regime. MFA believes that the Financial Stability Oversight Council's ("**FSOC**")

available at: https://www.mfaalts.org/letter/mfa-requests-sec-for-targeted-exemptive-relief-to-the-inter-affiliate-exception-in-the-treasury-clearing-rule/.

adoption of the flawed 2023 Guidance ("**2023 Guidance**")[9] did nothing to enhance financial stability and instead created more uncertainty for market participants. While FSOC is an important coordinating and oversight body, it is critical that FSOC look to the primary regulatory authorities—the SEC as it relates to alternative asset managers—to determine whether additional regulation is necessary. For alternative asset managers, a regulation by FSOC is unwarranted. Systemically Important Financial Institution ("**SIFI**") designation for alternative asset managers is inappropriate, as it would impose a bank-like regulatory framework on entities that do not present run risk, an asset-liability mismatch, or the potential for a taxpayer bailout. Such designations would do nothing to curtail risk; in fact, entity designation merely moves risk around like "whack-a-mole" and unduly harms individual organizations and their investors such as pensions, foundations, and endowments.[10] The 2023 Guidance, despite being advertised as improving transparency, in actuality imposed a black box designation process that exacerbated uncertainty for market participants, harming their ability to deliver for their investors.

MFA encourages regulators to revert to the FSOC guidance from 2019 ("**2019 Guidance**"),[11] which imposed far greater transparency requirements on FSOC and protections for the firm under consideration for SIFI designation. The 2019 Guidance prioritized an activities-based approach and imposed on FSOC the analytical rigor and transparency in the processes necessary for determining whether to subject a nonbank financial company to supervision by the Federal Reserve Board of Governors. The 2019 Guidance also required FSOC to consider the costs and benefits of such a designation, consistent with applicable case law.[12]

In addition, MFA encourages the Administration to work with Congress to explore more lasting changes to the role and expectations of FSOC to protect against penalizing less well understood market segments or participants in the name of "systemic risk." The alternative asset management industry is ill-served by having different administrations vacillate between the 2019 Guidance and the flawed 2023 Guidance depending on the political affiliation of the administration at that time. Investment managers require greater consistency and certainty to help guide their long-range activities, and MFA encourages the Administration to work with Congress to seek a more permanent reversion to the 2019 Guidance.

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9 FSOC, Analytic Framework for Financial Stability Risk Identification, Assessment, and Response, 88 Fed. Reg. 78026 (Nov. 14, 2023), available at: https://home.treasury.gov/system/files/261/Analytic-Framework-for-Financial%20Stability-Risk-Identification-Assessment-and-Response.pdf).

10 *See* MFA comment letter: https://www.mfaalts.org/press-releases/mfa-letter-to-fsoc-recommends-changes-to-proposed-guidance/.

11 FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 84 Fed. Reg. 71740 (Dec. 30, 2019), available at: https://www.govinfo.gov/content/pkg/FR-2019-12-30/pdf/2019-27108.pdf.

12 *See MetLife v. FSOC*, 177 F.Supp. 219 (DDC 2016).

II. Rescind the 2023 and 2024 SEC Form PF Amendments and Revamp Form PF to Make it Consistent with its Intended Purpose—Monitoring Systemic Risk

In 2023 and 2024, Form PF was amended twice to require the disclosure of considerable additional data from private fund managers. The first set of amendments, adopted solely by the SEC, imposed burdensome event reporting requirements on Large Hedge Fund Advisers and Private Equity Fund Advisers, even though none of the event reporting triggers are evidence of systemic risk.[13] The second set of amendments, adopted jointly by the SEC and CFTC, require the reporting of a huge amount of information from private fund advisers, without regard to the burdens or practicality of such reporting or whether such collection of information is consistent with the statute or even useful to regulators.[14]

We believe these recent amendments to Form PF fundamentally rewrite Form PF in ways beyond its original statutory purpose of providing the SEC, CFTC, and FSOC with data to assess potential systemic risk. As such, these two rulemakings were unlawful and should be rescinded. This would be consistent with the Regulatory Freeze EO and the Ensuring Lawful Governance EO, which require agencies to identify "regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition"[15] and "regulations that impose significant costs upon private parties that are not outweighed by public benefits."[16] We further believe the original Form PF needs to be amended to serve, and be consistent with, its intended purpose—monitoring systemic risk.

