

March 30, 2015

VIA EMAIL

Mr. Christopher Stein
Chief, Services Surveys Branch (BE-50)
Balance of Payments Division
Bureau of Economic Analysis
U.S. Department of Commerce
Washington, DC 20230

Mr. Paul Bugg
PRA Desk Officer for BEA
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: International Services Surveys: BE-180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons; RIN 0691-AA84

Dear Messrs. Stein and Bugg:

The Asset Management Group of the Securities Industry and Financial Markets Association (“AMG”) appreciates the opportunity to provide comments to the Bureau of Economic Analysis (“BEA”) on the proposed changes to its regulations regarding the BE-180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.¹ The main change proposed by BEA is to make the BE-180 survey mandatory for all U.S. financial service providers that meet the survey criteria, regardless of whether they are specifically contacted by BEA, in order to “ensure complete coverage” of transactions within the scope of the survey. We respectfully submit that this change would not advance BEA’s mission and would impose an undue reporting burden on asset managers.

The AMG’s members represent U.S. asset management firms whose combined assets under management exceed \$30 trillion. The clients of AMG member firms include, among others, registered investment companies, investment advisers, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds. AMG has a demonstrated ability to prescribe solutions for complex issues that regulators

¹ 80 Fed. Reg. 4228 (BEA Jan. 27, 2015).

Messrs. Stein and Bugg
March 30, 2015
Page 2 of 9

and industry participants alike classify as critical. With its diverse membership, AMG is well-placed to provide a unique perspective on the securities industry and how the proposed rule will affect the industry and BEA's survey results.

BEA has requested comments on the following subjects:

- (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) The accuracy of the burden estimate;
- (c) Ways to enhance the quality, utility, and clarity of the information collected; and
- (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

As described in more detail below, we believe that the BE-180 survey should not be made mandatory. This change is not necessary or beneficial for the proper performance of BEA's functions, and it would exacerbate the reporting burden on respondents. In the alternative, we suggest that the \$3 million reporting threshold be substantially increased, in order to target major financial service providers while minimizing the information collection burden on respondents. In any event, we believe that BEA must issue detailed instructions and guidance for asset managers to complete the BE-180 survey in order to ensure the quality and utility of information collected. Finally, we provide comments on the accuracy of BEA's estimated hours burden.

1. The BE-180 Should Not Be Mandatory For all Eligible Reporters

We respectfully submit that BEA should maintain its current reporting requirement for the BE-180 survey, such that persons are only required to respond to the survey if contacted by BEA. This approach would be consistent with the BE-185 quarterly survey of international financial services transactions,² and with most other BEA surveys.³

² See *BE-185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons*, 80 Fed. Reg. 12,447 (BEA Mar. 9, 2015) ("Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.").

³ See 80 Fed. Reg. at 4229 ("If the proposed rule is made final, unlike *most other BEA surveys conducted pursuant to the Act*, persons subject to the reporting requirements of the BE-180 would be required to respond whether or not they are contacted by BEA.") (emphasis added).



Messrs. Stein and Bugg
March 30, 2015
Page 3 of 9

BEA's proposed rule does not provide any reason for making the BE-180 survey mandatory, and we do not see any compelling reason that doing so would advance BEA's mission.

As the proposed rule indicates, during non-benchmark years, BEA adequately estimates of the volume of these transactions from sample data reported in BE-185 quarterly survey responses. Moreover, the response rate for the 2009 benchmark survey was over 80% with a survey size of about 6,200 firms.⁴ This is a very high response rate, which is also about the same as the response rate for the BE-185 quarterly survey. Accordingly, it is not necessary to make the survey mandatory in order to ensure complete coverage of the target transactions.

It is also important to consider the additional burden of a mandatory BE-180 survey in the context of other BEA reporting requirements recently imposed on asset managers. The BE-13 foreign direct investment survey was reactivated on a mandatory basis in November 2014 (with the first surveys due in January 2015), after being dormant since 2009. The BE-10 benchmark survey of outbound foreign investment is also due in 2015 on a mandatory basis. These two surveys were released in short order before the BE-180 and imposed substantive new reporting obligations on many asset managers. Due to their range of activities and global operations, many asset managers are in a unique position of having a significant number of complex transactions to report on these three BEA surveys. The cumulative burden of the BE-10, BE-13, and BE-180 surveys imposed on asset managers within one year is substantial. This burden is in addition to required financial reporting to other U.S. government agencies under the same statutory mandate and for similar purposes. We also understand that relatively few of SIFMA's asset manager members have been subject to BE-180 reporting requirements in the past. To make the BE-180 survey mandatory would in fact broaden the survey respondent base in a substantive way to cover all asset managers.

