



June 29, 2011

Via Electronic Mail: <http://comments.cftc.gov>

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposal to Rescind Sections 4.13(a)(3) and (a)(4); RIN 3038-AD30

Dear Mr. Stawick:

Managed Funds Association (“MFA”)¹ submits this letter as a follow-up to our conversations with Commodity Futures Trading Commission (the “Commission” or “CFTC”) staff on the Commission’s proposal to rescind Sections 4.13(a)(3) and (a)(4) (together, the “Private Pool Exemptions”) contained in its notice on rulemaking on amendments to compliance obligations for commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) (the “Release”).²

As discussed in our letter to the Commission on April 12, 2011 (“MFA April 12, 2011 Letter”), we believe that for a private fund that has an investment adviser registered with the Securities and Exchange Commission (“SEC”) under the Investment Advisers Act of 1940 (the “Advisers Act”):

(1) rescission of the Private Pool Exemptions is unnecessary to achieve the public policy objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”);³

(2) the preservation of the Private Pool Exemptions is consistent with current law and inter-agency comity; and

(3) the Commission will still receive information it needs from new Form PF, the SEC and exchanges even if the Commission retains the Private Pool Exemptions.⁴

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 \$2.0 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

² 76 FR 7976 (Feb. 11, 2011).

³ The Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376.

Accordingly, we respectfully recommended that the Commission preserve and amend the exemption in: (1) section 4.13(a)(4) for a pool with an investment adviser registered with the SEC; and (2) section 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interests and that has an investment adviser registered with the SEC.

Rescission of the Private Pool Exemptions would require many registrants subject to SEC-registration to become dually registered with the CFTC and subject to redundant, unnecessary, and inefficient regulation. Dual registration can be excessively burdensome for registrants, especially as the Commission and the SEC's (together, the "Commissions") regulatory/compliance requirements may be similar, but different in many respects. Upon further discussions, we understand that the Commission staff has concerns with respect to ensuring that it receives adequate systemic risk information on market participants trading commodity interests. We believe the Commission should work with the SEC and other members of the Financial Stability Oversight Council ("FSOC") to implement an appropriate information sharing framework for systemic risk data, and for the Commission to review and analyze Form PF data before considering whether rescission of the Private Pools Exemption is necessary. As alternatives to rescinding the Private Pool Exemptions, we propose for the Commission's consideration an information-sharing framework and a tiered registration framework, which we believe would provide the Commission with systemic risk data while minimizing unnecessary and duplicative regulation.

I. Proposal 1: Information Sharing Framework

MFA respectfully suggests that the Commission: (1) retain the exemption in section 4.13(a)(4) for a pool with an investment adviser registered with the SEC; (2) retain the exemption in section 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interests and that has an investment adviser registered with the SEC; and (3) arrange for appropriate information sharing with the SEC. We believe the Commission has alternative tools to assist with effective regulatory oversight of an investment adviser's fund that is currently exempt from registration as a commodity pool operator ("CPO") under the Private Pool Exemptions. The Commissions have proposed new rules and new Form PF under the Commodity Exchange Act ("CEA") and the Advisers Act to collect extensive information from advisers of private funds with respect to the size, strategies, and positions of large private funds.⁵ We believe new Form PF will provide the Commissions with detailed information on private funds; and that the Commission should rely on Form PF of entities that are exempt from registration under Section 4.13 to determine whether they are systemically risky rather than rescind the Private Pool Exemptions.

⁴ See letter from Stuart J. Kaswell, Executive Vice President and Managing Director, MFA, to David A. Stawick, Secretary, CFTC, on April 12, 2011 on Proposal to Rescind Sections 4.13(a)(3) and (a)(4), *available at*: <http://www.managedfunds.org/downloads/MFA.CFTC.Rule.4.13.final.4.12.pdf>.

⁵ 76 FR 8068, 8069 (February 11, 2011).

The Dodd-Frank Act sets out a framework for information sharing among regulators. It requires the SEC to share systemic risk information collected from private funds with the FSOC, which includes the Commission.⁶ The Dodd-Frank Act also requires the SEC and other recipients, including any department, agency, or self-regulatory organization, to maintain confidentiality of systemic risk data.⁷ As supported by the Dodd-Frank Act, we believe Congress intended to minimize the burdens and redundancy of dual registration by retaining and strengthening exemptions from registration under the Advisers Act and the CEA, and creating an information sharing framework among regulators.⁸

Accordingly, pursuant to the information sharing provisions of the Dodd-Frank Act, the Commission will have access to information on registered advisers trading commodity interests through Form PF and will be able to use information obtained through Form PF to assist with its regulatory programs. This information should address the Commission's concern over any feared lack of accountability with respect to systemically important private pools advised by a registered adviser. Moreover, we believe this framework may lend itself to a more efficient use of limited resources given the significant fiscal constraints regulators face.

