MANAGED FUNDS ASSOCIATION

Alternative Investment Management Association

September 6, 2016

VIA EMAIL

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Adviser Business Continuity and Transition Plans; S7-13-16

Dear Mr. Fields:

Managed Funds Association ("MFA")[1] and the Alternative Investment Management Association ("AIMA")[2] appreciate the opportunity to provide comments to the Securities and Exchange Commission (the "SEC" or "Commission") in response to its proposed rule on business continuity and transition plans for investment advisers (the "Proposed Rule").[3] While we appreciate the goals underlying the Proposed Rule, we believe a new rule is not necessary, since existing SEC guidance has already caused most investment advisers to implement business continuity plans ("BCPs") pursuant to Rule 206(4)-7 under the Investment Advisers Act of 1940 ("Advisers Act"). We also believe there is uncertainty whether the Proposed Rule is consistent with the goal of the statutory authority given to the SEC to promulgate rules under Section 206(4) of the Advisers Act. As described below, we respectfully suggest that the SEC should instead continue its practice of issuing timely, useful guidance to investment advisers as needed in

[1] The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

[2] Founded in 1990, the Alternative Investment Management Association (AIMA) represents the global hedge fund industry. Our membership is corporate and comprises over 1,600 firms (with over 10,000 individual contacts) in more than 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA's manager members collectively manage more than $1.5 trillion in assets. See www.aima.org.

[3] 81 F.R. 43530 (July 5, 2016).

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response to changing market conditions and events, rather than adopt a rule that we believe could be overly prescriptive.

Alternatively, if the SEC adopts the Proposed Rule, it should be modified to provide investment advisers with greater flexibility to tailor BCPs to their unique businesses by adopting and tailoring those components that are applicable to their businesses (such components would better serve the industry and its clients in the form of guidance). In addition, the Proposed Rule should be modified to include a safe harbor provision protecting an investment adviser from liability where a BCP is reasonable and developed in good faith (including in situations where such a BCP does not prevent harm from a continuity event).

Firms Already Have Business Continuity Plans in Place Making a New Rule Unnecessary

The members of MFA and AIMA agree that investment advisers should implement BCPs to address potential significant business disruptions. The Commission should continue to permit firms to develop their plans according to their particular needs; a one-size-fits all approach as proposed would disrupt these existing and effective industry practices. For many years, particularly after the events of September 11th and Hurricane Sandy, among others, investment advisers have generally adopted and implemented BCPs designed to ensure they are able to continue to serve their clients despite operational challenges. As a general matter, most investment advisers have invested substantial resources – in some cases millions of dollars – in developing, maintaining and upgrading systems that protect their firms from a range of potential events that could lead to the disruption of their businesses. Notably, clients often conduct due diligence on BCPs as part of their investment decisions to ensure that investment advisers have taken appropriate steps to protect client assets. Accordingly, BCPs are customized to address their specific characteristics, which are varied across the hedge fund industry. The current regulatory framework reinforces these arrangements and is more than sufficient to ensure that investment advisers develop and maintain BCPs.

It is our view that the SEC has appropriately addressed the importance of establishing BCPs in connection with the adoption of Rule 206(4)-7, requiring advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, and through subsequent guidance.[4] In the adopting release of Rule 206(4)-7, the SEC discussed the need for advisers to establish a reasonable process for responding to emergencies, contingencies, and disasters, and that an adviser's contingency planning process should be appropriately scaled, and reasonable in light of the facts and circumstances surrounding the adviser's business operations and the commitments it has made to its clients.[5]

[4] *See* SEC Compliance Alert, June 2007, available at: https://www.sec.gov/about/offices/ocie/complialert.htm; National Exam Program Risk Alert, SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year (Aug. 27, 2013), available at: https://www.sec.gov/about/offices/ocie/business-continuity-plans-risk-alert.pdf.

[5] 68 F.R. 74714 (Dec. 24, 2003).

It is instructive that in adopting Rule 206(4)-7, the SEC wisely made a determination that "funds and advisers are too varied in their operations for the rule to impose a single set of universally applicable required elements."[6] The Proposed Rule's focus on mandatory requirements breaks with this understanding. As a result, the Proposed Rule is both too generic to provide direction to investment advisers in implementing an effective plan from both practical and anti-fraud perspectives, and too specific as to certain elements that would not apply to a broad range of investment advisers. Accordingly, we do not think that the Proposed Rule will benefit investors. Moreover, the Proposed Rule's mandatory requirements would reverse not only the SEC's prior position on BCPs, but also its long-standing approach of permitting investment advisers to tailor policies that are unique to their businesses. The industry has become even more diverse since Rule 206(4)-7 was adopted, and we believe that the Commission's current approach to BCPs has worked well. In the absence of compelling evidence to the contrary, we see no basis for abandoning an approach that places the responsibility to develop BCPs appropriate to the circumstances on the advisers themselves.