Moreover, despite the fact that BEA has recently made the BE-10 and BE-13 surveys mandatory, it does not follow that the BE-180 should be made mandatory as well. The foreign direct investment surveys are broader than the international services surveys, and apply to various types of transactions and entities throughout the U.S. economy. It may arguably be useful to make these foreign direct investment surveys mandatory because BEA would not necessarily know which entities were involved in recent reportable investment transactions in order to obtain a representative sample. However, the universe of financial services providers is smaller and well-known to BEA. Accordingly, the existing sampling system remains adequate.

Also, the BE-180 survey overlaps to a large extent with the U.S. Department of the Treasury's mandatory Treasury International Capital ("TIC") reports. In particular, the

⁴ *A Guide to BEA's Services Surveys* at 12, available at <http://www.bea.gov/surveys/pdf/surveysu.pdf>.

Messrs. Stein and Bugg
March 30, 2015
Page 4 of 9

TIC-B form covers U.S. financial institutions' liabilities to, and claims on, foreign residents. The TIC reports are collected under the same statutory authority as BEA's surveys, and gather data on international financial services transactions for similar purposes. We submit that BEA should look to the comprehensive information that is already collected by the U.S. government from asset managers on a regular basis. This would be a more efficient and less burdensome approach than increasing the reporting requirements for U.S. asset managers.

Finally, if BEA decides to make the BE-180 mandatory in its final rule, we respectfully request that the response deadline be postponed or that the mandatory filing requirement take effect for the next benchmark reporting cycle in 2020. The final rule and actual survey will not be published for several more months, while the survey response is currently due by October 1, 2015. This schedule allows insufficient time for respondents – especially first time respondents – to collect and prepare the necessary data. As described further below, AMG members may need to implement new processes and systems in order to full comply with the BE-180 requirements. Based on our experience to date with the BE-10 and BE-13 surveys (the latter of which required multiple new reports within a short time after the final rule was published), it will require a great deal of time and resources to respond to this newly-imposed reporting requirement. Accordingly, it would be most beneficial for BEA and respondents to make the survey mandatory in the next five-year cycle, or at the very least to delay the deadline until six months after the final rule is published.

2. The Monetary Threshold for Reporting Should be Raised

If BEA revises its existing approach and makes the BE-180 survey mandatory, we submit that BEA should raise the \$3 million monetary reporting threshold. The existing \$3 million level in the proposed rule risks imposing inappropriate reporting obligations on smaller entities, potentially inundating BEA with smaller filers that would not provide data that advances BEA's mission, and skewing the aggregated data that BEA receives.

A higher reporting threshold would still ensure coverage of a significant range of financial services providers, while avoiding excessive coverage of smaller entities. For example, the U.S. Census Bureau reports that there were over 470,000 U.S. firms characterized as financial services providers in 2012 under NAICS Code 52, which BEA cites in its definitions for the BE-180 survey.⁵ The U.S. Securities and Exchange Commission ("SEC") oversees over 25,000 market participants (including nearly 12,000

⁵ U.S. Census Bureau, *Finance and Insurance: Industry Series: Preliminary Summary Statistics for the U.S.: 2012 Economic Census of the United States*, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_52I1&prodType=table.

Messrs. Stein and Bugg
March 30, 2015
Page 5 of 9

investment advisers)⁶ and currently there are over 25,000 federally or state registered investment advisers.⁷ An investment adviser is required to have at least \$100 million in assets under management in order to register with the SEC.⁸ At the same time, the Investment Company Institute (“ICI”), represents over 16,900 investment companies with over \$18.6 trillion in assets.⁹ Considering the global nature of markets today, it is likely that a very high percentage of these thousands of investment advisers and investment companies – in addition to many other hedge funds, private equity funds, pension funds, and other financial services providers – would cross the current \$3 million reporting threshold.

