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FINANCIAL STABILITY OVERSIGHT COUNCIL

Notice Seeking Comment on Asset Management Products and Activities

Docket No. FSOC-2014-0001

AGENCY: Financial Stability Oversight Council.

ACTION: Notice.

SUMMARY: Consistent with its responsibility to identify risks to the financial stability of the United States, the Financial Stability Oversight Council (Council) is issuing this notice seeking public comment on aspects of the asset management industry (Notice), in particular whether asset management products and activities may pose potential risks to the U.S. financial system in the areas of liquidity and redemptions, leverage, operational functions, and resolution, or in other areas. The Council is inviting public comment as part of its ongoing evaluation of industry-wide products and activities associated with the asset management industry.

DATES: Comments must be received no later than [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION].

ADDRESSES: Interested persons are invited to submit comments on all aspects of this Notice. All submissions must refer to docket number FSOC-2014-0001.

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, provides for timely receipt, and enables the Council to make the comments available to the public. Comments submitted electronically through <http://www.regulations.gov> can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Comments may be mailed to Financial Stability Oversight Council, Attn. Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

Public Inspection of Comments: Properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

Additional Instructions: In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of the Treasury, at (202) 622-2495; Lyndsay Huot, Senior Policy Advisor, Office of the Financial Stability Oversight Council, Department of the Treasury, at (202) 622-5874; or Eric Froman, Office of the General Counsel, Department of the Treasury, at (202) 622-1942.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Council to identify risks to the financial stability of the United States, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. Consistent with those purposes, the Council continually monitors the financial marketplace to identify potential risks to U.S. financial stability.

The Council has been engaged in work over the past year to analyze risks associated with the asset management industry and whether any such risks could affect U.S. financial stability. The Council recognizes that asset management is an important component of the financial services industry and that there are meaningful differences within the asset management industry, with diverse investment strategies, corporate structures, regulatory regimes, and customers. To further the Council's work, in May 2014, the Deputies Committee of the Council hosted a public conference on the asset management industry and its activities, at which practitioners—including CEOs, treasurers, and risk officers—as well as academics and other stakeholders discussed a variety of topics related to the industry. The Council subsequently directed staff to undertake a more focused analysis of industry-wide products and activities to assess potential risks associated with the asset management industry. Based on that and other work, certain areas of interest have been highlighted by the Council as warranting further review and analysis.

The Council is now seeking public comment in order to understand whether and how certain asset management products and activities could pose potential risks to U.S. financial stability. Specifically, this Notice requests information about whether risks

associated with liquidity and redemptions, leverage, operational functions, and resolution in the asset management industry could affect U.S. financial stability.¹ The Council also welcomes input on other areas associated with asset management products and activities that could affect U.S. financial stability.

The Council recognizes that investment risk is inherent in capital markets, representing a normal part of market functioning. The Council’s focus on the asset management industry is directed at assessing whether asset management products or activities could create, amplify, or transmit risk more broadly in the financial system in ways that could affect U.S. financial stability. Financial stability risks may arise even where existing measures protect individual market participants (including particular asset managers, investment vehicles, and investors) because these measures may not fully take into account the effects of possible stress on other market participants, markets themselves, or the broader economy. Similarly, risks to financial stability might not flow from the actions of any one entity, but could arise collectively across market participants. Further, the Council notes that certain activities that do not pose risks to financial stability during normal times may do so during periods of financial market stress or stress at a particular firm.

A number of different types of entities subject to varying regulatory frameworks engage in asset management activities, including but not limited to registered investment advisers, banks and thrifts, insurance companies, commodity trading advisors, and

¹ In this regard, the Council is acting consistent with the purposes described in section 112(a)(1) of the Dodd-Frank Act, see, e.g., 12 U.S.C. 5322(a)(1)(A) (“identify risks to the financial stability of the United States that could arise from the . . . ongoing activities, of . . . nonbank financial companies”), as well as pursuant to specific duties of the Council. See, e.g., 12 U.S.C. 5322(a)(2)(C) (requiring the Council to “monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States”).

commodity pool operators.² These entities provide a variety of asset management products, herein referred to as “investment vehicles,” such as separately-managed accounts (SMAs) and “pooled investment vehicles.”³ Pooled investment vehicles include investment companies registered under the Investment Company Act of 1940 (Investment Company Act) (registered funds), private funds (including hedge funds), bank collective investment trusts, and commodity pools. The Council is interested in obtaining information on potential risks to the U.S. financial system that may arise from the asset management activities of any entities or investment vehicles.