Moreover, MFA is increasingly concerned about the cybersecurity risk at government agencies as data reporting requirements continue to escalate. MFA encourages the Administration to ensure that measures are in place to adequately protect the market and participant data that the agencies collect and to continually evaluate and strengthen those protections as new threats emerge. Congress shared these concerns long before some of the most recent breaches. The House and Senate both adopted report language last summer directing the SEC and CFTC to report to Congress on their data collection and protection procedures.[17] We call on Congress to continue its work on data protection legislation applicable to financial regulation agencies, including the data that private funds provide to regulators and FSOC.

Accordingly, we believe the SEC and CFTC should revisit New Form PF with the goal of avoiding data collection overreach and streamlining the requirements to make the form more consistent with its

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13 Form PF: Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, 88 Fed. Reg. 38146 (June 12, 2023), available at: https://www.govinfo.gov/content/pkg/FR-2023-06-12/pdf/2023-09775.pdf.

14 Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, 89 Fed. Reg. 17984 (Mar. 12, 2024), available at: https://www.govinfo.gov/content/pkg/FR-2024-03-12/pdf/2024-03473.pdf.

15 Ensuring Lawful Governance EO at ¶ 2(iii).

16 *Id.* at ¶ 2(v).

17 *See* House Report 118-556, at 79: https://www.congress.gov/118/crpt/hrpt556/CRPT-118hrpt556.pdf; Senate Report 118-206, at 63: https://www.congress.gov/congressional-report/118th-congress/senate-report/206/1.

intended statutory purpose. MFA stands ready to partner with the Administration to ensure FSOC has the private fund information necessary to surveil financial stability risks in the markets.

III. Rescind the 2023 SEC Short Position and Securities Lending Reporting Rules

MFA has challenged the SEC for acting arbitrarily and capriciously in adopting inconsistent rules with respect to securities lending and short position reporting.[18] Notwithstanding any future court opinion, we encourage the SEC to review the securities lending rule and short position reporting rule in light of the Ensuring Lawful Governance EO, which requires agencies to identify "regulations that impose significant costs upon private parties that are not outweighed by public benefits"[19] and regulations that "impose undue burdens on small business and impede private enterprise and entrepreneurship."[20]

MFA has longstanding concerns with the wholesale development of a new, duplicative short position reporting regime. The SEC should consider revising the short position reporting rule to leverage the short interest reporting regime that the Financial Industry Regulatory Authority ("**FINRA**") has operated for years. Furthermore, any information the SEC or FINRA collects must protect the critical private investment and trading strategies, which as the SEC has explicitly recognized, are critical to private funds' willingness to engage in fundamental research and contribute to stock price efficiency.

As the SEC considers a new short position rule that is consistent with the Presidential Executive Orders, we urge the SEC to eliminate the parts of the rule that exceed the SEC's statutory authority. In particular, the requirement in Table 2 of existing Rule 13f-2 for investment managers to report daily activity related to their gross short positions exceeds the SEC's statutory authority in Section 13(f)(2) of the Securities Exchange Act of 1934.[21] For this reason, Table 2 should be eliminated. Furthermore, the SEC should ensure that the Securities Lending Rule aligns with the delayed, aggregated reporting requirements of the Short Position Reporting Rule.

IV. Enhance Capital Raising by Ensuring Enforcement of Rule 105 of Regulation M as Originally Intended

Facilitating capital formation is a core part of the SEC's mission. Regulation M is designed to prevent market manipulation by participants in a securities offering by regulating certain activities. We support the general purpose of Rule 105 of Regulation M to prohibit short selling of equity securities before an underwritten public offering that can artificially depress market prices which can lead to lower than

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18 *See NAPFM, et al. v. SEC*, No. 23-60471 (5th Circuit).

19 Ensuring Lawful Governance EO at ¶ 2(v).

20 *Id.* at ¶ 2(vii).

