October 17, 2016

By electronic submission to www.eba.europa.eu

European Banking Authority
One Canada Square (Floor 46)
Canary Wharf
London E14 5AA
United Kingdom

Re: EBA Consultation Paper on Guidelines on Connected Clients under Article 4(1)(39) of Regulation (EU) No 575/2013, EBA/CP/2016/09

Dear Sirs and Madams:

The Securities Industry and Financial Markets Association's Asset Management Group ("SIFMA AMG" or "AMG") appreciates the opportunity to comment on the proposed guidelines (the "Proposed Guidelines") of the European Banking Authority ("EBA") on the scope of the term "group of connected clients" for purposes of the large exposure limits of Regulation (EU) No 575/2013 (the "Regulation").[1] AMG members are U.S. and multinational asset management firms with combined global assets under management exceeding $34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS, and private funds such as hedge funds and private equity funds. AMG members act as fiduciaries for European clients and clients investing in Europe, and accordingly, would be affected indirectly by the restrictions the Proposed Guidelines would impose on European banks.

We understand and share the goal of the Regulation's large exposure limits: reducing the risks to a bank arising from the failure of one or more significant clients. We further understand that, in this context, it is critical to identify accurately the types of bank clients that are so economically related to each other that they should be considered a "group of connected clients" under the Regulation. As discussed in further detail in this letter, we believe that certain aspects of the Proposed Guidelines are overbroad in explaining the circumstances in which multiple clients are connected to each other such that they form a "single risk." In their conservatism, the Proposed Guidelines would have unintended negative consequences for banks' asset management clients, particularly clients based outside of Europe.

[1] EBA Consultation Paper on Guidelines on Connected Clients Under Article 4(1)(39) of Regulation EU No 575/2013, EBA/CP/2016/09 (July 26, 2016).

New York | Washington

120 Broadway, 35th Floor | New York, NY 10271-0080 | P: 212.313.1200 | F: 212.313.1301
www.sifma.org

Part I of this letter discusses the Proposed Guidelines with respect to connections among clients based on "control." Part II discusses the Proposed Guidelines with respect to connections among clients based on "economic dependency." Finally, Part III summarizes our recommendations to improve the Proposed Guidelines.

I. Control Relationships

A. The Final Guidelines Should Continue to Permit Banks to Determine That Certain Clients Connected by Control Relationships Are Not "Connected Clients"

The Regulation contemplates that multiple clients of a bank could be connected due to either (a) control relationships, or (b) economic dependencies. This approach reflects the assumption that entities that are connected by a control relationship would generally suffer losses or failure together, *i.e.*, that the entities present a "single risk" to the bank. However, the Regulation's definition of "group of connected clients" also contemplates that control relationships would not always create a single risk, providing that "'group of connected clients' means . . . two or more natural or legal persons who, ***unless it is shown otherwise***, constitute a single risk because one of them, directly or indirectly, has control over the other or others."[2] In this regard, the Proposed Guidelines would permit banks to determine that no single risk exists among clients that are connected by a control relationship, provided that they document the relevant circumstances in a detailed and comprehensible manner. Yet, the Proposed Guidelines also state that "only in *exceptional* cases the existence of a control relationship does not lead to a 'single risk.'"[3] The Proposed Guidelines also seek comment on whether there are situations where the existence of control relationships among clients do not lead to a single risk.[4]

There are several scenarios where the Proposed Guidelines' standards of "control" could capture entities that would not necessarily transmit to each other the losses they suffer and thus would not present a single risk, including arrangements that asset managers commonly use to structure investment funds. As a result, we support the continued inclusion of language in the final guidelines that permits banks to demonstrate that no single risk exists among clients despite the presence of a control relationship.