In previous versions of the BE-180 survey, the respondent base was “comprised mainly of major U.S. corporations.”¹⁰ Because a mandatory survey based on a \$3 million reporting threshold would significantly broaden the respondent universe, the value of any comparisons over time would be greatly diminished. As such, the low threshold would impair BEA’s ability to provide useful guidance on policy formation, accurately gauge the impact of relevant policy changes, and support the competitiveness of U.S. industry. Raising the monetary threshold for reporting would enable BEA to maintain a generally consistent respondent base of major U.S. corporations.

Moreover, in the proposed rule BEA stated that the \$3 million “exemption level would exclude most small businesses from mandatory coverage.”¹¹ We respectfully believe that this assumption is inaccurate. It is more likely to exclude mainly individuals. The scope of the BE-180 survey is broad and captures a wide range of financial services that are provided by entities of various sizes. Because of the variety of transactions captured, it would be relatively easy for even a small financial services provider to reach the \$3 million aggregate level. The problem is compounded by the fact that the \$3 million level applies to total sales *or* purchases by the U.S. reporter on a consolidated basis: a large number of small transactions of various types could easily subject an entity to reporting requirements, while the data provided may not accurately reflect important

⁶ SEC, FY 2016 Congressional Budget Justification, FY 2016 Annual Performance Plan; FY 2014 Annual Performance Report at 4, *available at* <http://www.sec.gov/about/reports/secfy16congbudgjust.pdf>.

⁷ SEC, Investment Adviser Public Disclosure, *available at* <http://www.sec.gov/answers/iapd.htm>.

⁸ *See* 17 C.F.R. § 275.203A-1.

⁹ ICI, 2014 Annual Report to Members, *available at* http://www.ici.org/pdf/14_ici_annual.pdf.

¹⁰ 80 Fed. Reg. at 4230.

¹¹ *Id.*

Messrs. Stein and Bugg
March 30, 2015
Page 6 of 9

trends in financial services transactions of which BEA should be aware. The low threshold, which has not been revised in recent years, therefore imposes a significant reporting burden on relatively small entities given the breadth of reportable services.

Raising the exemption level would also establish a benchmark consistent with various TIC reports. For example, the annual TIC SHCA report, which collects information on U.S. ownership of foreign securities, establishes a reporting minimum of \$100 million for Schedules 2 and 3. Likewise, the TIC Form S, related to cross-border ownership of securities, must be completed if total reportable transactions in purchases or sales of long-term securities amount to \$350 million or more during a single month.

Finally, the BE-180 survey's \$3 million exemption level is inconsistent with the reporting thresholds of other BEA surveys. As an entity's information-gathering burden increases, the reporting threshold similarly increases. For example:

- The BE-13 Survey of New Foreign Direct Investment in the United States requires reporting when the total cost of a *single* covered transaction is greater than \$3 million.
- The minimum reporting threshold for a complete BE-12 Benchmark Survey of Foreign Direct Investment in the United States report is \$20 million. Below this level, only selected data items are required to be reported.
- The minimum reporting threshold for a complete BE-10 Benchmark Survey of U.S. Direct Investment Abroad report (as well as the BE-11 annual report) is \$25 million. Below this level, only selected data items are required to be reported.
- The minimum reporting threshold for a complete BE-577 Quarterly Survey of U.S. Direct Investment Abroad is \$60 million.

Accordingly, a higher minimum reporting threshold would produce data more useful to BEA while relieving smaller institutions of burdensome information collection obligations.

3. BEA Must Provide Guidance for Asset Managers in Order to Obtain Meaningful Survey Data

AMG also respectfully submits that BEA must issue guidance on how to apply the BE-180 survey to the asset management and securities industry in order to ensure that it obtains consistent and meaningful survey data. This industry is complex and varied, and

Messrs. Stein and Bugg
March 30, 2015
Page 7 of 9

different from traditional financial institutions. As such, and given that this reporting requirement is new for many of our members, the application of the BE-180 survey to many asset management situations is unclear. Accordingly, we request that the BE-180 survey not be made mandatory until BEA issues formal guidance that may be discussed with the industry.