The Council recognizes that the Securities and Exchange Commission (SEC) is undertaking several initiatives that would apply to investment companies and investment advisers regulated by the SEC and may address some of the risks described in this Notice.⁴ While the SEC’s initiatives are not specifically focused on financial stability, the Council intends to consider the impact these initiatives may have in reducing any risks to U.S. financial stability associated with the asset management industry.

The Council’s analytical process will depend importantly on the existence and availability of high-quality data and information, which are essential to the ability of the Council to carry out its statutory purposes. The Council notes that information is

² Many of these entities provide a range of financial services. For the purposes of this Notice, the Council is interested in the asset management activities of these entities and any risks that they could present to the broader financial markets. As discussed in Sections III and IV, the Council is also exploring the existence of potential risks that could arise from interconnections with affiliated companies.

³ SMAs are accounts managed by a registered investment adviser, in which the client, which could be a pension fund, sovereign wealth fund, or other entity or individual, retains direct and sole ownership of the assets under management and which are typically held at an independent custodian on behalf of the client. For purposes of this Notice, SMAs are included in the term “investment vehicles.”

⁴ See Unified Agenda of Regulatory and Deregulatory Actions (Fall 2014) (initiatives relating to derivatives use by investment companies, fund liquidity management programs, transition plans for investment advisers, stress testing for large asset managers and large investment companies, and information reporting by SEC-regulated entities).

available in varying degrees about different asset management products and activities. A core component of the Council's review is an evaluation of the extent to which sufficient data are available to monitor and assess potential risks in the asset management industry and whether there are areas where additional data and information would be helpful to the Council, as well as to market participants.

The Council has not made any determination regarding the existence or nature of any potential risks to U.S. financial stability discussed in this Notice. Throughout this Notice, the Council asks questions regarding areas of potential risk in the asset management industry and will consider the input received in each case in evaluating whether any of these areas might present potential risks to U.S. financial stability. In the event the Council's analysis identifies risks to U.S. financial stability, the Council will consider potential responses.

I. Liquidity and Redemptions

Liquidity risk generally refers to the risk that an investor will not be able to buy or sell an asset in a timely manner without significantly affecting the asset's price.⁵ Most financial assets expose investors to some degree of liquidity risk, whether they invest directly in the assets or indirectly through a pooled investment vehicle. While the Council welcomes broader input on liquidity risks that may be associated with investment vehicles generally, the Council is focused on exploring whether investments through pooled investment vehicles that provide redemption rights, as well as their management

⁵ The term "liquidity risk" is used herein to describe market liquidity risk, as opposed to funding liquidity risk. Funding liquidity risk, which involves the risk that an entity is unable to meet its cash or other obligations in a timely manner, is a means through which leverage may contribute to financial market stress, a subject discussed in Section II.

of liquidity risks and redemptions, could potentially influence investor behavior in a way that could affect U.S. financial stability differently than direct investment.

In particular, the Council is interested in exploring the ways in which investors in some pooled investment vehicles could have greater incentives to redeem than if they were to sell a direct investment in the financial assets comprising the vehicle's portfolio. Investors in pooled investment vehicles that offer near-term access to redemptions could face increased redemption incentives, especially during periods of financial market stress, because the costs associated with redemptions are shared and, as a result, partially borne by remaining shareholders.⁶ As a result, investors could have an incentive to redeem before other investors to avoid sharing the costs associated with other investors' redemptions. This incentive to redeem from pooled investment vehicles may be magnified for vehicles invested in less-liquid asset classes. Managers of such vehicles might need to sell assets at a discount to meet redemptions, particularly during times of stress, and the cost would have to be borne by remaining investors in the vehicle. If a manager of such a vehicle were to sell more-liquid portfolio assets in order to minimize the price impact of early redemptions, liquidity risk could be concentrated on investors redeeming later. As a result, investor perceptions of how liquidity and redemption risk are managed in pooled investment vehicles could potentially heighten redemption incentives and increase the likelihood of asset sales.

The Council seeks input on whether these issues affect redemption behavior from pooled investment vehicles in a way that could ultimately affect financial stability.

Specifically, the Council is interested in whether such redemption incentives could make

⁶ In contrast, because SMAs impose the full cost of asset sales on the redeeming investor, SMAs are unlikely to create the same incentives for the investor to redeem.

fire sales more likely in the asset markets in which the pooled investment vehicles invest, as well as in correlated or broader asset markets.

The Council also is interested in redemption incentives associated with pooled investment vehicles in which lenders reinvest cash collateral received to secure a loan of securities.⁷ Such a pooled investment vehicle may experience redemptions triggered by terminations of securities loans, and the related requirement to repay cash collateral. The Council seeks input on whether such redemptions might increase during times of financial stress and whether this may result in the potential broader market impacts discussed above.

The Council understands that pooled investment vehicles may employ a variety of techniques to manage liquidity risks.⁸ For example, some investment vehicles maintain a portion of assets in cash or highly-liquid assets to meet redemption requests and may modify their portfolio composition based on market conditions to manage redemption requests.⁹ Many exchange-traded funds (ETFs) redeem in kind as a matter of course, and those that allow authorized participants (APs) to redeem in cash frequently impose transaction or liquidity fees that force the AP to bear the liquidity-related costs of its own

⁷ Securities lending is a transaction involving the temporary transfer of a security by one party (the lender) to another (the borrower) in exchange for cash or non-cash collateral. Securities loans generally are collateralized by an amount exceeding the value of the securities loaned, and the required collateral amount is marked-to-market daily. Most securities lending in the United States is secured by cash collateral, and lenders generally reinvest cash collateral to earn additional income.

⁸ Regulatory requirements regarding liquidity in pooled investment vehicles and redemption practices are also critical to understanding risks and risk management. The Council is aware of existing regulations in this area and, while the discussion notes some relevant regulatory constraints, this Notice is not intended to provide a comprehensive discussion of regulatory requirements.

⁹ In addition, SEC guidance provides that mutual funds and exchange-traded funds (ETFs) generally may not invest more than 15 percent of their net assets in “illiquid securities.” Illiquid securities are defined as securities that cannot be sold or disposed of in the ordinary course of business within seven days at approximately the price at which the fund has valued the investment. Revisions of Guidelines to Form N-1A, Investment Company Act Release No. 18612 (Mar. 12, 1992) 57 FR 9,828 (Mar. 20, 1992).

redemption.¹⁰ Hedge fund investors often are subject to an initial “lock up” period and thereafter may only redeem their interests on a periodic basis. Insurance separate accounts may serve as funding vehicles for life insurance policies or annuity contracts that provide deferred benefit payments and redemption disincentives (such as early-surrender charges and loss of economic and tax benefits).¹¹ Some private funds may have additional redemption restrictions that may be imposed during times of stress, such as size limits on redemptions (partial “gates”) or temporary suspension of redemptions. The Council is interested in the effectiveness of these measures during periods of overall market stress, as well as the potential impact on broader financial markets from the exercise of such measures.

The Council is also interested in the extent to which asset managers may not always manage investment vehicles in a way that prevents or fully mitigates the risks to the investment vehicle and to the broader financial system. For example, investor preferences regarding an investment vehicle’s investment strategy and portfolio allocation may generally encourage the vehicle to remain fully, or almost fully, invested in particular asset classes and limit the vehicle’s holdings of cash or highly-liquid assets. Similarly, competitive pressures to increase returns and outperform benchmarks may provide disincentives to holding cash or highly-liquid assets. The Council also seeks

¹⁰ ETF shares are traded on an exchange. Investors (other than APs as discussed below) do not transact in shares directly with the ETF, but instead buy and sell shares in the secondary market (and do not have a right of redemption). ETF shares may only be redeemed by (or issued to) certain broker-dealers or other institutions that have contractual arrangements to act as APs for the ETF. ETF shares are issued and redeemed in block-size aggregations (e.g., 50,000 shares) referred to as creation units, typically in an in-kind transaction in which an AP delivers or receives a specified portfolio of securities, other assets, and cash. Whereas mutual funds typically redeem their shares in cash but reserve the right to redeem in kind, ETFs typically redeem in kind but reserve the right to redeem in cash.

¹¹ Insurance separate accounts often are registered under the Investment Company Act as unit investment trusts.

input on the degree to which the risk management practices of asset managers sufficiently account for the possibility of simultaneous asset sales by multiple investors or the likelihood of significantly larger price effects in times of stress.