The Proposed Guidelines include two standards for "control": (1) consolidation standards set forth in International Financial Reporting Standards ("IFRS") as adopted by the European Commission ("EC") for banks' clients that prepare financial statements in accordance with IFRS, and (2) a multi-factor test assessing governance rights, contractual provisions, and share ownership levels for other clients. Under either standard of control, a client could control an entity solely through the client's governance rights over the entity (including voting rights and director appointment rights), or through the client's other contractual rights and obligations with respect to

2 Regulation, Art. 4(1)(39).

3 Proposed Guidelines at p. 9.

4 Proposed Guidelines at p. 30.

the entity, even if the client does not have a meaningful equity interest in the entity. We acknowledge that certain contractual arrangements, such as a commitment by the client to provide financial support to the entity, or cross-default provisions with respect to the entity, could create a loss transmission mechanism such that the client and the entity are a "single risk," despite the client's lack of equity interest in the entity.

Many other contractual arrangements and governance rights commonly accorded to banks' asset manager clients with respect to investment funds, however, would ***not*** create a loss transmission mechanism, even though they could create a control relationship. For example, a client may advise, sponsor, manage, or serve as general partner or managing member of an investment fund, and depending on the facts and circumstances, could control the fund by virtue of such relationship. Indeed, control could be deemed to arise in this context even if the client has not made a meaningful investment in the fund, committed to support the fund financially, or included in any contracts cross-default provisions with respect to the fund. In fact, under the Proposed Guidelines' multi-factor test, control could be deemed to arise merely by virtue of an investment management agreement, even if such an agreement were terminable at will by the fund and if the asset manager client had no stake in the fund or any structural relationship to the fund.[5] In these scenarios, control could arise even if the client would not be exposed to ***any*** credit or market losses as a result of the fund's activities.

While asset managers generally do not make contractual commitments to support financially the funds that they advise, sponsor, manage, or for which they serve as general partner or managing member, we understand that the EBA may be concerned about "step-in" risk, *i.e.*, the risk that an asset manager client would voluntarily step in and provide financial support to such a fund. However, a slew of regulatory reforms have greatly diminished step-in risk following the financial crisis of 2007-2008.

In Europe, these reforms include EBA guidelines on limits on exposures to market-based finance[6] and an EC proposal to overhaul Money Market Fund ("MMF") rules.[7] The EC MMF proposal would require MMFs to maintain robust liquidity levels, require constant net asset value ("NAV") funds to maintain minimum capital cushions, and establish other risk-reducing measures

---

5 Proposed Guidelines at pp. 31-32 (providing that indicators of "dominant influence" include the contractual power to decide on the strategy or direct the activities of an entity, power to decide on crucial transactions such as the transfer of profit or loss, or holding a blocking minority and management duties in the other entity.).

6 EBA Guidelines on Limits on Exposures to Shadow Banking Entities Which Carry Out Banking Activities Outside a Regulated Framework Under Article 395(2) of Regulation (EU) No 575/2013, EBA/GL/2015/20 (Dec. 14, 2015), available at https://www.eba.europa.eu/regulation-and-policy/large-exposures/guidelines-on-limits-on-exposures-to-shadow-banking.

7 *See* Proposal for a Regulation of the European Parliament and of the Council on Money Market Funds /* COM/2013/0615 final - 2013/0306 (COD)*/ (Apr. 9, 2013), available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0615.

that would eliminate the risk of a sponsor being compelled to "step-in" to provide financial support to a MMF.

Likewise, in the United States, the Securities and Exchange Commission ("SEC") has made significant amendments to the rules governing MMFs, providing MMFs with new tools that can be used to stem heavy redemptions and avoid the type of contagion that occurred during the financial crisis.[8] These enhancements have increased MMF resilience, reduced run risk, and significantly reduced the likelihood that MMF sponsors would be required to support their MMFs in future moments of financial stress. In addition, U.S. regulatory reforms have reduced step-in risk for other types of funds as well, such as open-end mutual funds, closed-end mutual funds, private equity funds, and hedge funds.[9] Other reforms in capital and liquidity regulation and accounting standards have also disincentivized step-ins.[10]

Even within fund structures, apart from an asset management relationship, parties connected by control do not generally present a single risk. Funds do not follow a "single point of entry" model in which resources of a controlling entity are deployed to its subsidiaries. Absent a contractual commitment or regulatory requirement to the contrary, fund entities are legally separate, siloed pools of assets that are not responsible for each other's obligations. Each fund has separate custodial and administrative relationships with a distinct group of investors impacted by the fund's performance.

