November 1, 2013

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

VIA ELECTRONIC MAIL: rule-comments@sec.gov

Re: Study: "Asset Management and Financial Stability"

Dear Ms. Murphy:

The undersigned directors of the Committee on Capital Markets Regulation (the "**Committee**")—R. Glenn Hubbard (Dean, Columbia Business School), John L. Thornton (Chairman, The Brookings Institution), and Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School)—thank the Securities and Exchange Commission (the "**Commission**") for providing an opportunity for public comment on the September 2013 report of the Office of Financial Research of the U.S. Department of the Treasury ("**OFR**"), entitled *Asset Management and Financial Stability* ("**OFR Report**").[1] The OFR Report was prepared in response to a request from the Financial Stability Oversight Commission ("**FSOC**") to assess whether certain asset managers should be designated as non-bank "systemically important financial institutions" ("**SIFIs**") and, if so, what forms of additional regulation would be appropriate.[2] We are grateful that the Commission has decided to consult with industry and other interested third parties on these critical issues. Consistent with the recommendations of the U.S. Government Accountability Office[3] and various members of Congress,[4] we would encourage FSOC and OFR to adopt a more transparent approach and incorporate the views of the investing public and asset management industry in formulating their own policies and studies in this area.

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our

[1] OFFICE OF FIN. RESEARCH, U.S. DEP'T OF TREASURY, ASSET MGMT. AND FIN. STABILITY (Sept. 2013) [hereinafter OFR REPORT].
[2] Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies, 77 Fed. Reg. 21,637 (Apr. 11, 2012) (to be codified at 12 C.F.R. pt. 1310).
[3] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-886, FINANCIAL STABILITY: NEW COUNCIL AND RESEARCH OFFICE SHOULD STRENGTHEN THE ACCOUNTABILITY AND TRANSPARENCY OF THEIR DECISIONS (2012).
[4] *Who is Too Big to Fail? GAO's Assessment of the Fin. Stability Oversight Council and the Office of Fin. Research: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Services*, 113th Cong. (2013).

membership includes thirty-two leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

We believe that the OFR Report presents an inaccurate and incomplete picture of the asset management market and the risks it poses to the financial system. The Committee has frequently commented on the issue of SIFI designation as applied to both banks and non-banks.[5] We have generally opposed use of the blunt tool of SIFI designation, particularly with respect to financial institutions that do not pose any appreciable systemic risk. We would argue that this category includes a variety of asset managers—including mutual funds, hedge funds, and private equity funds—as well as traditional insurers, with the partial exception of firms performing certain critical functions.[6] Simply stated, the failure of a large asset manager or its constituent funds would not pose systemic risk, because it "would not set off a chain reaction of financial institution failures."[7]

Although the OFR Report suggests that funds managed by large asset managers are susceptible to runs and fire sales,[8] it does not provide any empirical evidence that such runs or fire sales pose systemic risk or that such runs would occur on asset managers as distinct from funds. While institutional prime money market funds were subject to runs during the 2008 financial crisis, the Commission is proceeding through a separate rulemaking process with respect to that issue, as to which the Committee has separately

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[5] *See* Letter from Comm. On Capital Mkts. Reg. to Neal Wolin, Acting Chairman, Fin. Stability Oversight Council (Feb. 15, 2013), *available at* http://capmktsreg.org/wp-content/uploads/2013/02/FSOC.non-bank.SIFI_.comment.ltr_..pdf [hereinafter Feb. 2013 Letter], Letter from Comm. On Capital Mkts. Reg. to Lance Auer, Deputy Assistant Secretary, U.S. Treasury Dep't (Dec. 19, 2011), *available at* http://www.capmktsreg.org/pdfs/2011.12.19_SIFI_Comment_Letter.pdf, Letter from the Comm. On Capital Mkts. Reg. to Timothy Geithner, Chair, Fin. Stability Oversight Council (Nov. 5, 2010), *available at* http://www.capmktsreg.org/pdfs/2010.11.05_Volcker_Rule_letter.pdf, Letter from the Comm. On Capital Mkts. Regulation to Lance Auer, Deputy Assistant Secretary, U.S. Treasury Dep't (Feb. 22, 2011), *available at* http://www.capmktsreg.org/pdfs/2011.02.22_FSOC_systemically_important_letter.pdf.

[6] Feb. 2013 Letter, *supra* note 5, at 1–2.

[7] *Id.* at 2.

[8] *See, e.g.*, OFR REPORT, *supra* note 1, at 13 ("Runs on such short-term funds can be self-reinforcing, as investor redemptions further drive down prices, returns, and liquid assets in the fund—spurring more redemptions. If perceived to have broader market implications, runs on these funds or groups of funds could contribute to risks of widespread fire sales.").

provided comment.[9] The OFR Report explicitly states that it does not address money market funds,[10] although much of OFR's analysis is clearly premised on the 2008 experience in this separate market.

Supposing that a run on a particular asset manager or fund complex were to occur, the OFR Report offers no evidence to substantiate its conclusion that "a certain combination of fund- and firm-level activities within a large, complex firm . . . could pose, amplify, or transmit a threat to the financial system."[11] The OFR Report raises the concern that operational or risk-management failures at a particular asset management firm (including valuation problems, fraud, or even reputational damage[12]) could potentially trigger a run on *that firm's funds*. Whatever the likelihood of such an event, OFR fails to demonstrate the transmission mechanism whereby the idiosyncratic failure of a single fund or manager could spill over into the broader market. Evidence of fraud or other malfeasance at a major asset manager could well spell trouble for the manager and its funds. The effect on the *assets* held by such funds is less clear, and the effect on other asset managers or funds would be minimal.

In the absence of any clear evidence that asset managers contribute to systemic risk, we remain of the belief that FSOC should refrain from designating asset managers as non-bank SIFIs pursuant to its authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[13] Asset managers simply do not pose the types of risk that the FSOC was created to address, nor is the SIFI designation toolkit well calibrated to deal with asset managers.

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Thank you very much for your consideration of our views. Should you have any questions or concerns, please do not hesitate to contact Prof. Hal S. Scott (hscott@law.harvard.edu) or C. Wallace DeWitt (cwdewitt@capmktsreg.org), Research Director of the Committee on Capital Markets Regulation, at your convenience.

Respectfully submitted,

R. Glenn Hubbard	John L. Thornton	Hal S. Scott
CO-CHAIR	CO-CHAIR	DIRECTOR

[9] *See* Letter from Comm. On Capital Mkts. Reg. to Neal Wolin, Acting Chairman, Fin. Stability Oversight Council (Feb. 15, 2013), *available at* http://capmktsreg.org/wp-content/uploads/2013/02/FSOC.floating.NAV_.comment.ltr_.pdf.
[10] OFR REPORT, *supra* note 1, at 2 ("The report does not focus on particular risks posed by money market funds.").
[11] *Id.* at 7.
[12] *Id.* at 13, 22.
[13] 12 U.S.C. § 5323 (2012).