MANAGED FUNDS ASSOCIATION

July 20, 2007

Via Electronic Mail: pubcom@nasd.com

Attention: Barbara Z. Sweeney
Office of the Corporate Secretary
NASD
1735 K Street, NW
Washington, D.C. 20006-1506

Re: NASD NTM 07-27
Proposed Rule 2721, Member Private Offerings

Ladies and Gentlemen:

Managed Funds Association ("MFA") appreciates the opportunity to make this submission of comments to the National Association of Securities Dealers, Inc. (the "NASD") on Notice to Members 07-27 regarding proposed Rule 2721, Member Private Offerings (the "Proposal").

MFA is the voice of the global alternative investment industry. Our members include professionals in hedge funds, funds of funds and managed futures funds. Established in 1991, MFA is the primary source of information for policymakers and the media and the leading advocate for sound business practices and industry growth. MFA members represent the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the over $1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

Our interest in the Proposal arises from its potential impact on privately offered commodity pools and investment funds.

Scope of Proposed Rule 2721

We appreciate the NASD's efforts to protect investors from abusive and fraudulent member private offerings and commend the NASD for applying a beneficial ownership test to determine whether an entity is controlled by a member firm and thus subject to Proposed Rule 2721. The NASD's charge is to regulate the activities of its member broker-dealers. We are concerned that the scope of Proposed Rule 2721 is overly broad and overreaches the NASD's purview by potentially regulating the merits of non-member private placements. Specifically, the definition of "Control Entity" could extend beyond member private offerings and potentially regulate privately offered commodity pools and investment funds that are affiliated with an NASD member.

First, we do not believe that it is necessary for the NASD to regulate the substance of privately offered commodity pools and investment funds. Privately offered commodity pools and

investment funds are offered pursuant to section 4 of the Securities Act of 1933 ("Securities Act") and Regulation D thereunder. Congress recognized in passing the federal securities laws that registration of a security is a long and expensive process, and that in some circumstances the costs of compliance with registration greatly exceeded any public benefit. Thus, exemptions from the burdens of registration were written into the Securities Act as originally enacted in 1933. The Securities and Exchange Commission ("SEC") also recognized in adopting Regulation D that sophisticated or "accredited investors" could sufficiently fend for themselves and adopted Regulation D with limited disclosure requirements.

Additionally, privately offered commodity pools are already well regulated by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA"), and any additional regulation would be duplicative.

Commodity pools are operated or managed by a commodity pool operator ("CPO"). A CPO is generally required to register with the CFTC, and pursuant to the CFTC's Part 4 regulations, must provide to pool participants and file with NFA various disclosure documents. These disclosures include: general risks of futures trading and particular risks of the pool; fees and expenses; the business background and past performance of the CPO, commodity trading advisor ("CTA") and principals; certain material legal proceedings against the CPO or CTA during the past five years; conflicts of interest; intended trading methodology; use of proceeds; "break-even" point where profits exceed fees and expenses; and any other material information. A CPO must also provide participants with monthly account statements which report their income/loss and changes in net asset value, and certified annual reports which report the pool's financial condition, changes in financial condition, changes in ownership equity, and the participant's income/loss. In addition, the NFA conducts routine on-site examinations of CPOs.

We understand that the NFA and the New York City Bar will be submitting comments to the NASD also requesting that commodity pools be exempt from Proposed Rule 2721 and respectfully request that the NASD carefully consider their letters setting forth the regulatory requirements for commodity pools. As commodity pools are already subject to a comprehensive set of regulatory requirements, we believe that the Proposal would add a duplicative layer of regulation, raise regulatory costs for pools without providing additional benefits to investors, as well as potentially subject pools to inconsistent regulatory requirements. ***We recommend that the NASD exempt privately offered commodity pools from Proposed Rule 2721.***

Second, we appreciate the NASD's efforts to determine whether an entity is controlled by an NASD member firm for purposes of Proposed Rule 2721. Nevertheless, we are concerned that the "Control Entity" definition could subject privately offered commodity pools and investment funds that are affiliated with an NASD member to Proposed Rule 2721 and place them at a competitive disadvantage to other similarly situated funds that are not affiliated with an NASD member. Proposed Rule 2721 would subject funds that are affiliated with an NASD member to an additional and separate layer of regulation, and consequently, discourage NASD membership.

We are also concerned that privately offered commodity pools and investment funds could inadvertently or temporarily fall within the purview of Proposed Rule 2721 as a result of how the term "Control" is defined. In stating on page 5 of the Proposal that Proposed Rule 2721 would not apply to any private placements by any entity that does not meet the control test, including investment partnerships, direct participation programs and other private funds that the NASD member or its affiliate may organize, the NASD perhaps did not realize that for a short

period of time at the inception of a private fund, commodity pool or other investment fund, the receipt of "seed" money from NASD member firms or their affiliates who sponsor such funds to begin operations could trigger a private placement memorandum ("PPM") filing requirement under the rule that might never again apply because the 50% threshold is only temporarily exceeded.

It is not uncommon for a newly-formed fund to receive seed capital from an NASD member or its affiliate in order to allow the fund to start trading while it continues to raise capital from new investors. Such investments are also made to demonstrate the financial backing of the fund sponsor for its own program. While such a fund will likely cease being a "Control Entity" of an NASD member after its first closing, we are concerned that it could be swept under Proposed Rule 2721 if more than 50% of the fund is beneficially owned by an NASD member before the fund has raised capital from outside investors.

We recommend that the NASD limit the scope of Rule 2721 to private offerings by NASD members, or exempt from Proposed Rule 2721 commodity pools and investment funds (as discussed herein). We further recommend that the NASD modify the definition of a "Member Private Offering" as "a private placement of unregistered securities issued by a member or a control entity to finance the business or operations of the member exempt from the filing requirements of rules 2710, 2720 or 2810."

Finally, we do not believe Proposed Rule 2721 should apply to private investment funds, such as hedge funds that are exempt under section 3(c)(1) of the Investment Company Act of 1940 ("Company Act") ("3(c)(1) Funds"). In December of 2006, the Securities and Exchange Commission ("SEC") proposed raising the accredited investor standard for a natural person investing in a 3(c)(1) Fund, by requiring that a natural person be an accredited investor and have $2.5 million in investments. We support raising the accredited investor standard for natural persons investing in 3(c)(1) Funds as it will further safeguard that only sophisticated investors are invested in such funds.

Sophisticated investors do not need the protection of the SEC, nor the NASD. Thus, a 3(c)(1) Fund should not need to file a PPM with the NASD under Proposed Rule 2721 for investor protection reasons. ***We recommend that the NASD exempt 3(c)(1) Funds from Proposed Rule 2721.***

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We appreciate this opportunity to comment on Proposed Rule 2721, and would be pleased to meet with you to discuss our comments further. Please feel free to reach me or Jennifer Han at 202.367.1140.

Sincerely,

John G. Gaine
President