Questions for public comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to liquidity and redemption risks in the asset management industry that could potentially present financial stability concerns.¹²

1. How does the structure of a pooled investment vehicle, including the nature of the redemption rights provided by the vehicle and the ways that such vehicles manage liquidity risk, affect investors' incentives to redeem? Do particular types of pooled investment vehicles, based on their structure or the nature of their redemption management practices, raise distinct liquidity and redemption concerns (e.g., registered funds, private funds, or ETFs)?

2. To what extent do pooled investment vehicles holding particular asset classes pose greater liquidity and redemption risks than others, particularly during periods of market stress? To what extent does the growth in recent years in assets in pooled investment vehicles dedicated to less liquid asset classes (such as high-yield bonds or leveraged loans) affect any such risks?

3. To what extent might incentives to redeem shares in a pooled investment vehicle or other features of pooled investment vehicles make fire sales of the portfolio

¹² There may also be interconnections between liquidity and leverage risks, or between liquidity risk and activities such as securities lending. For example, leveraged investment vehicles whose posted collateral assets decline in value may need to sell other assets to obtain the liquidity required to meet margin calls. With respect to securities lending, if cash collateral is invested in assets with longer maturities than the loan terms, lenders could face liquidity risks that result in lender losses. See Section II for a discussion of risks associated with leverage.

assets, or of correlated assets, more likely than if the portfolio assets were held directly by investors?

4. To what extent does the potential for terminations of securities loans that would trigger redemptions from cash collateral reinvestment vehicles or other asset sales pose any distinct financial stability concerns? To what extent do investment vehicles reinvest cash collateral in assets with longer maturities relative to the lender's obligation to repay the collateral, which may increase liquidity risk? How much discretion do lending agents have with respect to cash collateral reinvestment? To what extent do lending agents reinvest cash collateral in vehicles managed by the same firm that manages the investment vehicle lending the securities?

5. How do asset managers determine whether the assets of a pooled investment vehicle are sufficiently liquid to meet redemptions? What liquidity and redemption risk management practices do different types of pooled investment vehicles employ both in normal and stressed markets, and what factors or metrics do asset managers consider (e.g., the possibility that multiple vehicles may face significant redemptions at the same time, availability of back-up lines of credit) in managing liquidity risk?

6. To what extent could any redemption or liquidity risk management practices (e.g., discretionary redemption gates in private funds) used in isolation or combination amplify risks?

7. To what extent can competitive pressures create incentives to alter portfolio allocation in ways that may be inconsistent with best risk management

practices or do not take into account risks to the investment vehicle or the broader financial markets?

8. To the extent that liquidity and redemption practices in pooled investment vehicles managed by asset managers present any risks to U.S. financial stability (e.g., increased risks of fire sales or other spillovers), how could the risks to financial stability be mitigated?

9. What additional information would help regulators or market participants better assess liquidity and redemption risks associated with various investment vehicles, including information regarding the liquidity profile of an asset class or of a particular type of investment vehicle?

II. Leverage

Leverage is created when an investor (e.g., investment vehicle) enters into transactions resulting in investment exposures that exceed equity capital. Leverage can be financial (i.e., borrowings reflected on the balance sheet), or synthetic (i.e., exposures embedded in the structure of financial instruments such as derivatives). While the use of leverage with appropriate controls and risk management can be a useful component of an investment strategy, high degrees of leverage can present risks to investment vehicles by magnifying the impact of asset price or rate movements.

In this Notice, the Council is interested in exploring ways in which the use of leverage by investment vehicles could increase the potential for forced asset sales, or expose lenders or other counterparties to losses or unanticipated market risks, and the extent to which these risks may have implications for U.S. financial stability. For example, during periods of financial market stress, declines in asset prices could lead to

collateral or margin calls, requiring leveraged investors to meet those demands through asset sales that could in turn result in further declines in asset prices. Additionally, the exposures created by leverage establish interconnections between borrowers and lenders—and possible further interconnections between lenders and other market participants—through which financial stress could be transmitted to the broader financial system.

The Council understands that the use of leverage by investment vehicles can vary significantly depending on the type of investment vehicle and type of investment strategy. In particular, the Council is interested in the extent and full variety of ways that private funds and SMAs obtain leverage.¹³ While the Council recognizes that registered funds are generally limited in their use of leverage, it is nonetheless also interested in the nature and extent of leverage obtained by registered funds, including through the use of derivatives.