Not only would detailed and focused guidance aid eligible reporters, but it is necessary to advance BEA's statutory mandate of gathering and assessing accurate data. In the absence of industry-specific guidance, asset managers are likely to make inconsistent (and possibly inaccurate) determinations as to which services are reportable. Uncertainty and inconsistency would adversely affect the reliability and utility of BEA's data collection, undermining its mission.

For example, AMG members have raised several questions about the proper interpretation of the BE-180 survey to our industry. Below is just a sample of issues that are not clearly addressed by the 2009 survey and instructions, and for which directed guidance would be useful.

- A foreign person may hire a U.S. investment adviser to manage its assets, and that adviser hires a U.S. sub-adviser to manage certain assets in this portfolio. Does the U.S. sub-adviser need to report a sale of services to the foreign principal, or is the U.S. investment adviser considered the purchaser of its services?
- Investment advisers often place trades through a broker-dealer and pay a commission. The broker-dealer may have affiliates around the world. How does the investment adviser determine which entity is the supplier of the brokerage services (*e.g.*, the affiliate with which it placed the order, the affiliate that conducted the trade, the affiliate that charged the commission, etc.)?
- While interest is generally not considered a financial service, would the carried interest received by a general partner be considered a reportable fee received for providing management services to the limited partnership?
- Is the fee paid by a fund to a director that is a foreign person considered a reportable payment for management services?
- Are other payments related to financial management (*e.g.*, monitoring fee, break-up fee, loan commitment fee) considered reportable financial services transactions? If so, how should they be reported?

Messrs. Stein and Bugg
March 30, 2015
Page 8 of 9

Finally, by way of illustration, we note that the instructions for BEA's prior BE-180 survey comprised seven pages, and BEA provided a few FAQs that were not specific to any industry. By contrast, the TIC-B reports include a 76-page instruction document, and the Treasury Department issued additional FAQs and made a number of presentations to industry groups. In its proposed rule, BEA stated that "[s]urvey instructions and data item descriptions would be changed to improve clarity" ¹² We respectfully request that the instructions be expanded significantly to provide meaningful guidance to the asset management and securities industry before significantly expanding the survey through mandatory application.

4. BEA's Burden Estimate Is Vastly Understated

We also appreciate this opportunity to comment on the accuracy of the burden estimate for this information collection. BEA estimates that, while the respondent burden may vary, it would take an average of ten hours to provide a complete response, "including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information." ¹³ We respectfully submit that this estimate is vastly understated.

If a firm qualifies for mandatory reporting, even based on the current \$3 million exemption level, that firm is likely to have engaged in significant cross-border financial service activity. Asset managers in particular engage in numerous international transactions just with affiliated parties, as asset managers conduct business through various entities and funds organized in jurisdictions around the world.

The BE-180 survey covers ten distinct categories of financial services, many of which apply to a single U.S. reporter even if different services are handled by different parts of the corporate group. That reporter would have to research, aggregate, and review data on various transactions from multiple entities and business units. These data and reporting methodologies are then often reviewed by internal and external compliance personnel and legal counsel. A more accurate estimated hour burden for any mandatory reporter would be at least an order of magnitude larger than ten hours. In fact, most of our members have already spent more than ten hours reviewing the instructions from BEA's 2009 survey. We believe that the reporting burden will be so great that BEA's proposed rule is inconsistent with its statutory obligation to "give due regard to the costs incurred by persons supplying such information" ¹⁴

¹² 80 Fed. Reg. at 4229.

¹³ *Id.*

¹⁴ 22 U.S.C. § 3103(g).



Messrs. Stein and Bugg
March 30, 2015
Page 9 of 9

We would welcome the opportunity to discuss these issues further at your convenience. If you have any questions about these comments, or if we can provide any additional information, please contact Lindsey Keljo at 202-962-7312 or by email at lkeljo@sifma.org.

Respectfully,

A handwritten signature in black ink, appearing to read "Timothy W. Cameron". The signature is stylized with a long horizontal stroke extending to the left.

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

A handwritten signature in blue ink, appearing to read "Lindsey Weber Keljo". The signature is cursive and fluid.

Lindsey Weber Keljo, Esq.
Vice President and Assistant General Counsel
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cc: Mario Mancuso, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP