



June 25, 2009

VIA ELECTRONIC MAIL: mmchenry@nfa.futures.org,
thunt@nfa.futures.org

National Futures Association
Attn: Mary McHenry, Tracey Hunt
Senior Manager, Compliance
300 South Riverside Plaza
Suite 1800
Chicago, IL 60606

Re: CPO Reporting Requirements

Dear Mses. McHenry and Hunt:

Managed Funds Association (“MFA”)¹ appreciates the opportunity to comment on the National Futures Association’s (“NFA”) request for comment by member Commodity Pool Operators (CPO) on issues relating to Quarterly Reporting by CPO’s. “Notice to CPO Members, dated May 5, 2009” (“Request for Comment”). The Request for Comment explains that NFA recently developed a new risk management system designed to identify trends and assign audit priorities for compliance staff. NFA currently obtains information regarding commodity pools from pool disclosure documents (for those pools which must file disclosure documents) and from pool annual reports. NFA states that neither of these sources provides NFA information with sufficient frequency to optimize its new risk management program. Accordingly, the compliance staff seeks to obtain enhanced information on a more frequent basis from commodity pools.

MFA is committed to, and we believe that our members exemplify, the highest degree of professionalism and best business practices for commodity pool operators. We support NFA’s initiative, as the self-regulatory organization for CPOs, to enhance its audit and compliance program through the development of a risk management system. This system is intended to assist NFA in assigning audit priorities. It is critically important that NFA be able to efficiently marshal its compliance resources to provide the public with the highest degree of confidence in the integrity of the commodity pool industry. MFA recognizes that the routine and periodic collection of additional information with respect to the commodity pools operated by a CPO will assist NFA in achieving that goal. We also applaud NFA for considering the views of MFA in how best to implement the request for enhanced reporting requirements. In light of our over-all support of NFA’s initiative, we offer the following specific and technical comments.

¹ MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. 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 include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

Information to be required

The Request for Comment lists a number of general types of information that would be required to be reported, including: 1) the identity of third-party relationships; 2) statement of changes in Net Asset Value; 3) monthly performance; and, 4) a current Schedule of Investments. MFA believes that NFA should examine the purpose for each category of information requested and establish an appropriate reporting cycle specific to each information category. As discussed below, the best method for reporting various types of information may differ among categories and targeting the best method of reporting for each will ease the burden on both CPOs and NFA.

Third-party relationships

The identity of third-party relationships and other types of structural information is likely to remain relatively constant. Accordingly, CPOs should provide an initial list of such third-party service providers and notify NFA only of changes as they occur. This would be less burdensome on CPOs and provide NFA with more targeted, and timelier information.

Moreover, we believe NFA should specify whether the entities required to be reported are limited to those that provide a trading or solicitation function, or whether they include attorneys, accountants, technology providers and other non-trading infrastructure providers. Even among third-party entities that provide trading-related services, some may not be pertinent to the information being collected. For example, an executing broker may be of less interest for NFA's reports than a clearing broker. The same may be true of the function of other professional third-party service providers. For example, a CPO may retain an attorney for purposes not related to its core business. We believe NFA should require a CPO to only report third-party service providers whose service has a material or key impact on a CPO's business, and that greater guidance should be provided in this respect.

Statement of Changes in Net Asset Value and Monthly Performance

MFA believes that the relative burden of reporting NAV and performance information is dependent upon the frequency and manner of reporting. MFA respectfully suggests that the trends which would assist NFA in establishing its compliance audit priorities would be apparent using a quarterly reporting cycle. In addition, it is likely that NFA would find that quarterly updating of information would better match its ability to make adjustments to its on-going compliance schedule.

Moreover, MFA is concerned that with respect to less liquid investments, monthly information may be less reliable than information provided quarterly. Many CPOs contract with outside experts to value illiquid or hard-to-value investments. Typically, these valuations are reported by such outside firms on a quarterly basis. Accordingly, quarterly reporting to NFA will likely provide more reliable information on an over-all basis than monthly reports. If NFA nevertheless adopts a reporting requirement more frequent than quarterly, NFA should in its guidance make clear that with respect to such hard-to-value investments, such quarterly valuations may be used for the intervening monthly reports.

In addition to frequency, the manner of collection of the information is crucial to its relative burden. MFA strongly recommends that CPOs be able to upload the required data, using a functionality such as easy-file, without having to separately key-in the required information.

Clearly, a requirement to key-in detailed financial data would add significantly to the burden of reporting as well as increase the risk of errors. MFA believes strongly that to the extent that NFA is embarking on a significant new information collection requirement, that it automate the reporting process to the greatest degree possible.

A related issue is the elapsed time between the date as of which the information would be reportable and the date on which the report must be filed. MFA suggests that a 45-day lag date between the “as of” date of the information and the date on which the report is required to be filed is reasonable. In our experience, our members will need a reasonable period of time to compile and verify the information, even if the process can be made highly automated. A 45-day lag period will provide CPOs with the time necessary to receive, compile and verify the information to be reported. This will help to ensure the accuracy of the information reported and help ensure a high degree of compliance with the requirement. Finally, a delayed reporting date for CPOs of funds-of-funds should also be considered because the CPOs of investing fund’s need to receive reports from the investee funds in order to complete their own reports.

As discussed above, with regard to the substance of the information required to be reported, NFA must consider issues related to the difficulty of valuing less liquid investments. As a consequence of the difficulty of valuing this type of investment, the valuation process is likely to be a lengthy and involved process and the value of such investments is unlikely to change from one quarter to the next. NFA should provide guidance that such investments may continue to be carried at the initial value reported unless information becomes known to the CPO which would cause it to undertake a new valuation process for such investments.

On a related issue, MFA recommends that NFA include guidance specifying that the NAV to be reported to it is the same as reported to a pool’s investors. This would produce certainty for CPOs that the NAV computed in the manner required by the constitutional and disclosure documents of a commodity pool would not have to be restated under U.S. GAAP or some other specific accounting standard solely for purposes of this reporting requirement. Moreover, we urge NFA to provide guidance that the performance data may be unaudited.

Schedule of Investments

NFA should clarify what is to be included in the “Schedule of Investments.” If this is meant to include all futures positions in which the commodity pool is invested, it should be noted that clearing house members provide large trader position reports to the CFTC. This information is already provided on a daily basis and in a highly automated manner. Rather than requiring duplicative reporting directly from CPOs, NFA should consider whether it could receive useful and similar information either directly from the clearing member or from the CFTC. MFA encourages sharing of information between regulators and self-regulatory authorities whenever possible, rather than requiring the filing of duplicative information with multiple regulatory or self-regulatory authorities.

Fund-of-funds

As noted above, we believe particular guidance is required with respect to how the contemplated reporting requirement would be applied to a fund-of-funds. Much of the information proposed to be included in the reporting requirement does not have particular

application to a commodity pool that solely invests in other pools. MFA urges NFA to consider whether requiring reports from fund-of-funds would result in either double counting of certain information, or in information that in general would not provide meaningful input to NFA establishing its priorities for compliance audits.

Scope of requirement

NFA requested comment on whether this requirement should apply to all CPOs, regardless of their exempt status. We believe that pool operators that are exempt from registration as such under CFTC Rule 4.13 should not be subject to the contemplated reporting requirement. Rule 4.13 is an exemption from CPO registration and (except for the explicit requirements specified in the rule) an exemption from all of the disclosure and reporting requirements that apply to registered CPOs. As contemplated under the Request for Comment, NFA members that are registered CPOs that choose to operate under the CFTC Rule 4.13(e) exemption would be subject to the requirements. We believe that such an outcome would be contrary to the letter and spirit of CFTC Rule 4.13 in treating all CPOs claiming the exemption under CFTC Rule 4.13 the same.

Confidentiality

Finally, we note that MFA is aware that NFA as a self-regulatory organization is required to safeguard the confidentiality of information. We also understand that NFA treats all information, except for that information available through NFA's BASIC system, as confidential. However, in light of the highly confidential nature of the information which is contemplated to be reported under the proposed reporting requirement, MFA recommends that NFA adopt specific and detailed statements of internal procedures that will assure that the confidentiality of the information is recognized and maintained. We further recommend that NFA include those procedures in guidance issued in connection with the new reporting requirement.

* * * * *

MFA appreciates the opportunity to provide its views on the NFA Request for Comment. MFA believes that the suggested changes to the NFA proposal will increase the utility of the information reported while at the same time reducing the compliance burden. We would be pleased to meet with NFA staff to further discuss our suggestions in greater detail. If the staff has comments or questions, please do not hesitate to contact Jennifer Han or the undersigned at (202) 367-1140.

Respectfully submitted,

/s/ Stuart J. Kaswell

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