For these reasons, we strongly believe that banks should have the ability to determine, as contemplated by the Regulation, multiple entities connected by a control relationship do not present a single risk, particularly in light of structures where an entity may control, but has no meaningful economic exposure to, another entity.

---

8 The SEC now requires institutional prime funds to implement floating NAVs to eliminate the "first mover advantage" that had incentivized institutional investors to redeem fund shares in times of stress when a MMF's market-based NAV was less than $1.00 per share, making institution funds simply incapable of "breaking the buck." In addition, the SEC's amended rules also provide retail and institutional MMFs the ability to impose liquidity fees and redemption gates. *See* 79 United States Federal Register 47,736 (Aug. 14, 2014).

9 The SEC has finalized mutual fund liquidity rules that will require the creation of liquidity risk management programs and enhancements to disclosure, making those funds less likely to need a sponsor to step-in. *See* SEC final rules regarding Investment Company Liquidity Risk Management Programs and Investment Company Reporting Modernization (Oct. 13, 2016), *available at*: https://www.sec.gov/rules/final.shtml. In addition, under the Volcker Rule, a banking entity is now prohibited from providing financial support to a private equity fund or hedge fund that the banking entity sponsors as a condition of the Volcker Rule's exemption for seeded funds, and the fund's offering documents must have disclosures to that effect. *See* 12 C.F.R. § 248.11(a).

10 For an overview of these reforms, please see the Global Financial Markets Association's March 17, 2016 comment letter in response to the Basel Committee on Banking Supervision's consultation on step-in risk, available at http://gfma.org/correspondence/item.aspx?id=797.

B. The Final Guidelines Should Recognize the Financial Consolidation Standards of United States Generally Accepted Accounting Principles

The Proposed Guidelines would impose a more burdensome control test with respect to non-European clients of banks than for European clients, and as a result, would unfairly burden those non-European clients and make it more difficult for outside capital to access European markets.

The Proposed Guidelines would permit a bank to rely on the concept of control set forth in IFRS when the bank is determining the entities controlled by a client that prepares its financial statements in accordance with IFRS as adopted by the EC.[11] In effect, this rule would permit banks to rely on such clients' control determinations, and therefore would impose fewer burdens on such clients. Clients that follow European IFRS could furnish to a bank a list of entities that (1) they consolidate on their balance sheet for accounting purposes and (2) engage in covered transactions with the bank.[12]

In contrast, the Proposed Guidelines would require a bank to undertake an independent control analysis to determine the entities controlled by a client that prepares its financial statements in accordance with other accounting standards, such as United States Generally Accepted Accounting Principles ("GAAP"). This independent control analysis would require banks to assess their clients' voting rights, director rights, contractual rights, management interlocks, and share ownership levels with respect to other entities. This is so despite the fact that the financial consolidation standards of U.S. GAAP are broadly comparable to, and in some instances more conservative than, the consolidation standards of IFRS. IFRS requires consolidation when a company has the power to control the entity through (a) its power over the entity, (b) its exposure or rights to variable returns from its involvement with the entity, and (c) its ability to exercise its power over the entity to affect the amount of the company's returns.[13] U.S. GAAP includes two models of consolidation – the voting interest model and the variable interest model – and a company generally is required to consolidate any entity that it controls under either model. Under the voting interest model, a company generally controls any entity in which it holds a majority voting interest. In certain circumstances, control may exist when one entity holds less than a majority voting interest, *e.g.*, because of contractual provisions or agreements with other shareholders. Under the variable interest model, a company that has the power to direct the most significant economic activities of a variable interest entity ("VIE") will consolidate the VIE if the company also holds a variable interest in the VIE, including certain equity interests or explicit or implicit obligations to support the VIE financially.[14] As a result of these conservative tests, we believe that U.S. GAAP

---

11 Proposed Guidelines at pp. 30-31.

12 The Proposed Guidelines also would require banks to determine "whether they are aware of" the existence of other entities that a client following European IFRS controls but are not consolidated on the client's balance sheet. *See* Proposed Guidelines at p. 32. However, this standard would not require banks to collect any additional information from clients following European IFRS.

