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| asset management group

Via electronic mail

April 1, 2015

Mr. Jacob J. Lew, Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Ms. Mary Jo White, Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dr. Janet L. Yellen, Chair
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Timothy G. Massad, Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Dear Secretary Lew, Chair White, Chair Yellen and Chairman Massad:

On behalf of the members of the Asset Management Group (the "AMG") of the Securities Industry and Financial Markets Association ("SIFMA"),[1] we write to express our significant concerns regarding the March 4, 2015 publication by the Financial Stability Board (the "FSB") and the International Organization of Securities Commissions ("IOSCO") of their second consultative document entitled *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions* (the "Second Consultative Document").[2]

In particular, we are deeply troubled by the lack of attention the Second Consultative Document evidences to the fundamental substantive concerns raised in our comments[3] on the FSB's and IOSCO's first consultative document (the "First Consultative Document"),[4] as

[1] SIFMA is the voice of the nation's securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the United States, serving retail clients with over $16 trillion in assets, and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. With offices in New York and Washington, DC, SIFMA is the U.S. regional member of the Global Financial Markets Association. For more information, visit http://www.sifma.org.

[2] FSB and IOSCO, Consultative Document (2nd), *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions*, March 4, 2015, available at http://www.financialstabilityboard.org/wp-content/uploads/2nd-Con-Doc-on-NBNI-G-SIFI-methodologies.pdf.

[3] *See* Letter from the AMG to the Secretariat of the Financial Stability Board, April 4, 2014, available at http://www.financialstabilityboard.org/wp-content/uploads/r_140423an.pdf.

[4] FSB and IOSCO, Consultative Document, *Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions*, January 8, 2014, available at http://www.financialstabilityboard.org/wp-content/uploads/r_140108.pdf.

well as the timing of the Second Consultative Document's release. The Second Consultative Document proposes methodologies for designating investment funds and their managers as global systemically important financial institutions ("SIFIs"). Our comments and those of others have demonstrated that the designation of asset managers and investment funds as SIFIs would be unjustified, because they do not present the type or scale of risk required for SIFI designation, and would be an ineffective structure for their regulation. The Financial Stability Oversight Council (the "Council") appears to have recognized those facts and shifted its attention to a more constructive review of products and activities in the sector, and away from individual firms or funds identified on the basis of their size. Because this is the only sensible approach to analyzing and regulating the asset management sector and the capital markets more broadly and because the Second Consultative Document is irredeemably flawed, we urge you, in your capacities as the U.S. members of the FSB and/or IOSCO, to reject the proposals in the Second Consultative Document and oppose any further attempts by the FSB and IOSCO to create a methodology for designating asset managers and investment funds as SIFIs.

Lack of Attention to Fundamental Concerns with First Consultative Document

While our review of the Second Consultative Document is continuing, it is apparent that the document does not address a number of the comments raised in connection with the First Consultative Document. Most importantly, as described in our comment letter on the First Consultative Document,[5] asset managers and investment funds have fundamentally different risk profiles than banks and insurers, making SIFI designation for individual asset managers and investment funds both inappropriate and ineffective at addressing any risks that may arise from activities in the asset management sector and the capital markets. Among other things, risk in the asset management sector and capital markets is broadly distributed and easily transferred among many participants, and thus is unlikely to be or remain concentrated in individual entities.[6] In addition, the designation of a few large entities but not others would be unlikely to reduce the overall level of risk associated with the activities of the designated entities, because investors could (and likely would) move their assets to un-designated entities

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[5] *See supra* n.3.