21 When the SEC adopted Rule 13f-2, both Commissioner Hester Peirce and Commissioner Mark Uyeda objected to the inclusion of Table 2 in the rule, arguing that it "goes well beyond anything required by the statute" (Uyeda) and that "[t]he statute does not require the Table 2 information" (Peirce). *See* https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-short-sale-101323 and https://www.sec.gov/newsroom/speeches-statements/peirce-statement-short-sale-101323.

anticipated offering prices, thus causing an issuer's offering proceeds to be reduced. However, the way the SEC Enforcement staff has aggressively pursued potential violations of Rule 105 has unnecessarily impeded capital formation.

It has become apparent that the SEC Enforcement staff has taken a "blunt instrument" approach to identifying potential violations of Rule 105, which results in burdensome and costly subpoena requests, even when there has been no intentional manipulation. Unfortunately, the SEC Enforcement staff has applied a "strict liability" approach to Rule 105, even where the trading activity in question does not raise the anti-manipulation concerns that Rule 105 was designed to address.

Many institutional investment managers may be reluctant to commit capital to participate in certain public securities offerings due to fears of being subject to aggressive enforcement investigations and actions by the SEC. This most notably arises in connection with SEC Enforcement staff scrutinizing investment managers' reliance on the rule's "separate account" exception.[22] Reliance on this exception is particularly confusing for investment managers who execute multiple strategies out of a single fund.

As a result, many investment managers have become reluctant to commit capital to be investors in Rule 105 covered offerings. This is to the detriment of issuers and selling shareholders who desire to raise capital. We would thus like to work with the SEC to obtain common sense relief or guidance that will restore Rule 105 back to its original purposes and support capital raising.

V. Eliminate Reporting by Buy-Side Firms in the OFR Repo Reporting Rule

On May 6, 2024, the U.S. Department of the Treasury's Office of Financial Research ("**OFR**") adopted a rule to improve transparency within the repo market by establishing a data collection for non-centrally cleared bilateral transactions ("**Repo Reporting Rule**").[23] Sell-side firms like broker-dealers and banks began reporting their repo transactions in December 2024 (including repo transactions with buy-side firms that are their customers). Buy-side firms, such as private funds, will begin reporting in June 2025, unless OFR takes steps to further extend the compliance date of the rule for buy-side firms or eliminate the obligation entirely because it is unjustified.

While we support improving data collection by regulators, where appropriate, to help them identify

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22 *See* 17 CFR § 242.105(b)(2) (permitting "a purchase of the offered security in an account of a person where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts").

23 The Repo Reporting Rule establishes two categories of "covered reporters": (1) A securities broker-dealer or government securities broker-dealer ("**Category 1 Reporters**") and (2) any other financial company with over $1 billion in assets or assets under management whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repo transactions, including commitments of all funds for which the company serves as an investment adviser, with counterparties that are not securities broker-dealers or government securities broker-dealers overall business days during the prior calendar quarter is at least $10 billion ("**Category 2 Reporters**").

and monitor risks to financial stability, OFR already is receiving a significant amount of information regarding the repo activity of buy-side firms from broker-dealers and banks that are currently reporting repo transactions under the rule. Once the SEC's Treasury clearing mandate goes into effect, OFR will receive even more information regarding the repo activity of buy-side firms as they centrally clear more and more of their Treasury repo transactions. Applying the Repo Reporting Rule to buy-side firms is costly and unprecedented. In the United States, trade reporting obligations typically lie with sell-side firms.[24] We do not believe subjecting buy-side firms, such as private funds, who predominantly enter into transactions with financial intermediaries like broker-dealers and banks or their affiliates, to a costly new reporting regime is warranted. Furthermore, in the United States, regulators have long recognized that dual-sided reporting (*i.e.*, reporting of the same transaction by both parties to the transaction) is not efficient. At a minimum, OFR should revise the Repo Reporting Rule to eliminate dual reporting because it is unnecessary and overly costly.

The Repo Reporting Rule, unless revised, will be enormously costly to asset managers, lowering returns for investors and harming the U.S. economy, and will lead to inaccurate data sets. Accordingly, we urge the Administration to ensure that the Repo Reporting Rule does not impose a direct reporting obligation on buy-side firms but relies on sell-side firms like broker-dealers and banks, and their affiliates, to report repo transactions.