13 *See* IFRS 10 (*Consolidated financial statements*).

14 *See* ASC 810-10-22-50 to -54.

would require consolidation in most, if not all, circumstances where IFRS would require consolidation.

Asset managers' clients generally do not publicly disclose the type of information that would be relevant to an independent control analysis under the Proposed Guidelines, even if they are public reporting companies. Our members expect that banks would be forced to request a significant volume of information from every existing and prospective client that does not follow European IFRS in order to comply with their obligations under the Proposed Guidelines. To conduct a control analysis under the Proposed Guidelines, a bank would need to know, among other things: the identity of every entity in which the client has an investment or governance rights; the client's ownership level in each entity; the client's voting and director appointment rights in each entity; and the client's other contractual rights with respect to each entity.

The requirement for banks to conduct this independent control analysis would have significant unintended consequences. Our members have serious concerns about the information that banks will be required to request of their clients as part of this sweeping due diligence exercise, including:

- ***Information sensitivity.*** Some information that would be relevant to an independent control analysis is sensitive personal financial information or other proprietary nonpublic information. For example, a bank's client may be a family investment vehicle, and revealing information about the vehicle's precise voting structure could involve divulging highly sensitive personal information to the bank.

- ***Competitive considerations.*** To conduct an independent control analysis of a client that is itself a financial institution, the bank would need to request nonpublic information that could create significant competitive issues if shared with the bank. For example, a bank's client may be a competitor investment fund that would be required to provide the bank with its proprietary fund agreements. The bank might obtain inappropriate visibility into its client's operations.

- ***Counterparty obligations.*** To conduct an independent control analysis of a client, the bank would need nonpublic information that is sensitive not only for the client, but also for third parties such as clients and business partners of the client. The bank's client may be prohibited from sharing this third party information by law, contract, or ethical obligation.

- ***Inability to access timely information.*** Both from a bank and client perspective, passive investors in collective investment vehicles may have a particularly difficult time tracking their ownership percentages on a real time basis as purchases or redemptions of other holders may not be communicated promptly, if at all, to all the investors in a fund.

- ***Data minimization principles.*** Requiring a bank to collect vast amounts of sensitive information from its clients is incompatible with data security best practices, which dictate that financial institutions should collect the minimum amount of customer information necessary for their business and regulatory purposes. Data minimization reduces the risks to a financial institution in the event that collected data is compromised.

- ***Information walls.*** A business line unit at a client may not always have full information about its company's dealings; as a result, aggregating this information may require information to be shared across information walls of the client. Likewise, a business line unit at a bank could learn information about its client that would not be permitted to be shared across information walls of the bank. These issues could arise, for instance, if the broker-dealer arm of a bank that also has an asset management business were transacting with an asset management client.

- ***Access to services.*** A prospective client would be required to provide this information to every bank with which it seeks to establish a relationship in Europe. This requirement would make it difficult for clients to access necessary financial services quickly, and would create significant barriers for less sophisticated clients.

- ***Time and expense.*** It would be extraordinary time-consuming and expensive for clients to have to gather information for every single entity to which they may be connected under the multi-factor test.

This information collection exercise would put non-European clients at a disadvantage when seeking to access services from European banks. It would also make it more difficult for non-European clients to access European markets which, in turn, would make it more difficult for European businesses to obtain outside capital. And, while the Proposed Guidelines' independent control analysis would impose significant burdens on banks and their clients that do not follow European IFRS, these burdens would not be outweighed by any marginal benefit in accuracy for the vast majority of a bank's client relationships, which will not come near the large exposure limits of the Regulation.