[6] As indicated in our comments on the First Consultative Document and in response to the Council's Notice Seeking Comment on Asset Management Products and Activities (see footnote 8 below), we do not believe that an investment fund can "fail," with the potential to trigger a collapse in an industry or economy that could have a systemic effect. An investment fund is designed to provide its investors with exposure to investment risk, and if the investments of a fund were to lose all or substantially all of their value, then investors, who knowingly accepted the risk of loss of their investments in choosing to invest and remain invested in the fund, would bear the fund's losses. Even if there were a concentration of risk in an individual fund, designating that fund would not be an effective way to address this risk given the factors we have noted previously, such as the competitive nature of the asset management sector, the availability of substitutes for different types of investments, and the ownership of investment assets by investors.

continuing to engage in the same activities. This would have the effect of distorting competition and making any designated U.S. funds or managers less competitive. Furthermore, investment funds and their managers are merely subsets of the much broader categories of asset owners and participants in global capital markets.

By continuing the misguided focus on large individual funds and managers and failing to appreciate that regulatory policy must reflect the characteristics of the regulated business or market, the Second Consultative Document is a significant step in the wrong direction. The FSB and IOSCO should first demonstrate that a risk exists and then consider ways to address that specific risk, rather than designating funds and managers and then leapfrogging ahead to a solution that they have not yet designed[7] and that may or may not be effective at addressing any risks actually posed by the activities of the designated funds and managers. There is no clear nexus between the proposed methodologies in the Second Consultative Document and global financial stability, and no explanation of how designation of funds and managers would enhance that stability. If the FSB/IOSCO proposal were implemented, it could do harm to investors, issuers, financial markets and the real economy while failing to reduce systemic risk. As we have stated previously, theory and history both demonstrate that it is more effective for the primary regulators of asset managers and investment funds to review the activities in which funds and their managers engage, on an industry-wide basis and in the context of the broader capital markets in which they participate; to consider whether those activities present a risk; and to analyze policy options to determine if additional regulation of those activities could address any such risk effectively and without doing more harm than good. This view is widely shared and well explained by the AMG and others in comments to the First Consultative Document.

As you are well aware, the Council has spent a significant amount of time considering these issues and analyzing the asset management sector. These efforts culminated in the Council's issuance of a notice seeking public comment on whether specific aspects of the asset management sector may pose potential risks to the U.S. financial system (the "FSOC Notice").[8] The issuance of the FSOC Notice represented a constructive shift with regard to the Council's assessment of the asset management sector and its relation to financial stability; and we believe a focus on products and activities is the only sensible approach for assessing and, if appropriate, addressing any risks to financial stability that may arise within the sector.[9]

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[7] *See* Second Consultative Document at p. 2, indicating that policy measures will follow the finalization of assessment methodologies.

[8] *Notice Seeking Comment on Asset Management Products and Activities*, 79 Fed. Reg. 77488 (Dec. 24, 2014) (notice).

[9] The Securities and Exchange Commission (the "SEC") pursued such an approach in 2010 and again in 2014 in reforming its regulation of money market funds in response to concerns about their resilience as a result of the financial crisis. *See Money Market Fund Reform*, 75 Fed. Reg. 10059, 10062 (March 4, 2010) (final rule) (following the "severity of the problems experienced by money market funds during 2007 and 2008," the SEC adopted new rules intended "to reduce the susceptibility of money market funds to runs and reduce the consequences of a run on fund shareholders"); Press Release, *SEC Adopts Money Market Fund Reform Rules*, July 23, 2014, available

We will review the Second Consultative Document with our members and submit a comment letter by the specified deadline; however, given the fact that the funds and managers that exceed the proposed size thresholds are almost exclusively based in the United States, we are deeply concerned that the FSB and IOSCO are set on a path that could very well have a significant negative effect on U.S. investors, businesses and capital markets without reducing systemic risk. As a result, we urge you, as members of the Council that are also members of the FSB and/or IOSCO, to reject the proposals in the Second Consultative Document and to oppose any further attempts by the FSB and IOSCO to create a methodology for designating individual asset managers and investment funds as global SIFIs.[10]

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at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542347679#.VQ907GfwuUk (announcing the adoption of structural and operational reforms to address risks of investor runs in money market funds, and describing the reforms as building on the 2010 amendments, due to the SEC's recognition when it adopted the 2010 reforms "that the 2008 financial crisis raised questions of whether more fundamental changes to money market funds might be warranted"); *Money Market Fund Reform; Amendments to Form PF*, 79 Fed. Reg. 47735 (August 14, 2014) (final rule).