Leverage can be obtained by investment vehicles through a variety of secured financings, including margin credit, repurchase agreements (repos), prime brokerage financing arrangements, securities lending transactions, or bank loans. Investment vehicles may also obtain leverage through derivative transactions. Entering into numerous derivative contracts or having large directional exposures through derivatives may significantly increase the complexity of risk management and the associated level of risk within the investment vehicle. Some private fund strategies rely extensively on the

¹³ While an SMA represents a direct investment by a client and investment management agreements may specify limitations relating to leverage, the Council is interested in whether, and how, the use of leverage by investors is affected when the investors' assets are managed through SMAs.

use of derivatives to obtain leverage. Registered funds may also use derivatives, subject to certain limitations.¹⁴

The Council recognizes that derivatives are also used by investment vehicles for purposes other than obtaining leverage, such as establishing hedges against market risks. The Council is interested in better understanding whether and how derivatives are used by various types of investment vehicles to obtain leveraged market exposures, as opposed to hedging risks relating to other investment positions.

U.S. regulations restrict leverage for certain types of investment vehicles. For example, the Investment Company Act constrains the amount of leverage that may be employed by mutual funds and other registered funds. Mutual funds may only incur indebtedness through bank borrowings with 300 percent asset coverage.¹⁵ Registered funds may engage in repos, but must segregate liquid assets equal to the repurchase price of the securities. Registered funds may also use derivatives, for hedging purposes or to enhance returns, subject generally to a requirement to segregate liquid assets for their derivatives transactions.¹⁶

¹⁴ A number of regulations apply to derivatives transactions. For example, exchange-traded and centrally-cleared derivatives are subject to specific margin rules and clearinghouse protocols to support payment of potential counterparty obligations. For certain swap and security-based swap transactions, rules (or proposed rules will) require mandatory clearing and execution on trading platforms, collection of margin, and data reporting and recordkeeping. Over-the-counter derivatives that are not centrally cleared may be more difficult to value, transfer, or liquidate, potentially exposing contracting parties to greater counterparty credit risk.

¹⁵ Closed-end registered funds are also subject to the 300 percent asset coverage requirement on their indebtedness. Closed-end funds may borrow both from banks and nonbank lenders, and closed-end funds are permitted to issue preferred stock subject to a 200 percent asset coverage requirement.

¹⁶ The amount of liquid assets to be segregated varies depending on the transaction and would generally either be the full obligation due at the end of the contract or, with respect to certain cash-settled derivatives, the daily mark-to-market liability, if any, of the fund under the derivative. In certain cases, registered funds may cover their derivatives transactions by holding a fully offsetting position. The SEC issued a concept release on the use of derivatives by registered funds in August 2011. [See Use of Derivatives by Registered Investment Companies Under the Investment Company Act of 1940](#), Investment Company Act Release

By contrast, private funds, including hedge funds and other unregistered funds, are not subject to the leverage restrictions imposed on funds registered under the Investment Company Act. In addition, certain publicly offered products other than registered funds, such as exchange-traded commodity pools, may provide investors with more highly leveraged investment exposures than would be available through registered funds. SMAs may also employ leverage.¹⁷ Because regulators currently do not collect data on SMA portfolio positions on a systematic, industry-wide basis, information regarding the types of assets held in these accounts, their counterparty and other exposures, and amounts of leverage are not routinely available to regulators for assessment and monitoring purposes.

Questions for public comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to the risks of leverage in the asset management industry that could potentially present financial stability concerns.

1. How do different types of investment vehicles obtain and use leverage?

What types of investment strategies and clients employ the greatest amount of leverage?

2. To what extent and under what circumstances could the use of leverage by investment vehicles, including margin credit, repos, other secured financings, and derivatives transactions, increase the likelihood of forced selling in stressed markets?

No. 29776 (Aug. 31, 2011). Among other things, the concept release requested comment on the benefits and shortcomings of the asset segregation approach and potential alternatives.

¹⁷ Because SMAs are not collective investment vehicles, they are not subject to restrictions on leverage under the Investment Company Act. The investment management agreement between the client and asset manager, however, may specify limitations relating to the use of leverage.

To what extent could these risks be increased if an investment vehicle also offers near-term access to redemptions?

3. How do asset managers evaluate the amount of leverage that would be appropriate for an investment strategy, particularly in stressed market conditions?

To what extent do asset managers evaluate the potential interconnectedness of counterparties? How do lenders or counterparties manage their exposures to investment vehicles?

4. What risk management practices, including, for example, widely-used tools and models or hedging strategies, are used to monitor and manage leverage risks of different types of investment vehicles? How do risk management practices in investment vehicles differ based on the form of leverage employed or type of investment vehicle? How do asset managers evaluate the risk of potential margin calls or similar contingent exposures when calculating or managing leverage levels? How are leverage risks managed within SMAs, and to what extent are such risks managed differently than for pooled investment vehicles?

5. Could any risk management practices concerning the use of leverage by investment vehicles, including hedging strategies, amplify risks?

6. To what extent could the termination of securities borrowing transactions in stressed market conditions force securities lenders to unwind cash collateral reinvestment positions? To what extent are securities lenders exposed to significant risk of loss?

7. To the extent that any risks associated with leverage in investment vehicles present risks to U.S. financial stability, how could the risks to financial stability be mitigated?

8. What are the best metrics for assessing the degree and risks of leverage in investment vehicles? What additional data or information would be useful to help regulators and market participants better monitor risks arising from the use of leverage by investment vehicles?

III. Operational Risk

Operational risk refers to the risk arising from inadequate or failed processes or systems, human errors or misconduct, or adverse external events. Examples include business disruptions or failures in systems and processes, either within a firm or at external service providers relied upon by a firm. Like other financial services firms, asset management firms rely significantly on both affiliated and unaffiliated providers of technology, data, and other operational services, and they are exposed to operational risk in many different forms. While the Council is interested in any areas of operational risk within the asset management industry that could present risks to U.S. financial stability, the Council is particularly interested in two areas: (1) risks that may be associated with the transfer of significant levels of client accounts or assets from one asset manager to another; and (2) risks that may arise when multiple asset managers rely on one or a limited number of third parties to provide important services, including, for example, asset pricing and valuation or portfolio risk management.¹⁸

¹⁸ While Section IV focuses on the financial implications of the failure or closure of an entity in the asset management industry, the Council is also interested in any unique operational risks that may arise if an asset manager, its affiliates, or investment vehicles were to fail or be liquidated.

The Council is interested in exploring any potential risks associated with the transfer of a significant level of client accounts or assets from an asset manager and whether there could be obstacles to this process, particularly during a period of financial market stress, that could pose risks to U.S. financial stability.¹⁹ Such transfers could occur on a large scale for various reasons, including damage to a manager’s reputation that leads clients to select other managers or a manager’s voluntary or involuntary exit from the business. Although clients have routinely replaced asset managers without significant impact in non-stressed situations, there could be delays or other obstacles associated with transferring client accounts to other managers or transitioning client assets to another custodian, particularly in a stressed scenario.

The Council seeks information on market practices, processes, and systems employed by asset managers and other market participants (e.g., custodians and transfer agents); these entities’ operational capabilities to transition client accounts and assets between managers; and the effectiveness of such market practices, processes, and systems in times of idiosyncratic or market stress.

The Council is also interested in exploring risks associated with reliance on service providers—either affiliated entities or independent third-party providers—for important components of the asset management business. Asset managers may use service providers for key functions or may be providers of such services to other asset managers or financial institutions. For example, asset managers often use affiliated entities or third parties to provide custody, brokerage, asset pricing and valuation,

¹⁹ The transfer of client accounts or assets refers to the transfer of SMAs. Outflows of assets from a manager in the form of redemptions from pooled investment vehicles are discussed in Section I.

portfolio risk management, and administrative services (e.g., recordkeeping, accounting, and transfer agency services).

The Council seeks to understand the potential risk across the asset management industry if multiple asset managers rely exclusively on one or a small number of providers for certain services and the resulting risk if one of these providers either ceases operations or renders the services in a flawed manner (e.g., providing asset pricing and valuation or portfolio risk models that contain errors in methodology). Careful consideration of how asset managers use service providers, particularly the degree of reliance by multiple asset managers on a concentrated number of service providers, is important in understanding whether there may be risks to certain markets or asset classes if asset managers were to suffer a disruption in service.