Finally, we believe that the Proposed Rule may not be consistent with the intent of Congress when it provided authority to the SEC to adopt rules under Section 206(4) of the Advisers Act. Section 206(4) makes it unlawful for an adviser "to engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative." This Section authorizes the SEC to adopt rules and regulations that "define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative." The SEC typically exercises its authority under Section 206(4) in the promulgation of rules that prohibit intentional misconduct. The SEC explains, however, that the Proposed Rule is based on its view that it would be fraudulent and deceptive for an adviser to hold itself out as providing advisory services unless it has taken steps to protect its clients' interests from being placed at risk as a result of the adviser's inability (whether temporary or permanent) to provide those services.[7] We do not believe the authority given in Section 206(4) to allow the SEC to restrict fraudulent, deceptive, and manipulative practices should be used to convert every operational or business practice of a registered investment adviser into a potential fraud if the SEC subsequently deems those practices insufficient. In our view, the Proposed Rule is not appropriate because it ignores the element of scienter.

Even applying a more permissive "negligence" standard under Section 206(4), the Proposed Rule as drafted would expand the commonly understood definition of "negligence-based fraud." We are concerned that the Proposed Rule could be interpreted in a way that could potentially impose fraud liability on an adviser when its BCP does not prevent harm from a continuity event, even when the plan was reasonable and developed in good faith. For example, it seems possible that a manager could be deemed to have engaged in fraudulent conduct if, notwithstanding it having adopted and implemented a reasonable business continuity and transition plan, it was determined, after an event, that a plan was somehow deficient or did not satisfy one of the required components. Similarly, the Proposed Rule as drafted could be viewed

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[6] 68 F.R. at 74715 ("Each adviser should adopt policies and procedures that take into consideration the nature of that firm's operations. The policies and procedures should be designed to prevent violations from occurring, detect violations that have occurred, and correct promptly any violations that have occurred.").

[7] 81 F.R. at 43532.

to result in a violation if a plan failed to operate effectively in the event of a business disruption event. In effect, we are concerned that the prescriptive nature of the Proposed Rule could lead to instances where an adviser's failure to anticipate or fully prevent unpredictable events could be viewed according to a standard that approaches strict liability. We do not believe this is the SEC's intent, and therefore recommend that it continue its existing approach and provide guidance that firms should develop a reasonable process in light of their business operations.

A Transition Plan Rule for Hedge Funds is Unnecessary for Investor Protection

Similar to BCPs, for many years, investment advisers have implemented transition plans that have effectively met the needs of clients, and a transition plan rule is not necessary. The structure of investment advisers creates a framework that protects investors, even when managers fail or investors redeem their shares and wind up a fund. Indeed, the SEC acknowledges that "advisers routinely transition client accounts without a significant impact to themselves, their clients, or the financial markets," due to the agency relationship of advisers managing client assets, and the Advisers Act requirement that client assets must be held at a qualified custodian, such as a bank or broker-dealer. These characteristics of the investment adviser industry enable accounts to be transitioned from one adviser to another without the physical movement or sale of assets.[8]

The SEC also recognizes the additional protections for transitioning client assets that are built into the structure of pooled investment vehicles, including that clients have the ability to terminate the investment advisory contract or remove the governing entity of the fund, and appoint a new investment adviser or governing entity.[9] We agree with these observations, and offer below additional detail on how the industry already ensures that clients are fully protected in the case of an investment adviser transition.

Funds and managers are legally separate entities, and a manager cannot commingle the assets of a fund it manages with its proprietary assets or the assets of other funds it manages. Investment advisers do not guarantee the performance or financial obligations of the funds they manage, and they do not otherwise create counterparty exposure between themselves and their clients with respect to trading activities of their funds or other clients. Although GAAP accounting rules may bring fund assets onto the adviser's balance sheet, this does not reflect the economic or legal reality of the adviser. Accordingly, there is no interconnectedness between the fund and the investment adviser's balance sheet.