[10] To the extent that U.S. members of the FSB and/or IOSCO are unsuccessful in opposing the current FSB/IOSCO approach, we urge the Council to reject any designation within the U.S. regulatory framework of specific asset managers and investment funds as systemically important. *See* the Council's *Nonbank Designations – FAQs*, at Q11 (**Q:** If international entities such as the Financial Stability Board (FSB) identify a U.S. firm as systemically important, does that mean that the FSOC will do the same? **A:** No. While the FSB and the FSOC are both focused on strengthening financial stability, their processes are distinct. Decisions reached in the FSB do not determine decisions made by the FSOC. In fact, **the FSOC is under no obligation to even consider a firm identified by the FSB for designation**.) (emphasis added), available at http://www.treasury.gov/initiatives/fsoc/designations/Pages/nonbank-faq.aspx#11. *But cf.* Peter J. Wallison and Daniel M. Gallagher, *How Foreigners Became America's Financial Regulators*, The Wall Street Journal, March 19, 2015, available at http://www.wsj.com/articles/peter-wallison-and-daniel-gallagher-how-foreigners-became-americas-financial-regulators-1426806547 (quoting memorandum from FSB Chairman and Governor of the Bank of England Mark Carney to members of the FSB, stating that FSB decisions must receive "full, consistent and prompt implementation" by member nations because that "is essential to maintaining an open and resilient financial system"; also noting that during the past year, "[i]n every case where the FSB made a decision or announced a policy, the [Council] followed"). If it were to be the case that the FSB process could determine decisions of the Council, that would raise a number of significant questions that should be answered, including why the U.S. members of the FSB and IOSCO would participate in an effort by international regulators to designate U.S. entities if these U.S. agencies disagree with that approach.

Questionable Timing for Release of Second Consultative Document

We are also troubled by the timing of the Second Consultative Document's release and its connection, or lack thereof, to the FSOC Notice process, given that all of the U.S. members of the FSB and/or IOSCO are also members of the Council. The Second Consultative Document was published on March 4, 2015, even though comments on the FSOC Notice were not due until March 25, 2015.[11]

As you know, the FSOC Notice was first published on December 18, 2014, following work over the preceding year to analyze the asset management industry.[12] During the meeting at which the Council considered whether to issue the FSOC Notice, Secretary Lew stated publicly that the Council "had no predetermined view about the conclusions to draw or actions to take" following the FSOC Notice.[13] The FSOC Notice reiterated this position,[14] as did Patrick Pinschmidt, Deputy Assistant Secretary at the Department of the Treasury and the Council's Executive Director, in a recent speech.[15] In particular, Deputy Assistant Secretary Pinschmidt stated:

> [R]egarding the Council's asset management work, I think it's worth echoing what Secretary Lew said in December when the Council issued the request for public comment—and this certainly remains true today: there is no predetermined outcome, and no final decisions have been made in terms of potential risks relating to asset management products and activities. Once the Council has an opportunity to review public comments, it will be in a better position to identify any risks that may exist, and—to the extent any risks exist—assess the nature of those risks to better

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[11] *See Notice Seeking Comment on Asset Management Products and Activities*, 80 Fed. Reg. 7595 (February 11, 2015) (notice; extension of comment period).

[12] FSOC Notice, 79 Fed. Reg. at 77489.

[13] Minutes of the Financial Stability Oversight Council Held December 18, 2014, at p. 13, available at http://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/December%2018,%202014%20Meeting%20Minutes.pdf.

[14] FSOC Notice, 79 Fed. Reg. at 77490 ("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.").

[15] Remarks of Deputy Assistant Secretary of FSOC Office Patrick Pinschmidt at the Investment Adviser Association's (IAA) 2015 Compliance Conference, March 5, 2015, available at http://www.treasury.gov/press-center/press-releases/Pages/jl9988.aspx.

understand how a particular product or activity could pose a risk to U.S. financial stability.

