MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

July 21, 2016

VIA EMAIL

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Washington, DC 20230

Re: Comment Request; Direct Investment Surveys: BE-577, Quarterly Survey of U.S. Direct Investment Abroad-Transactions of U.S. Reporter With Foreign Affiliate, and Changes to Private Fund Reporting on Direct Investment Surveys

Dear Ms. Jessup:

Managed Funds Association ("MFA")[1] appreciates the opportunity to provide comments to the Bureau of Economic Analysis ("BEA") regarding its proposed change to the reporting requirements for private funds under the BE-577, Quarterly Survey of U.S. Direct Investment Abroad, the BE-11, Annual Survey of U.S. Direct Investment Abroad, and the BE-10, Benchmark Survey of U.S. Direct Investment Abroad (the "Surveys").[2] Under the change, U.S. reporters would no longer be required to report on the Surveys for foreign affiliates that are private funds and do not own, directly or indirectly, 10 percent or more of the voting interest of another foreign business enterprise that is not also a private fund or holding company.

The proposal requests comment on: (i) whether the information is necessary for the proper performance of the functions of the BEA, including whether the information will have practical utility; (ii) the accuracy of the BEA's burden estimate; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents.

We appreciate the important role of the BEA and its data collection in understanding and analyzing the scope of foreign investments by U.S. companies, and we recognize the value of this

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[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, the Americas, Australia and all other regions where MFA members are market participants.

[2] 81 F.R. 33659 (May 27, 2016).

information for various policy-making determinations. As we have previously explained, however, and as further described below, we believe the Surveys and the existing reporting regime are not well-suited to the unique structure and operations of hedge funds, as compared to operating companies. As a consequence, hedge funds submit information on the Surveys that may not be representative of the types of investment flows that the Surveys seek to measure. Moreover, because hedge funds do not compile such information in the normal course of their business activities, such information is often burdensome to obtain.[3]

Accordingly, we support the proposed change to provide that private fund managers would not need to complete the Surveys for foreign affiliates that are private funds and do not own, directly or indirectly, 10 percent or more of the voting interest of another foreign business enterprise that is not also a private fund or holding company. We agree that reporters of investments in private funds that display characteristics of portfolio investment should instead report through the Treasury International Capital (TIC) reporting system, and not through the Surveys. This change will result in more representative information submitted on the Surveys and the TIC reporting system, and will reduce the reporting burden for private fund managers, many of which now report both on the TIC reporting system and the Surveys.

Hedge funds are private pools of investor capital that are managed by a separate entity, called an investment manager.[4] Investors in hedge funds include taxable U.S. investors, tax-exempt U.S. investors, and non-U.S. investors. In order to satisfy the requirements of each of these types of investors, and to provide the most favorable tax treatment for their investments, a U.S. fund manager generally will manage investor capital through both U.S.-domiciled funds and non-U.S.-domiciled funds.[5] In particular, managers establish non-U.S. domiciled funds in response to demands from non-U.S. investors and tax-exempt U.S. investors, such as pension funds, which require that their investments in hedge funds be through a non-U.S. domiciled fund to ensure those investors are not subject to disadvantageous U.S. tax treatment simply because they are investing through a pooled investment vehicle. The U.S. investment manager, or an affiliate of the manager, operates and controls each of the funds, and typically organizes them in structures that are appropriate to the needs of the manager and fund investors.

For example, a common arrangement for hedge fund managers is a "master-feeder" structure, whereby investors invest through one or more U.S. and non-U.S. feeder funds, and these

[3] *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Barbara K. Hubbard, Direct Investment Division, Bureau of Economic Analysis (Oct. 14, 2014), available at: https://www.managedfunds.org/wp-content/uploads/2014/10/MFA-Comments-on-BEA-Survey-BE-101.pdf; Letter from Stuart J. Kaswell, MFA, to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce (Sept. 9, 2013), available at: https://www.managedfunds.org/wp-content/uploads/2013/09/MFA-Comments-on-BEA-Surveys-BE-11-and-BE-577.pdf.

[4] Hedge fund managers generally must register as investment advisers with the SEC and file information about their businesses on Form ADV. Most SEC-registered hedge fund managers must also submit extensive information to the SEC about hedge funds they manage on Form PF, which is filed on a quarterly or annual basis.

[5] Typically, a U.S. fund is organized either as a limited partnership or limited liability company, and a non-U.S. fund is often organized as a corporation or similar entity.

feeder funds are themselves investors in a single master fund.[6] This type of structure is beneficial to a manager and investors because it allows the manager to manage a single portfolio of the master fund. Master-feeder and other structures often also include other entities referred to as special-purpose vehicles (SPVs).[7] These SPVs are often non-U.S. legal entities that managers utilize primarily for tax and other reasons.