We believe that the provisions of fund agreements and advisory contracts provide adequate documentation to prepare for and guide a liquidation event. The relationships between investment advisers and their clients are straightforward and detailed in fund agreements and advisory contracts. Fund agreements allow for an orderly wind down and liquidation if an adviser were to go bankrupt or a fund were to close. Fund agreements prescribe the types of events that would trigger the dissolution of a fund, such as a vote of the limited partners (by majority or super-majority), a discretionary decision by the adviser, or the bankruptcy of the adviser. In the case of a bankruptcy of a fund's manager, however, most agreements permit the fund to continue

[8] 81 F.R. at 43535.

[9] Id.

if the holders of a majority of the voting interests vote to continue the business and elect a new fund manager. If investors elect to liquidate the fund, fund agreements generally provide that a trustee or liquidator previously designated by the investment adviser or the majority-in-interest holders will wind down the fund. When distributing assets of the fund, the liquidator is obligated to follow the priority of payments detailed in the fund agreement. This priority of payments affords creditors predictability and fairness and generally follows the statutory provisions of the fund's state corporate law regarding partnership or limited liability company dissolutions. In addition, advisory contracts typically permit clients to terminate the advisory relationship and replace a fund's manager if it is in the best interest of the fund.

These characteristics of the industry are clearly exhibited in the regular winding down of hedge funds. Each year, many hedge funds close for any number of reasons such as extended poor performance, the retirement or departure of senior personnel, or a changed market environment.[10] In each case, the fund's portfolio is wound down by the manager, sometimes gradually over many months and, less frequently, in a "liquidation" by the prime brokers or other market participants that hold the fund's collateral. This market discipline is a hallmark of the industry as hedge funds and their managers close while new funds and managers emerge. Moreover, because hedge funds are one of many different types of asset management structures, other types of investment managers and institutional investors also replace the services of hedge funds that cease operations. This continued cycle of fund closures and launches evidences that client assets are protected during the course of transitions, and that a transition planning rule is not necessary to protect investors.

Existing Regulations Already Address Systemic Risk, Making a Transition Plan Unnecessary and Unsuitable for Hedge Funds

We also do not believe that the winding down of a hedge fund raises systemic risk concerns, and therefore a transition rule is not necessary to the extent its objective is to mitigate systemic risk. The SEC asks in the Proposed Rule whether it should adopt a more prescriptive rule that calls for a more specific transition plan similar to the "living wills" required by the Board of Governors of the Federal Reserve System for large banks.[11] We note that such living wills are designed to address systemic risk concerns associated with winding down a large banking institution.[12]

Previously, in response to a notice by the Financial Stability Oversight Council seeking comment on asset management products and activities, MFA has set out in detail the characteristics of the hedge fund industry and its regulatory regime that make the industry and its

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[10] For example, more than 950 hedge funds liquidated between October 2013 and October 2014, without fanfare or systemic impact. *See* Press Release, HFR, Hedge Fund Launches Slow as Assets, Global Equities Reach Record Levels (Dec. 11, 2014), available at https://www.hedgefundresearch.com/pdf/pr_20141211.pdf.

[11] 81 F.R. at 43544.

[12] *See* Resolution Plans Required, 76 F.R. 67323 (Nov. 1, 2011).

individual members improbable sources of systemic instability in the U.S. financial system.[13] As a result of these characteristics, hedge funds regularly wind down their operations, and these hedge fund closures have not historically had systemic impact. Hedge funds close and liquidate quite frequently with no impact on the stability of the U.S. financial system.[14] During the financial crisis, many hedge funds liquidated, but neither created nor amplified systemic risk and did not require government intervention.

Even large funds that have closed suddenly have had no systemic impact. For example, in 2006, a hedge fund managed by Amaranth Advisors LLC lost nearly $4 billion in natural gas futures in less than 14 days, forcing it to liquidate and wind up. Despite the size of Amaranth's losses and the speed of its collapse, no government intervention was required and there was no systemic crisis associated with Amaranth's closure. The hedge fund's portfolio of natural gas futures was sold off, making "barely a ripple in broader markets."[15]

While no hedge fund closure threatened the broader financial system during the financial crisis, regulations implemented and market practices adopted since the financial crisis further mitigate the risk that the liquidation of assets held by one or more hedge funds, even in periods of market stress, could have widespread impact on the financial system or cause any significant harm to hedge fund's counterparties. Large hedge fund managers are now directly supervised by the SEC or CFTC and, in some cases, by both agencies.

To the extent that hedge funds are linked to their service providers and counterparties, they also are linked and exposed, albeit indirectly, to regulation applicable to those entities. These regulations, both direct and indirect, including the reforms implemented under the Dodd-Frank Act and other post-crisis reforms, as well as those undertaken by other international regulatory agencies, have had a substantial impact on hedge funds and their managers because banks, broker-dealers, swap dealers and other hedge fund counterparties have changed their business practices in order to comply with the new rules. Hedge funds, their managers and their investors have been, directly and indirectly, beneficiaries of these new regulations, which is why the industry has

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[13] *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council (Mar. 25, 2015), available at: https://www.managedfunds.org/wp-content/uploads/2015/03/MFA_Response_to_Dec_2014_FSOC_Notice1.pdf.

[14] One study sought to distinguish hedge fund "failures" from normal attrition and discovered that the number of "failures" is quite low. *See* Ging Lian & Hyuna Park, Predicting Hedge Fund Failure: A Comparison of Risk Measures, 45 J. FIN. & QUANTITATIVE ANALYSIS 199 (2010) (finding a 3.1% closure rate versus an 8.7% attrition rate for hedge funds on an annual basis from 1995 to 2004, differentiating the conventional measure of hedge fund closures used in prior academic studies – or "attrition" – from "real failure", defined as a fund (i) with a negative average rate of return for 6 months, (ii) with decreased AUM for 12 months and (iii) that was listed in a database (such as Lipper TASS or HFR) but is no longer reporting). In 2014, 764 hedge funds launched and 260 hedge funds liquidated. *See* 2015 Preqin Global Hedge Fund Report.

[15] Steven Mufson, Hedge Fund's Collapse Met With a Shrug, WASH. POST, Sept. 20, 2006, available at: http://www.washingtonpost.com/wp-dyn/content/article/2006/09/19/AR2006091901388.html.

supported many of these new initiatives and constructively engaged in the related rulemaking process.

The Costs of the Proposed Rule Would Likely Exceed the Benefits

The SEC estimates that initial costs for managers to implement the Proposed Rule would range from $30,000 to $1.5 million per manager, and ongoing costs would range from $7,500 to $375,000 per manager per year, some of which may be passed on to clients and fund investors through higher fees. The SEC also explains that it is unable to quantify the potential benefits, which it notes would include a reduced risk of harm to investors.[16] We do not believe the Proposed Rule would lead to substantial benefits for hedge fund investors, and therefore the cost/benefit estimates do not provide support for the Proposed Rule. In fact, the estimates suggest that the costs of the Proposed Rule would almost certainly outweigh any potential benefits.[17] The SEC should, at a minimum, obtain information about any potential benefits.

The SEC Staff Should Instead Continue to Issue Useful, Timely Guidance

We recommend that the SEC staff instead continue to issue guidance to assist investment advisers in business continuity and transition planning, within the context of the existing regulatory framework. In our view, guidance is a more effective approach than rulemaking in these areas for both regulators and managers. Guidance provides increased flexibility to regulators to respond to new developments, and to managers to develop new practices that are appropriate for their firms as market conditions and technology change.

Flexible guidance for business continuity planning is critical to permit a wide range of practices for managers based on their circumstances, and to reflect the variation among potential business continuity events, including ones the industry has experienced (*e.g.*, natural disasters, cyber-attacks, terrorism), and others that it has not. The response to each type of event will be fact-specific, and the more rigid and prescribed a BCP, the less flexibility a manager will have in responding to unexpected events. Both business continuity and transition planning are areas that by their nature evolve, and the regulatory framework should be designed to provide appropriate and useful guidance in this context.

For example, in the wake of Hurricanes Katrina and Sandy, Commission staff reviewed and addressed advisers' business continuity practices, and issued alerts reflecting staff observations and describing notable practices.[18] The Risk Alert on Business Continuity Plans

[16] 81 F.R. at 43546 ("In general, we cannot quantify the total benefits to the affected parties because we lack data on certain factors relevant to such an analysis, such as investor preferences and the likelihood of business disruptions.").

[17] Section 202(c) of the Advisers Act requires the SEC to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[18] *See* SEC Compliance Alert, June 2007; National Exam Program Risk Alert, SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year (Aug. 27, 2013).

following Hurricane Sandy was based on examinations of the BCPs of approximately forty advisers, and provided observations and lessons learned from the SEC staff review. Similarly, the Compliance Alert in 2007 following Hurricane Katrina described examinations of investment advisers located in Louisiana and Mississippi, and indicated lessons learned by advisers' implementations of their disaster recovery plans. We believe this type of guidance, based on real scenarios that managers have confronted, is a more effective approach than a one-size-fits-all rulemaking.