VI. Enhance Investment Opportunities for Investors: Streamline Regulatory Approval Processes and Diversify Retirement Investment Options

Private markets have become a larger and more important part of our capital markets over the last fifteen years. Retail investors have limited ability to access these markets. When fund managers have tried to provide retail investors with greater access to those markets through appropriate investments within registered investment products, they have been stymied by SEC staff impediments to their development, approval, and distribution.

MFA believes that the SEC should streamline the process for the development of investment products that invest in private markets under the Investment Company Act of 1940 framework. The SEC staff process currently includes time-consuming and unnecessarily complex exemptive applications and restrictive informal SEC staff positions on business development companies ("**BDCs**") and other closed-end investment companies seeking to provide individual investors with an appropriate level of exposure to private market investments and alternative asset classes in a regulated investment pool structure, with the safeguards and oversight that come with that structure. We are encouraged by the SEC staff's recent

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[24] For example, transaction reporting for equity securities is governed by rules of FINRA and the SEC. For over-the-counter ("**OTC**") equity securities, FINRA rules provide that in transactions between a broker-dealer member and a non-member or customer, the broker-dealer member shall report the trade. Similarly, only FINRA-regulated broker-dealer firms report fixed income security transactions to the Trade Reporting and Compliance Engine ("**TRACE**"). Exchange-traded equity securities are reported by national securities exchanges according to FINRA and SEC Rules.

approval of a more principles-based exemptive application for co-investment relief filed by FS Credit Opportunities Corp.[25]

Moreover, MFA believes that employer-sponsored or defined-contribution retirement plans should have appropriate access to investment options that contain alternative asset classes, as many investors in these plans have a long-term investing horizon. Assets in 401(k) plans now far outnumber defined-benefit pension plans as employees' only retirement savings option at work. It is critical that those plans contain enough long-term assets to enhance retirement outcomes. Plan sponsors serve as Employee Retirement Income Security Act ("**ERISA**") fiduciaries for 401(k) plans. Congress should work with the Department of Labor ("**DOL**") to identify ways to provide the clarity and safeguards needed for plan sponsors to offer appropriate diversification to allow retirement savers to best meet their long-term objectives.

MFA believes that expanded access should be explored while also recognizing the need for and the merit of multiple regimes, with appropriately calibrated rules and structures for sophisticated institutional and high-net worth investors and others for broader investor participation. MFA encourages the SEC and the DOL to assess current access to alternative asset classes and evaluate—along with Congress—whether rule-based, statutory, or other changes should be made to further democratize investment opportunities, while also ensuring investors are appropriately protected.

VII. Boost U.S. Competitiveness: Eliminate Duplicative Regulation; Remove Unnecessary Trading Barriers; Streamline and Simplify Cross-Border Regulation

U.S. asset managers can be subject to multiple sets of U.S. federal regulation that are often duplicative and unnecessary. MFA recommends that this dual regulatory structure be streamlined at a minimum. An investment manager registered with the SEC that, for example, uses derivatives to manage interest rate or foreign exchange risk, also is subject to CFTC regulation (and the National Futures Association). The additional compliance, regulatory, and reporting risks and burdens imposed by this dual federal regulatory system places U.S. managers at a competitive disadvantage with their non-U.S. counterparts that are only subject to a single regulatory regime. We encourage the SEC and CFTC to seek to better harmonize regulatory oversight of investment managers with a strengthened emphasis on substituted compliance to avoid this competitive disparity between U.S. managers and non-U.S. managers.

In addition, U.S. asset managers are often prohibited from trading on foreign futures and derivatives exchanges because of CFTC regulations meant to protect U.S. investors. We believe U.S. *Qualified Institutional Buyers* should be allowed to trade through foreign futures commission merchants or swap dealers on foreign exchanges without these entities needing to be registered with the CFTC. Such

[25] In the Matter of FS Credit Opportunities Corp., *et al.*, Investment Company Act Release No. 35561 (Apr. 29, 2025) (order), available at: https://www.sec.gov/Archives/edgar/data/1568194/999999999725002145/filename1.pdf; *see* Application for an Order Pursuant to Sections 17(d) and 57(i) of the Investment Company Act of 1940 Permitting Certain Joint Transactions Otherwise Prohibited by Sections 17(d) and 57(a)(4) of Rule 17d-1 under the Investment Company Act of 1940 (amended Apr. 3, 2025), available at: https://www.sec.gov/Archives/edgar/data/1568194/000119312525071964/d920107d40appa.htm.

paternalistic regulations, while well-intentioned, harm the ability of U.S. asset managers to trade and hedge investments for their investors.