As a result of these common structures, U.S. hedge fund managers often control one or more non-U.S. hedge funds or SPVs, and therefore may fall within the existing reporting requirements of the Surveys.[8] However, there are significant differences between hedge funds and operating companies that make many of the questions on the Surveys inappropriate for hedge funds.[9]

As noted, hedge funds are private pools of investor capital that are controlled and operated by an investment manager. Hedge funds typically make investments in securities (or other instruments) issued by other companies, including operating companies. They generally do not engage in the types of activities that are common for operating companies, and which are the subject of many questions on the Surveys. A hedge fund generally does not have employees, other than a board of directors (if organized as a corporation). Instead, generally all employees reside within the investment manager, or an affiliate of the manager, that controls the funds. Similarly, hedge funds do not have any sales of goods, do not have any physical plants, property or equipment, and do not have research and development operations. Physical presence in a jurisdiction is instead due to the operations of the investment manager or its affiliates, which are generally located in the U.S. or certain non-U.S. jurisdictions.[10] Finally, unlike most operating companies, hedge funds in many non-U.S. jurisdictions are not subject to an entity-level income tax. Accordingly, many of the questions in the Surveys are inappropriate for hedge funds, and responses may not be representative of the types of investment flows that the BEA seeks to measure.

Nevertheless, a hedge fund manager that completes the Surveys must expend considerable time and effort, often with the assistance of legal counsel, to determine whether and/or how it should respond to each question. In some cases, the questions in the Surveys are ambiguous in

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[6] *See* Appendix for a representation of a master-feeder structure. *See also* Hedge Funds and Other Private Funds: Regulation and Compliance, Thomas P. Lemke, Gerald T. Lins, Kathryn L. Hoenig and Patricia S. Rube, 2012-2013 ed., §2:10.

[7] SPVs are often entities owned by the master fund in the master-feeder structure. SPVs do not typically have employees or conduct business activities.

[8] In addition, U.S. feeder funds may fall within the requirement as a result of their ownership of interests in a non-U.S. master fund.

[9] There are also some common traits between hedge funds and operating companies, including that many hedge funds prepare financial statements, receive interest income and dividends, and, for those organized in a non-U.S. jurisdiction as a corporation, are overseen by a board of directors.

[10] Generally, any non-U.S. operations of the investment manager or an affiliate are not located in the jurisdiction in which a non-U.S. fund is domiciled.

how they apply to a hedge fund structure, and managers apply a reasonable determination in completing the questions and document their determination. The process is often complex and time-intensive, and made more so by the various organizational structures that some managers have developed over time in response to investor demands.

For these reasons, we believe the proposed changes to the reporting requirements would enhance the utility of information collected by the BEA, result in more representative information submitted on the Surveys, and reduce the reporting burden for private fund managers.

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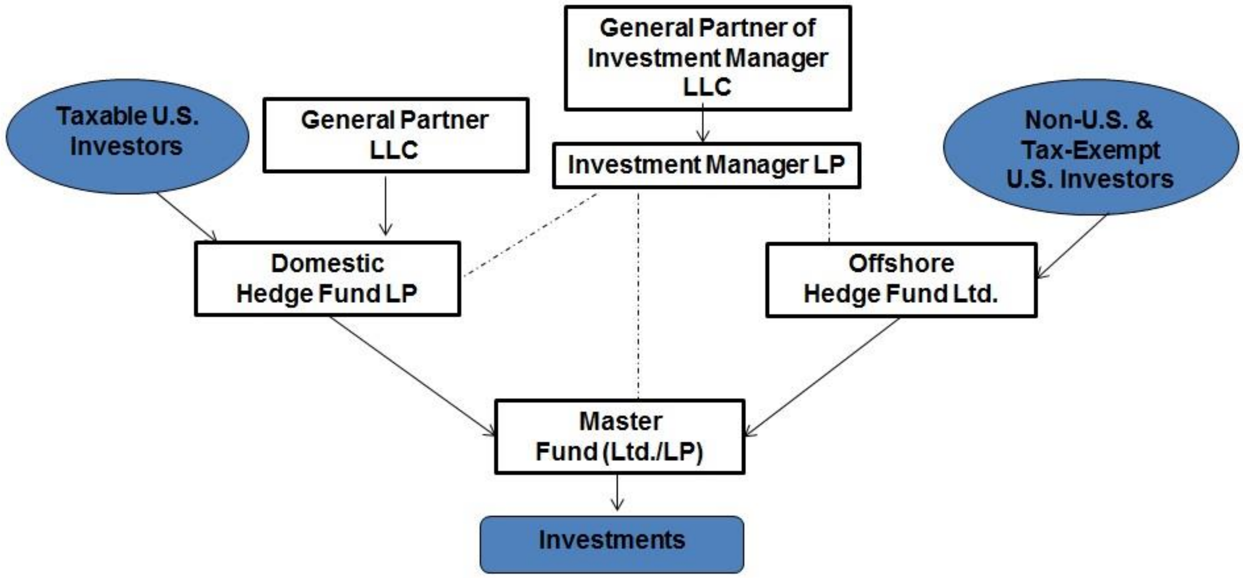
We would be happy to further discuss any of the above information with you or your colleagues. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Newell, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director,
General Counsel

Appendix



*An SPV structure would typically be located beneath the Master Fund and above the Investments.