The SEC also continues to address BCPs of registered investment companies through guidance. For example, when it issued the Proposed Rule, SEC staff published updated guidance on BCPs for registered investment companies.[19] As the SEC staff notes in the guidance, registered investment companies are subject to Rule 38a-1 under the Investment Company Act of 1940, which requires funds to adopt and implement written compliance policies and procedures, and the adopting release for Rule 38a-1 indicates that a fund's policies and procedures should address BCPs to the extent that they are relevant.[20] We would encourage the SEC to maintain the same approach of issuing guidance for registered investment advisers as it does for registered investment companies. Providing guidance would also be in line with the Commission's current approach to cybersecurity of identifying measures advisers should consider in connection with implementing policies designed to prevent, detect and respond to cyberattacks.[21]

<u>Guidance Should Continue to Provide that Policies Should be Reasonable</u>

Guidance, or a rule if the SEC determines to proceed through rulemaking, should not mandate specific components of the plans, and should instead require that policies and procedures for the plans be reasonably designed to address operational risks related to a significant disruption in the adviser's operations. As noted above, many firms have invested substantial resources in developing business continuity and transition plans that are appropriate for their businesses. The approach of the Proposed Rule to specify each required element of the plans would impose increased costs on managers to adjust their plans in a manner that may not necessarily enhance their effectiveness. We respectfully recommend that the SEC follow the approach that it has taken in adopting Rule 206(4)-7 and other rules, in which it has recognized that the diversity of investment adviser business models requires corresponding flexibility in compliance policies and procedures.

FINRA's rule on BCPs, Rule 4370, provides broker-dealers with more flexibility than the Proposed Rule. The FINRA rule indicates that the elements that comprise a business continuity

[19] SEC Division of Investment Management Guidance Update, Business Continuity Planning for Registered Investment Companies (June 2016), available at: https://www.sec.gov/investment/im-guidance-2016-04.pdf.

[20] 68 F.R. at 74717.

[21] *See e.g*., SEC Division of Investment Management Guidance Update, Cybersecurity Guidance (April 2015), (citing Rule 206(4)-7 that "funds and advisers could also mitigate exposure to any compliance risk associated with cyber threats through compliance policies and procedures that are reasonably designed to prevent violations of the federal securities laws").

plan are flexible and may be tailored to the size and needs of a member, and also provides that a member need only address certain categories to the extent they are applicable and necessary.[22] In addition, the rule generally takes a less prescriptive approach than the Proposed Rule and does not require certain elements in the Proposed Rule.[23] And while the Commission has seemingly patterned the Proposed Rule in part on the NASAA Model Rule on Business Continuity and Succession Planning (adopted April 13, 2015), we note that without a track record of advisers having adopted business continuity and succession plans in accordance with the model rule and activating those plans in response to real life business disruptions, the efficacy of the approach mandated by the model rule remains unclear, whereas the SEC's approach has worked well for many years.

We also note that certain of the proposed components of the business continuity and transition plans are already addressed by the Advisers Act and existing rules, including safeguarding of client assets pursuant to the custody rule,[24] communicating material information to investors,[25] and investor consent for transfers of advisory contracts.[26] We believe these longstanding provisions have worked well, and any guidance that also addresses these components could be duplicative and create uncertainty.

For example, the Proposed Rule would require an adviser to develop policies and procedures to address communications with clients, employees, service providers, and regulators. Managers regularly communicate with clients with regard to various aspects of their businesses, and do so pursuant to existing SEC rules and their fiduciary obligations. It is not clear that it is necessary to prescribe a rule requiring a manager to adopt policies and procedures to communicate with its clients about a future business continuity event, when the existing regulatory framework is sufficient. In the event of a manager activating its BCP, it would undertake an assessment, based on the facts and circumstances of an event, and determine the appropriate disclosure. We do not believe the Proposed Rule is necessary to supplement this framework, and we are concerned that a rigid approach in this area could impose obligations on managers, such as with regard to sensitive information that could cause harm to clients if it were disclosed outside their firms.

<u>Additional Comments if the SEC Determines to Proceed Through Rulemaking</u>

If the SEC nevertheless determines to proceed through rulemaking, set out below are additional recommendations to enhance the effectiveness of the rule.

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[22] FINRA Rule 4370(c).