Finally, U.S. global firms are harmed competitively by regulatory complexity. U.S. asset managers that are global have non-U.S. entities for a variety of strategic reasons. U.S. cross-border regulations, however, are so complex that it can be challenging to understand when non-U.S. entities of U.S. asset managers are subject to U.S. rules. The CFTC's rules relating to cross-border applications of swaps regulation, as an example, differ depending on whether the transaction is subject to a 2020 CFTC cross-border [26] or 2013 CFTC cross-border guidance.[27] For a firm that is seeking simply to comply with the rules, there is no reason for *the same regulatory agency* to have dueling standards to regulate the swaps markets. Managers often use swaps to facilitate risk management and hedging transactions, and MFA believes eliminating these dueling and conflicting standards would simplify firms' risk managing trading activities.

VIII. Extend the AML Compliance Date; Provide Additional Guidance as Needed

We support regulations reasonably designed to prevent anti-money laundering ("**AML**"), but the regulations proposed under the last Administration were vague, subjective, and overly burdensome. MFA further supports Financial Crimes Enforcement Network's ("**FinCEN**") goals to ensure that asset managers develop and implement appropriate AML policies and procedures, but the rules FinCEN adopted in 2024 simply go too far and attempt to impose bank-like AML requirements on alternative asset managers that do not accept cash or otherwise take custody of client assets; investor funds are typically wired from the investor's bank to the fund custodian.

We recommend that **FinCEN** extend the compliance date for the AML rules adopted last year. The customer identification program ("**CIP**") rules, proposed jointly by the SEC and FinCEN last year, remain outstanding. If the CIP rules are adopted, investment managers must consider the CIP and AML rules in tandem to develop a holistic, risk-based compliance program that meets the requirements of both rules.[28] Reproposing the AML rules for additional notice and comment would be appropriate so commenters could consider the two rules in tandem. MFA also encourages FinCEN to issue interpretive staff guidance through frequently asked questions and otherwise provide clarification on various aspects of the rule.

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[26] CFTC, Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 Fed. Reg. 56924 (Sep. 14, 2020), available at: https://www.govinfo.gov/content/pkg/FR-2020-09- 14/pdf/2020-16489.pdf.

[27] CFTC, Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013), available at: www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-17958a.pdf.

[28] *See* MFA comment letter: https://www.mfaalts.org/letter/mfa-submits-comments-to-sec-fincen-on-the-anti-money-laundering-proposal/.

IX. Stop the Unlawful Interpretation of the Dealer Definition; Adopt an Interpretation Consistent with the Statute and Avoid Over-Regulation

The SEC adopted a rule in 2024 that further defined the terms "dealer" and "government securities dealer" in a manner that exceeded its statutory authority and was arbitrary and capricious, potentially subjecting many traders and investors to unnecessary and inappropriate regulation as dealers. The U.S. District Court for the Northern District of Texas agreed and vacated the rule.[29] The court's decision affirmed that to be a "dealer" under the Securities Exchange Act of 1934 it is necessary for a person to provide "dealer services" to "customers.[30]

We appreciate that the SEC has withdrawn a number of enforcement actions brought over the last four years alleging unregistered dealer activity in which the SEC had advocated for an unlawful interpretation of who a securities dealer is, with no footing in the statutory text or history. However, we are concerned that in the future the SEC may revert to an overly expansive view of the term dealer. To prevent the unlawful over-regulation of market participants in the future, we urge the SEC to adopt an interpretation of the dealer definition consistent with the statute and clarify that to be a dealer a person must provide dealer services to customers, not merely engage in trading activity that has the effect of providing liquidity. It is critical that the SEC take steps to prevent future Commissions from engaging in unlawful over-regulation of market participants, which could have significant deleterious effects on capital raising and the U.S. economy.