We recognize the Commissions are still in the process of developing Form PF, including the logistics for receiving and/or distributing Form PF. To the extent the Commission is concerned that it may not directly receive Form PF from entities trading commodity interests, we recommend including in Form PF three categories/checkboxes: SEC registrant; CFTC registrant; and Section 4.13 Exempt. Forms tagged CFTC registrant or Section 4.13 Exempt should be directly accessible by the Commission.

II. Proposal 2: A Tiered Registration Framework

Alternatively, if the Commission believes after receipt and analysis of the Form PF data that the information sharing afforded by Form PF for Private Pool Exemptions filers is not sufficient, we propose that the Commission consider a tiered registration framework based upon the amount a pool trades in commodity interests. We believe a tiered registration approach would be able to provide the Commission with necessary information, while minimizing the regulatory burden on a firm. We propose a registration framework considering three tiers of trading activity, as discussed below:

1st Tier – Trading at 5% or Less and Other Exemptions from Registration

A commodity pool operator is exempt from registration with respect to a pool if:

- A. (1) The pool has 5% or less of initial margin in commodity interests, calculated by taking the amount the pool has in initial margin and premiums on options on futures divided by

⁶ Section 404 of the Dodd-Frank Act.

⁷ *Id.*

⁸ *See* MFA April 12, 2011 Letter.

assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a “Notice Registration” within 90 days after the last day of such calendar year); and

(2) The pool has an investment adviser registered with the SEC;

OR

B. The pool is only a passive investor in commodity interests, meaning that it primarily invests in other pools and does not directly trade commodity interests (*i.e.*, fund of funds and family offices), provided that the pool is not only trading commodity interests.

2nd Tier – Trading Above 5% and Under 20% - Notice Registration

A commodity pool operator is subject to “Notice Registration” with respect to a pool if:

(1) The pool’s trading activity in commodity interests is above 5% and under 20% of its net assets, calculated by taking the amount the pool has in initial margin and premiums on options on futures divided by assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a registration statement within 90 days after the last day of such calendar year); and

(2) The pool has an investment adviser registered with the SEC.

“Notice Registration” would entail:

- Filing basic pool information with the Commission.
- Submitting Form PF to the CFTC (to the extent the registrant is otherwise required to make such regular filings with the SEC).
- Requiring the pool to provide investors with annual audited financial statements.
- Requiring the pool’s operator to annually certify its eligibility for Notice Registration.
- Managers qualifying for Notice Registration would not be subject to CFTC part 4 regulations or the requirement to become a member of the National Futures Association.

We believe the 5 – 20% threshold, discussed above, is appropriate in light of the increased number of products encompassed under the new definition of “commodity interest”, as well as the higher margin levels that is likely to be mandated for certain instruments.⁹

3rd Tier – Full Registration

A commodity pool operator would be subject to registration requirements with respect to a pool pursuant to CFTC part 4 regulations if the pool’s trading activity in commodity interests is equal to 20% or more of its net assets, calculated by taking the amount the pool has in initial

⁹ See, e.g., Notice of Proposed Rulemaking on “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants”, 76 FR 23732 (April 28, 2011).

margin and premiums on options on futures divided by assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a registration statement within 90 days after the last day of such calendar year).

III. Conclusion

MFA encourages the Commission to work with FSOC members to implement an appropriate information sharing framework with respect to systemic risk data pursuant to the Dodd-Frank Act, and for the Commission to review and analyze Form PF data before considering whether rescinding the Private Pool Exemptions is necessary. MFA continues to believe, as set forth in our MFA April 12, 2011 Letter, that the Commission should preserve and amend the exemption in: (1) section 4.13(a)(4) for a pool with an investment adviser registered with the SEC; and (2) section 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interests and that has an investment adviser registered with the SEC. The Dodd-Frank Act sets forth an information sharing framework among regulators, which we believe would provide the Commission with systemic risk data on private funds that trade commodity interests. We believe the Commission should use the Form PF of such entities rather than rescind the Private Pool Exemptions for funds with an investment adviser registered with the SEC. To the extent the Commission believes that more information is needed from entities trading commodity interests, we propose a tiered registration framework based upon the level of commodity interest trading by a fund.

We would be happy to discuss our comments or any other questions in the Release at greater length with the Commission or its staff. If the staff has any questions, please do not hesitate to call Jennifer Han or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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

CC:

The Hon. Chairman Gary Gensler
The Hon. Commissioner Michael Dunn
The Hon. Commissioner Bart Chilton
The Hon. Commissioner Jill Sommers
The Hon. Commissioner Scott O'Malia
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