[23] For example, Rule 4370 does not refer to alternative physical locations of offices, assessments of third-party service providers, or transition plans for the winding down of a business.

[24] Rule 206(4)-2.

[25] Rule 206(4)-8.

[26] Section 205(a)(2).

The SEC explains in the Proposed Rule that a business continuity and transition plan should include short-term arrangements, such as which specific individuals would satisfy the roles of key personnel when unavailable, and long-term arrangements regarding succession planning and how an adviser will replace key personnel.[27] While we appreciate that a BCP should address short-term personnel unavailability caused by business continuity events, it is not clear that the type of long-term succession planning described in the Proposed Rule is applicable to either business continuity or transition plans. The Proposed Rule appropriately describes transition planning as concerning the possible winding down of an adviser's business or the transition of the business to others in the event the adviser is unable to continue providing advisory services. These scenarios do not involve succession planning, which refers to situations that involve the transfer of leadership within a firm, and which would not include the winding down of the business or the transition of the business to a separate entity.

In addition, firms engage in succession planning in a wide variety of ways, depending on the unique characteristics of the firm and its personnel structure, and a rule requiring managers to adopt policies and procedures to address succession planning could lead to difficult interpretive questions as to the type of scenarios that would need to be included. We do not believe these types of internal arrangements should be included in the rule, and request that the SEC clarify that only temporary personnel arrangements would need to be included.

The SEC indicates that it considered as an additional requirement that firms disclose summaries of their business continuity and transition plans in their Form ADVs, or to clients. We would not support such a requirement. As you know, hedge fund managers are generally smaller organizations that are closely-held, and, like other such organizations, treat personnel matters as highly sensitive, confidential information within their firms. Public disclosure of this type of information could potentially be extremely disruptive to the relationship between the hedge fund manager and its key personnel.

With regard to BCPs, we agree with the statement that public disclosure of BCPs may make advisers more vulnerable to third parties, such as cyber-attacks.[28] BCPs include information regarding a firm's operations and responses to cybersecurity incidents that should not be disclosed, and which could increase a firm's vulnerability. Public disclosure is not necessary for investors, since investors in private funds are sophisticated individuals and entities that generally request information about BCPs during their initial and ongoing due diligence.

Managers should also not be required to report to clients or the SEC every instance when a manager activated its BCP or transition plan. As noted above, managers are already subject to appropriate disclosure obligations under the federal securities laws and related rules, and a separate reporting requirement could discourage a manager from activating a plan in a situation that is not clear-cut. Managers are required under the recordkeeping rule to maintain records that would generally include these situations, and these records are regularly subject to inspection and examination by the SEC staff. The staff should continue to review the effectiveness of advisers' plans through these types of examinations.

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[27] 81 F.R. at 43538.

[28] 81 F.R. at 43550.

The Proposed Rule would require a manager to adopt policies and procedures that address pre-arranged alternate physical locations of the adviser's office and/or employees. Firms have invested substantial resources in establishing their BCPs to protect client assets, and in many cases have determined that employees working remotely from home is the most secure and effective approach. A requirement that managers maintain a separate, backup office location would be highly inefficient and costly for managers and investors, and if the Commission adopts the rule, we urge the SEC to confirm that managers could use appropriate remote access arrangements for their employees.

The Proposed Rule would require a manager's BCP to include the identification and assessment of third-party services critical to the operation of the adviser, which may include onsite visits, reviewing summaries of BCPs, developing due diligence questionnaires, and obtaining certifications. We request that the SEC confirm that, in the case of a service provider that is a regulated entity, a manager would not be required to make an independent assessment and determination of the adequacy of its BCP. The BCPs of service providers that are regulated entities must comply with applicable rules; for example, broker-dealers are subject to FINRA Rule 4370 and are themselves subject to oversight by regulators. A separate assessment by managers generally would not provide additional value beyond such reviews, and managers should be able instead to devote their resources to other compliance purposes.

If the SEC nevertheless determines to adopt the Proposed Rule, it will take substantial time for managers to implement the new requirements, which will include, among other things, rewriting existing plans, entering into or amending agreements with service providers, and training staff. We request that the SEC provide managers with at least 18 months to comply with any new rule.

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MFA and AIMA appreciate the opportunity to provide comments to the Commission in response to the Proposed Rule. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Newell or Stuart Kaswell of MFA at (202) 730-2600, or Jennifer Wood or Jiří Król of AIMA at +44 20 7822 8380.

Respectfully submitted,

/s/ Stuart J. Kaswell

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/s/ Jiří Król

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