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

August 22, 2008

Via Electronic Mail: rtoomey@sifma.org

Mr. Robert Toomey
Securities Industry Financial Markets Association
360 Madison Avenue
New York, New York 10017

Re: Comments to Optional Mini Close-out Provision for MRA

Dear Mr. Toomey:

Managed Funds Association ("MFA")[1] appreciates the opportunity to comment on the Securities Industry Financial Markets Association's ("SIFMA") "Optional Mini Close-out Provision" proposal (the "Proposal") for use with the Master Repurchase Agreement ("MRA").

As the voice of the global hedge fund industry, MFA supports SIFMA in its undertaking to address issues raised by delivery failures in repurchase transactions governed by an MRA. This is a topic of great importance to our members, many of whom utilize MRAs and repurchase transactions as a vital form of financing and as a key source of liquidity. Our membership considers it critical to include "mini close-out" language in its negotiated MRAs and would be interested in any effort to ensure that market participants can rely on industry standard language that addresses issues surrounding delivery failures in a repurchase transaction governed by an MRA.

Our main concern with the Proposal is that the provisions would permit a non-failing party to declare an Event of Default and close-out the entire MRA based upon the occurrence of a delivery failure. The purpose of a mini close-out provision is to provide that the non-failing party can only close-out the individual failed transaction and exercise certain other remedies with respect to the individual failed transaction (including requiring margin for the individual failed transaction or requiring the return the Purchase Price/Repurchase Price, as applicable). After all, as noted in the guidance notes to the Global Master Repurchase Agreement ("GMRA"), it is "recognized that "settlement fails" do frequently occur in the market, and their occurrence is not generally an indicator of credit deterioration". Moreover, if the occurrence of a technical failure could potentially result in the close-out of an entire MRA (and potentially other master trading agreements that contain cross default provisions), this would present significant risk to parties to an MRA and also a systemic risk concern to the markets generally. Accordingly, the GMRA includes a mini close-out provision and further provides that a delivery failure will not be an Event of Default under the GMRA, unless the parties elect otherwise. Any mini close-out provisions to be included in the MRA must be consistent

[1] MFA is the voice of the global alternative investment industry. Our members include professionals in hedge funds, fund of funds and managed futures funds. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members represent the vast majority of the largest hedge funds in the world who manage a substantial portion of the approximately $2 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C. with an office in New York, NY.

with this approach and must provide that routine delivery failures are not Events of Default. Otherwise, the provisions will fail to satisfy the central concern that the mini close-out concept was designed to address.

MFA members have also expressed concern with the optionality of the Proposal. It is MFA's view that SIFMA should amend the template MRA to include the mini-closeout provision, thus, making the mini-closeout process a standard term in repo transactions. This amendment would be consistent with current market practice.

We are also concerned that the Proposal is overly complex and, in some respects, unworkable and the same results could be achieved in a more simplified provision that is more in line with market standard provisions that are ordinarily added to MRAs negotiated with the buy-side.

MFA is willing to work with SIFMA to develop workable mini close-out provisions for repurchase transactions governed by an MRA so that any proposal can be more widely utilized by both the buy-side and the sell-side. To that end, we have included as an attachment MFA's proposed changes to the Proposal for your consideration.

MFA welcomes the opportunity to answer any questions you may have regarding our comments. My colleague, Carl Kennedy, will be more than happy to assist you. He can be reached at 202-367-1140 or at carl@managedfunds.org.

Respectfully Submitted,

Richard H. Baker
CEO and President

Enclosure