X. Rescind 2023 SEC Schedule 13G Beneficial Ownership Reporting Amendments; Modify to Eliminate Duplicative Filing by Allowing Filers to Rely on Form 13F

Requiring investment managers to take on the burden of filing Schedule 13Gs on a quarterly basis has immensely increased compliance burdens on Schedule 13G filers. There is a better, more efficient way to require reporting of beneficial ownership.

Consistent with the Presidential Executive Orders, we urge the SEC to consider rescinding this requirement. This increased burden on investment managers comes with little benefit to the market. Investment managers' trading activity is already subject to significant scrutiny by the SEC and the public through the filing of Form 13F. Form 13F includes information about the issuers and securities in which investment managers are invested, the number of shares owned, and their fair market value.

Moreover, almost all investment managers currently filing Schedule 13Gs have expressly disclaimed any intent to change or influence the control of the issuer, rendering information about their holdings less urgent and crucial from the market's perspective than those of a Section 13D

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29 *See* Nat'l Ass'n of Priv. Fund Managers v. SEC, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024); Crypto Freedom All. of Tex. v. SEC, No. 4:24-cv-00361 (N.D. Tex. Nov. 21, 2024).

30 *See id.*

filer.[31] Given these facts, the information included in Schedule 13G is not sufficiently important to the market to warrant requiring *quarterly*, security-by-security Schedule 13G filings. The previous system of *annual* filing provided specific information regarding beneficial ownership close in time to the issuer's preparation of its proxy statement or annual report on Form 10-K or 20-F, which would then summarize the beneficial ownership of all more-than-5% owners. The previous system still required interim disclosure for material changes, such as when persons acquired more than 10% beneficial ownership or had subsequent 5% acquisitions or dispositions. We continue to believe that the previous annual Schedule 13G reporting, especially when combined with Form 13F obligations, provided the market with sufficient information without overburdening managers.

If the SEC is committed to requiring more frequent reporting by investment managers, it should consider modifying how it collects such information. Revisions to Form 13F, and the ability to rely on Form 13F to fulfill an investment manager's Schedule 13G filing obligation, would achieve the goals of Schedule 13G at a significantly less onerous cost to investors.[32]

This approach would permit substituted compliance for investment managers, so long as they do not beneficially own any securities for that issuer beyond the beneficial ownership reported by the investment manager. This approach would provide the market and the investing public with substantially similar information as issuer-by-issuer Schedule 13G filings. However, it would significantly reduce the burden on investment managers relative to near-duplicative filings, which impose substantial burdens without a clearly articulated benefit as compared to requiring the same disclosure on Form 13F filings.

Conclusion

We believe each of these recommendations is responsive to the OMB's Deregulation RFI and is consistent with the Presidential Executive Orders, which are designed to ensure lawful governance, remove competitive barriers, and reduce waste and will go a long way toward reversing past policies that have harmed markets, investors, and the economy. To this end, we also recommend that the SEC withdraw the outstanding rules proposed under the last Administration and going forward ensure that it conducts a

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31 *See* 17 CFR § 240.13d-1(b)(1)(i).

32 For example, Form 13F could be used to capture the material Schedule 13G information by simply adding a column to Form 13F requiring filers to check a box, and thereby explicitly note, for each voting class that is registered under Section 12(b) or 12(g) and is a "Section 13(f) security," whether the filer holds over 5% beneficial ownership at the end of the reporting period. If the box is checked, Form 13F could permit the disclosure of the investment manager's beneficial ownership under Rule 13d-3 in a separate column along with the Central Index Key for that issuer. Form 13Fs can then be indexed using the relevant issuers' Central Index Key numbers, so that members of the investing public researching a particular issuer can readily see the Form 13F filers who have disclosed a greater-than-5% position in that issuer. Investment managers with more than 5% beneficial ownership can agree to provide beneficial ownership information upon request to the SEC, its staff, or the management or board of directors of the issuer.

thorough cost-benefit analysis of any new proposed rule, including considering the costs and benefits of related rules proposed at or near the same time.

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MFA appreciates your consideration of our recommendations. We look forward to working to improve regulation to protect investors, support U.S. economic growth, and promote capital formation. We would be pleased to discuss our recommendations in further detail. Please do not hesitate to reach out to me.

Sincerely,

/s/ Jillien Flores

Jillien Flores
Chief Advocacy Officer
MFA