To equalize the playing field for U.S.-based clients, and avoid imposing inappropriate burdens on them, the final guidelines should permit banks to rely on the consolidation standards set forth in U.S. GAAP for clients that follow U.S. GAAP, subject to banks' ability to find that two companies connected by a control relationship do not present a "single risk."

C. The Final Guidelines Should Include a *De Minimis* Threshold For Control Relationships

Even under the accounting consolidation test, the requirement for banks to conduct a control analysis would impose serious burdens on clients. The Proposed Guidelines appear to require, at a minimum, banks to request asset managers to compile lists of consolidated entities for each fund they manage. Some asset managers have relationship with hundreds of funds. This exercise would take an extraordinary amount of time and effort, even though most funds do not have control relationships that would create exposure concentrations for banks. In addition, funds generally do not disclose their control relationships with third parties, and will have legitimate concerns about sharing with a bank (and their asset manager) the list of companies consolidated on their balance sheets. This is particularly true for funds that may have affiliates that compete with the bank or asset manager. And by requiring European banks to request sensitive and voluminous information in order to maintain a relationship with a client, the Proposed Guidelines could put European *banks* at a disadvantage to their non-European competitors, which may not be required to request such information from all of their clients. If a fund would not consent to share its list of controlled entities with a European bank, the fund's asset manager could be forced to establish relationships with a bank in a different jurisdiction to access services for the fund.

To reduce the occurrence of these burdens and issues, the final guidelines should include a *de minimis* threshold for a bank to conduct a control analysis for a client, just as the Proposed Guidelines include for the economic dependence analysis. A bank should only be required to assess whether a client is connected to other clients by control relationships if the bank's net credit exposure to one of the clients equals 5 percent or more of the bank's eligible capital. Such a *de minimis* threshold would reflect the reality that the vast majority of a bank's client exposures will not be anywhere near the Regulation's large exposure limit.

II. Economic Dependency

A. Funds Advised By the Same Advisor Are Not Economically Interdependent By Virtue of The Advisory Relationship

The Proposed Guidelines provide that banks should assess any contagion or idiosyncratic risk that could emerge from two clients using the same investment advisor.[15] If the implication of this statement is that the use of a common investment advisor creates a direct link whereby financial distress would be transmitted among commonly-advised investment funds, we disagree. Each investment fund advised by an investment advisor has a legally separate, siloed pooled of assets. Investment funds generally do not have cross-default provisions whereby one fund would default on its obligations if a commonly-advised fund defaulted. We also note that the Proposed Guidelines include no data or analysis indicating that commonly-advised funds tend to default together.

If the implication of the statement in the Proposed Guidelines is that solely by virtue of the advisory relationship, financial stress at a fund could be transmitted to its investment advisor, and that financial stress at the investment advisor could be transmitted to other funds it advises, we again disagree. Investment advisors act as agents, not principals.[16] Investment funds and their advisors generally do not have cross-default provisions whereby one would default on its obligations if the other defaulted. As discussed above in section I.A., asset managers generally do not commit to support the funds they advise, and as a result of regulatory reform, counterparties to funds do not have any expectation of such support.

The Proposed Guidelines' language regarding the use of a common investment advisor should not be included in the final guidelines.

---

15 Proposed Guidelines at p. 36.

16 For a further discussion of why the failure or financial distress of an asset manager would not adversely affect the funds it manages, please see pages 63-64 of our March 25, 2015 comment letter to the U.S. Financial Stability Oversight Council regarding Asset Management Products and Activities, available at http://www.sifma.org/issues/item.aspx?id=8589953776.