More generally, strong operational controls and risk management are important within the asset management industry in areas such as accounting and recordkeeping, trading operations (including algorithmic trading), data security, custody, and pricing and valuation. Asset management firms, like other financial services firms, rely significantly on technological systems, including processing, recordkeeping, and communications systems, which are vulnerable to a number of operational risks ranging from normal system disruptions to targeted cyber-attacks. Asset managers that operate globally may be confronted with additional operational risks. The Council is interested in understanding whether any operational risks to asset managers could have broader implications for U.S. financial stability.

Questions for public comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to operational risks in the asset management industry that could potentially present financial stability concerns.

1. What are the most significant operational risks associated with the asset management industry and how might they pose risks to U.S. financial stability? What practices do asset managers employ to manage operational risks (e.g., due diligence, contingency planning)?

2. What are the risks associated with transferring client accounts or assets from one manager to another and how do these risks vary depending on the nature of the client, the asset types owned by the client (e.g., derivatives), or how the asset type is traded or cleared? For certain asset classes or strategies, are the number of asset managers offering a comparable strategy so concentrated that finding a substitute would present challenges? How rapidly could investment management accounts be transferred, including during a time of financial market stress?

3. What market practices, processes, and systems need to be in place to smoothly effect transfers of client accounts or assets by asset managers and/or custodians? What differences exist in information technology systems, processes, or data formats that could pose operational risk, particularly when markets are stressed? Are there specific risks related to foreign clients, foreign custodians, foreign assets, or the use of offshore back-office operations?

4. While asset liquidation is not required for, and is not typically associated with, the transfer of client accounts, are there any significant risks of asset

liquidations in the event of a large-scale transfer of accounts or assets from an asset manager?

5. To what extent do asset managers rely on affiliated or unaffiliated service providers in a concentrated or exclusive manner for any key functions (e.g., asset pricing and valuation, portfolio risk modeling platforms, order management and trade processing, trading, securities lending agent services, and custodial services)? What would be the impact if one or more service providers ceased provision of the service, whether due to financial or operational reasons, or provide the service in a seriously flawed manner? To what extent do potential risks depend upon the type of service provided, whether the provider is affiliated with the asset manager, or whether the service provider is non-U.S. based? What due diligence do firms perform on systems used for asset pricing and valuation and portfolio risk management?

6. What operational interconnections exist between the asset manager and the investment vehicles it manages, among investment vehicles managed by the same asset manager or affiliated managers, or between the asset manager and its affiliates? For example, to what extent do asset management firms rely on shared personnel, technology, or services among affiliates? Could any of those interconnections result in operational risk transmission among affiliated investment vehicles or asset managers in the event of a failure and resolution of an affiliate? Do market practices ensure that operational interconnections are sufficiently documented to allow for an orderly continuation of an investment vehicle's operations if the asset manager or affiliated or independent third-party service providers were to declare bankruptcy?

7. What are best practices employed by asset managers to assess and mitigate the operational risks associated with asset management activities performed by service providers, whether affiliated with the asset manager or not, and how common are these practices across the industry? What agreements or other legal assurances are in place to ensure the continued provision of services? What are asset managers' contingency plans to deal with potential failures of service providers, and how might these plans be impacted by market stress?

8. To the extent that any operational risks in the asset management industry present risks to U.S. financial stability, how could these risks to financial stability be mitigated?

IV. Resolution

The Council is interested in the extent to which the failure or closure of an entity could have an adverse impact on financial markets or the economy.²⁰ While previous sections of this Notice explore aspects of potential risk that could be associated with material stress at an asset manager or investment vehicle, this section explores whether there are specific financial interconnections that could present risks if an asset manager, investment vehicle, or affiliate were to become insolvent, declare bankruptcy, or announce an intent to close and liquidate.²¹ The Council seeks information on whether there are any financial interconnections, such as transactions, investments, or loans across affiliated investment vehicles, between investment vehicles and an asset manager, or with

²⁰ For the purposes of this Notice, resolution refers to the commencement of proceedings in bankruptcy or, if bankruptcy is not appropriate, other proceedings or processes for the resolution, reorganization or liquidation of a legal entity.

