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December 1, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Commodity Futures Trading Commission and Securities and Exchange Commission: Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC) (collectively, the Commissions), entitled "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF" (RINs: 3038-AD03; 3235-AK92). We received the rules on November 1, 2011. They were published in the *Federal Register* as joint final rules on November 16, 2011. 76 Fed. Reg. 71,128.

The final rules adopt new rules under the Commodity Exchange Act and the Investment Advisers Act of 1940 to implement provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new SEC rule requires investment advisers registered with the SEC that advise one or more private funds and have at least \$150 million in private fund assets under management to file Form PF with the SEC. The new CFTC rule requires commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") registered with the CFTC to satisfy certain CFTC filing requirements with respect to private funds, should the CFTC adopt such

requirements, by filing Form PF with the SEC, but only if those CPOs and CTAs are also registered with the SEC as investment advisers and are required to file Form PF under the Advisers Act. The new CFTC rule also allows such CPOs and CTAs to satisfy certain CFTC filing requirements with respect to commodity pools that are not private funds, should the CFTC adopt such requirements, by filing Form PF with the SEC. Advisers must file Form PF electronically, on a confidential basis. The information contained in Form PF is designed, among other things, to assist the Financial Stability Oversight Council in its assessment of systemic risk in the U.S. financial system.

Enclosed is our assessment of the Commissions' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commissions complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission

David A. Stawick
Secretary
Commodity Futures Trading Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
COMMODITY FUTURES TRADING COMMISSION AND
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"REPORTING BY INVESTMENT ADVISERS TO
PRIVATE FUNDS AND CERTAIN COMMODITY POOL OPERATORS
AND COMMODITY TRADING ADVISORS ON FORM PF"
(RINS: 3038-AD03; 3235-AK92)

(i) Cost-benefit analysis

CFTC and SEC (together, "the Commissions") performed a cost-benefit analysis in conjunction with the final rule. The Commissions identified two classes of benefits. First, the information collected will facilitate Financial Stability Oversight Council's (FSOC's) understanding and monitoring of systemic risk in the private fund industry and assist FSOC in determining whether and how to deploy its regulatory tools with respect to nonbank financial companies. Second, the information will enhance the Commissions' ability to evaluate and develop regulatory policies and improve the efficiency and effectiveness of efforts to protect investors and maintain fair, orderly, and efficient markets. The costs associated with the final rule are, for the most part, discussed in the Paperwork Review Act section below.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

SEC performed a regulatory flexibility analysis in conjunction with the final rule. SEC estimates that no more than 50 small entities are likely to become subject to Form PF reporting obligations under the final rule. SEC estimates that completing, reviewing, and filing Form PF will cost approximately \$13,600 for each small adviser in its first year of reporting and \$4,200 per year for each subsequent year, in addition to a filing fee of \$150 per annual filing. To minimize the impact on small entities, SEC is adopting a minimum reporting threshold of \$150 million as well as reporting requirements and time tables that differ for smaller entities. In addition, the information that a small entity subject to the rule must provide under section 1 of Form PF is much simpler than the information required of large hedge fund or large liquidity fund advisers and is consolidated in one section of the form.

CFTC determined that its portion of the final rule would not impose any additional burdens on registered CPOs and CTAs that are dually registered as investment advisers with the SEC because such entities are only required to file Form PF with the SEC. Therefore, CFTC certified that the final rule will not have a significant impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As independent regulatory agencies, the Commissions are not subject to the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On January 26, 2011, in a joint release, the Commissions proposed new rules and a new reporting form, and this proposal was published in the *Federal Register* on February 11, 2011. 76 Fed. Reg. 8,068. The Commissions received more than 35 letters in response to the proposal, and responded to those comments in the final rule. 76 Fed. Reg. 71,128.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Paperwork Reduction Act, and the SEC is submitting the requirements to the Office of Management and Budget (OMB) for review. The Commissions estimate that Form PF would result in an aggregate burden of 258,000 hours per year for all private fund advisers for each of the first 3 years, or 72 burden hours per year on average for each private fund adviser over the same period. In addition, firms required to file Form PF must also pay filing fees of \$150 per annual filing and \$150 per quarterly filing, which the Commissions estimate will result in advisers paying aggregate filing fees of approximately \$684,000 per year.

Statutory authorization for the rule

The final rule implements provisions of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act. CFTC adopts Rule 4.27, included in the final rule, pursuant to its authority set forth in section 4n of the Commodity Exchange Act, as codified at 7 U.S.C. § 6n. SEC adopts Rules 204(b)-1 and 279.8, included in the final rule, pursuant to its authority set forth in sections 204(b) and 211(e) of the Advisers Act, as codified at 15 U.S.C. § 80b-4 and 15 U.S.C. § 80b-11.

Executive Order No. 12,866 (Regulatory Planning and Review)

As independent regulatory agencies, the Commissions are not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As independent regulatory agencies, the Commissions are not subject to the review requirements of the order.