B. Clients That Are General Partners in Limited Partnerships Are Not Always Significantly Economically Exposed to Such Limited Partnerships

The Proposed Guidelines provide that when a client is liable according to its legal status as a member in an entity, such as when it serves as a general partner in a limited partnership, and the exposure is so significant for the client that the client is likely to default or experience financial difficulties if a claim against the limited partnership occurs, the client and the limited partnership would be economically interdependent.[17]

We understand this principle to allow for the possibility that there are circumstances where the exposure of a client that is a general partner to a limited partnership would *not* be so significant for the client that the client would be likely to default or experience financial difficulties if a claim against the limited partnership occurs. These circumstances would include, for instance:

- Where the size and scope of the limited partnership's activities – and potential liabilities – are insignificant compared to the size of the client and its capital base.

- When the limited partnership does not engage in the types of activities that would lead to a large general liability claim against the limited partnership. Investment funds that invest in liquid securities and use only a modest amount of leverage are much less risky for the general partner than limited partnerships that operate businesses with large litigation contingencies, such as environmental claims.

- When the client holds its general partner interest in a manner that limits the client's general liability for the limited partnership's obligations. In many situations, a client holds its general partner interest through a "blocker entity" (such as a limited liability company) designed to limit the client's unlimited legal liability. That is, the blocker entity (1) sits between the client and the limited partnership, and (2) has few assets that provide it with the ability to make good on the obligations of the limited partnership if called upon. The existence of such a blocker entity limits the client's liability, including by relieving the client of the obligation to fund losses of the limited partnership.

In addition, we note that further conditions would need to be satisfied in order for the client to avoid presumptively being connected to the limited partnership through a control relationship. Under U.S. GAAP, for instance, the general principle is that a general partner in a limited partnership is presumed to control that limited partnership. However, the general partner would not control the limited partnership if the limited partners have either (a) the substantive ability to dissolve the limited partnership or otherwise remove the general partner without cause, or (b) substantive participating rights.

---

17 Proposed Guidelines at p. 34.

C. The Final Guidelines Should Include a Higher De Minimis Threshold For Identifying Economic Dependencies Among Clients

The Proposed Guidelines provide that a bank would only be required to identify economic dependencies among clients for exposures that reach an exposure value equal or above 2 percent of the bank's eligible capital. We believe this *de minimis* threshold would be far too low, for several reasons.

First, global large exposures standards use a 5 percent threshold. The Basel Committee's large exposures framework sets its *de minimis* threshold for an economic dependence analysis at 5 percent of a bank's eligible capital.[18] Likewise, in the United States, the Federal Reserve's proposed single counterparty credit limits would set their *de minimis* threshold for an economic interdependency analysis at 5 percent of a banking organization's eligible capital.[19] The EBA does not offer any reason for its guidance to diverge so significantly from global standards.

Second, we believe that a lower *de minimis* threshold would not materially increase the likelihood that a bank would identify a group of connected clients to which the bank's exposures exceed the large exposure limit of the Regulation. The Proposed Guidelines do not include any data or analysis demonstrating that any client to which less than 5 percent of a bank's eligible capital is exposed would be even remotely likely to be economically interdependent with other clients such that they form a group to which more than 25 percent of the bank's eligible capital is exposed.

Many investment funds are subject to exposure limits and use other risk mitigants that significantly reduce the likelihood that they would be economically interdependent with third parties. Funds establish internal exposure limits as a matter of prudent risk management, and some types of funds are subject to regulatory exposure limits as well.[20] These exposure limits reduce funds' exposures to third parties. As a result, these limits lessen the need for banks to be subject to an overly conservative *de minimis* threshold for purposes of conducting economic interdependency analyses of their fund clients.

Third, banks' clients would bear the burden of an unnecessarily low *de minimis* threshold. The Proposed Guidelines would require banks to "intensively investigate" and document economic connections among their clients that exceed the threshold. To comply, banks would be likely to request highly sensitive information and large quantities of information from their clients. This information would include:

---

18 Basel Committee on Banking Supervision, Standards: Supervisory Framework for Measuring and Controlling Large Exposures, at 6 (Apr. 2014), available at http://www.bis.org/publ/bcbs283.htm.