²¹ A pooled investment vehicle is owned by its investors, who are entitled to distribution of the vehicle's net assets if the vehicle were to be closed and liquidated.

third parties, that could complicate resolution in the asset management industry, particularly during a period of financial market stress. The Council also is interested in understanding the potential implications of the failure or liquidation of a private fund for financial stability.²² The Council also seeks information on whether there are any actions that market participants or counterparties to contracts could take that would adversely affect a resolution or give rise to liquidity concerns. The Council would like to explore whether there are issues that could make the resolution or liquidation of an asset manager or an investment vehicle with international operations more complex. For example, the Council seeks input on the extent to which access to assets in foreign jurisdictions or shared services located abroad may be impaired, or proceedings may be subject to multiple jurisdictions with potentially conflicting resolution regimes. In addition, the Council seeks information on practices or planning undertaken by asset managers to help mitigate the potential for disruption to clients or markets more generally in the event of a failure of a firm or liquidation of an investment vehicle.

The Council recognizes that asset management firms and investment vehicles have closed without presenting a threat to financial stability. The Council notes that an investment vehicle has a separate legal structure from the asset manager, any parent company, or any affiliated investment vehicles under the same manager. In addition, the assets of the investment vehicle are not legally available to the asset manager, its parent company, or affiliates for the purpose of satisfying their financial obligations or those of

²² As discussed in Section II, leverage can present risks to investment vehicles, and the use of leverage by some private funds has raised concerns in the past. For example, margin calls and liquidity constraints were a prominent reason for the near-failure of Long-Term Capital Portfolio LP and the other funds managed by Long-Term Capital Management in 1998, which led a consortium of commercial financial institutions to recapitalize these funds to avoid potential financial instability. See “Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management,” Report of the President’s Working Group on Financial Markets (April 1999).

affiliated investment vehicles. Nonetheless, the Council would like to explore any potential issues that may arise in a resolution or liquidation of an entity in the asset management industry, particularly in circumstances of financial market stress, and if an entity were to have a high degree of complexity and multi-jurisdictional operations.

Questions for public comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to resolution and liquidation in the asset management industry that could potentially present financial stability concerns.

1. What financial interconnections exist between an asset manager and the investment vehicles it manages, between an asset manager and its affiliates, or among investment vehicles managed by the same or affiliated asset managers that could pose obstacles to an orderly resolution? To what extent could such interconnections result in the transmission of risk among asset managers and affiliated investment vehicles? Do market practices ensure that any financial interconnections are sufficiently documented to allow for an orderly continuation of operations if an asset manager, investment vehicle (e.g., private fund), or affiliate were to become insolvent, declare bankruptcy, or announce an intent to close?
2. Could the failure of an asset manager or an affiliate provide counterparties with the option to accelerate, terminate, or net derivative or other types of contracts of affiliates or investment vehicles that have not entered insolvency?
3. In what ways, if any, could the potential risks associated with liquidity and redemption or leverage discussed in Sections I and II, respectively, impact the resolution of an asset manager or investment vehicle in times of financial stress?

4. Are there interconnections that exist between asset managers and other financial market participants that in times of financial stress could transmit risks? For example, are there risks that securities lenders indemnified against borrower default by an asset manager lending agent may terminate their loans if the asset manager were to fail?²³ If so, could those terminations have disruptive consequences if counterparties face an unexpected requirement to return borrowed securities upon early loan terminations?

5. For asset managers, investment vehicles, or affiliates that operate internationally, in what ways could cross-border resolution complicate an orderly insolvency or resolution in one or more jurisdictions? Do contracts with service providers, such as custodians or prime brokers, allow for assets to be custodied, or subcustodied, at offshore entities, and what are the implications for resolution?

6. What contingency planning do asset managers undertake to help mitigate risks to clients associated with firm-specific or market-wide stress?

7. To the extent that resolution and liquidation in the asset management industry present risks to U.S. financial stability, how could the risks to financial stability be mitigated?

8. What data currently are available or should be collected to monitor activities that may affect a resolution?

V. Conclusion

²³ Securities lending agents often indemnify lenders against borrower default, and under indemnification agreements must cover the shortfall between the value of the securities on loan and the value of the collateral pledged by the borrower (but typically not losses resulting from cash collateral reinvestment).

The Council invites comment on all of the questions set forth in this Notice and welcomes input on other issues that commenters believe are relevant to the Council's understanding of risks to U.S. financial stability, if any, posed by asset management products and activities. The Council recognizes the areas of risk highlighted in this Notice may be interrelated and welcomes views on whether the interrelation of any of the risks described above or any other risks might present financial stability concerns. The Council will consider all comments as part of its evaluation of potential risks to U.S. financial stability.

Dated: _____

David Clunie
Executive Secretary
Department of the Treasury