In this context, it was confusing, to say the least, to learn on March 4 that the FSB and IOSCO had released a new global SIFI proposal in the Second Consultative Document – at odds with the approach taken by the Council in the FSOC Notice and three weeks before comments on the FSOC Notice were due.[16] The approval by U.S. members of the FSB and IOSCO of a new global SIFI proposal before the end of the comment period on the FSOC Notice appears to conflict with statements that Secretary Lew and others have made. These statements stress that the Council has determined neither whether there is a risk to financial stability from asset management products and activities, nor whether a regulatory response is required to address any such risk. The FSOC Notice certainly did not propose – let alone endorse – a new and very specific regulatory approach to an as-yet-unidentified risk; but that is exactly what has been done to the extent that members of the Council approved the issuance of the Second Consultative Document.

Following the comment period on the First Consultative Document, the Council's analysis of risks associated with the asset management industry, and discussions between policymakers and the industry throughout 2014, members of the AMG were encouraged when it appeared the Council would pursue the recommended focus on products and activities through its issuance of the FSOC Notice – and would do so with an open mind and "no predetermined view." Furthermore, in our letter requesting an extension of the comment period for the FSOC Notice, we noted that the authors of the FSB/IOSCO document would benefit from consideration and analysis of comments on the FSOC Notice, and we therefore requested that the members of the Council involved in the FSB/IOSCO process defer any further action until after comments on the FSOC Notice had been reviewed and considered.[17] This request was made by other organizations as well in their requests that the comment period for the FSOC Notice be extended.[18]

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[16] We note, moreover, that Daniel K. Tarullo, a member of the Board of Governors of the Federal Reserve System, which is a member of the Council, chairs the FSB's Standing Committee on Supervisory and Regulatory Cooperation, which is the FSB committee responsible for addressing financial stability issues relating to the development of supervisory and regulatory policy. This makes the differences in approach between the Council and the FSB/IOSCO all the more troubling.

[17] *See* letter from the AMG to the Council, January 15, 2015, available at http://www.regulations.gov/#!documentDetail;D=FSOC-2014-0001-0003.

[18] *See* letter from the U.S. Chamber of Commerce to the Council, January 7, 2015, available at http://www.regulations.gov/#!documentDetail;D=FSOC-2014-0001-0002; letter from the Managed Funds Association to the Council, January 16, 2015, available at http://www.regulations.gov/#!documentDetail;D=FSOC-2014-0001-0006.

At a minimum, the decision not to heed those requests and the simultaneous participation in these two conflicting regulatory endeavors has created confusion about how the global SIFI designation and FSOC Notice processes relate to one another, as well as concern about whether comments on the FSOC Notice will be considered thoughtfully. This would appear to undermine the validity of the notice and comment process for the FSOC Notice and raises concerns about the possibility that non-U.S. regulators could attempt to dictate a regulatory approach for U.S. funds and managers that is established without the benefit of the procedural protections afforded to interested parties under U.S. law and is in conflict with the approach pursued by U.S. regulators. As noted above, we urge all of you, as the members of the Council that are also members of the FSB and/or IOSCO, to oppose any such efforts.

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We appreciate your consideration of the questions and concerns raised in this letter and would appreciate the opportunity to meet with you at your earliest convenience to discuss these matters. Please feel free to contact me at tcameron@sifma.org or 202.962.7447.

Sincerely,

Timothy W. Cameron, Esq.
Head, Asset Management Group
Securities Industry and Financial Markets Association

cc: Hon. Thomas J. Curry, Comptroller, Office of the Comptroller of the Currency
Richard Cordray, Director of the Consumer Financial Protection Bureau
Hon. Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation
Melvin L. Watt, Director of the Federal Housing Finance Agency
Hon. Debbie Matz, Chairman of the National Credit Union Administration
S. Roy Woodall Jr., Voting Member of Financial Stability Oversight Counsel