19 81 Fed. Reg. 14,328, 14,332 (Mar. 16, 2016).

20 *See, e.g.*, Directive 2009/65/EC of the European Parliament and of the Council, at Art. 52 (July 13, 2009), as amended (exposure limits for UCITS); 15 U.S.C. §§ 80a-5(b), 80a-8(b)(1), & 80a-12(d) (Investment Company Act exposure limits for registered investment companies in the United States); 26 U.S.C. § 851(b) (exposure limit to qualify as "regulated investment company" for U.S. federal tax purposes).

- whether the client has guaranteed another entity's obligations, or been a co-borrower with another entity, and whether another entity has guaranteed the client's obligations;
- whether the client is a general partner in an entity that creates significant exposure for the client;
- information about the client's significant assets, revenues, expenditures, and income;
- the identity of the client's customers and concentration of the client's customer base;
- information about the client's sources of funding;
- information about holders of the client's liabilities, and obligors on the client's receivables;
- the identity of the client's investment advisor, if any; and
- the identity of the client's shareholders.

Sharing this information with banks would present the same concerns for clients as the concerns described in section I.B. above with respect to independent control analyses. The EBA should not impose these burdens on clients when there is so little chance for a client to be part of a group that exceeds the large exposure limit of the Regulation, as would be the case for any client to which less than 5 percent of the bank's capital is exposed.

III. Summary of Recommendations

For the reasons described above, we have the following recommendations for the EBA to make the final guidelines more accurate and less burdensome for clients:

- ***No Single Risk Resulting From Certain Control Relationships.*** The final guidelines should continue to permit banks to determine that multiple clients do not form a single risk despite the existence of control relationships, as is the case in many asset management structures.
- ***Recognition of U.S. GAAP For Control Analysis.*** In order to avoid unfairly burdening clients based in the United States and creating a barrier to outside capital reaching European markets, the final guidelines should allow banks to rely on the standards of consolidation set forth in U.S. GAAP when determining the control relationships of a client that follows U.S. GAAP, subject to banks' ability to find that two companies connected by a control relationship do not present a "single risk."
- ***Addition of De Minimis Threshold for Control Analysis.*** The final guidelines should provide that a bank is only required to identify control relationships among clients for exposures that reach an exposure value equal or above 5 percent of the bank's eligible capital.

- ***No Single Risk Arising From Common Investment Advisor.*** The final guidelines should not include language from the Proposed Guidelines suggesting that the use of a common investment advisor subjects multiple clients to a single risk.

- ***Clarification of Risks Arising From General Partner Roles.*** The final guidelines should clarify that clients that are general partners to limited partnerships are not necessarily significantly economically exposed to those limited partnerships, such as when (1) the size and scope of the limited partnership's activities are insignificant, (2) the limited partnership does not engage in the types of activities that would lead to a large general liability claim against the limited partnership, or (3) the client holds its general partner interest in a manner that limits the client's general liability for the limited partnership's obligations.

- ***Higher De Minimis Threshold For Economic Dependence Analysis.*** The final guidelines should provide that a bank is only required to identify economic dependencies among clients for exposures that reach an exposure value equal or above 5 percent of the bank's eligible capital.

*　　　*　　　*

We appreciate the EBA's consideration of our concerns. Should you have any questions, please do not hesitate to contact Tim Cameron ((202) 962-7447 or tcameron@sifma.org) or Laura Martin ((212) 313-1176 or lmartin@sifma.org), or our counsel at Covington & Burling LLP, John C. Dugan ((202) 662-5051 or jdugan@cov.com) or Randy Benjenk ((202) 662-5041 or rbenjenk@cov.com).

Respectfully submitted,

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

Laura Martin, Esq.
Asset Management Group – Managing Director and Associate General Counsel
Securities Industry and Financial Markets Association