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

June 11, 2009

Via Electronic Mail: HershaftM@SEC.GOV

Mr. Michael Hershaft
Special Counsel
Division of Trading and Markets,
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Follow-up to Interagency Regulator Call with Managed Funds Association *et al*. on June 9, 2009

Dear Mr. Hershaft:

Managed Funds Association ("MFA")[1] appreciates the opportunity to speak with the U.S. interagency regulator working group (the "Working Group") on June 9, 2009 regarding standardization and clearing eligibility of over-the-counter ("OTC") derivatives products. We applaud the efforts of the Working Group in collaborating with market participants to further develop Treasury's proposal to regulate the OTC derivatives market. MFA and its members share the goal of regulators in ensuring a sound financial system and we are committed to working with regulators to develop appropriate and effective regulation to achieve that goal.

MFA believes that it is important that we supplement the information shared during our telephone conversation to assist the Working Group in accurately and thoroughly meeting its task. In particular, we would like to share our definition of "standardization" for the purposes of crafting draft legislation and to reiterate certain key points that were made by MFA members.

MFA recommends that the Administration and regulators define "standardization" in respect of OTC derivatives as requiring:

(i) Common product terms/definitions (*e.g.*, published ISDA product definitions);
(ii) Common specifications (*e.g.*, T-30/T-60 effective date, 100/500 coupon, reference entity/reference obligations, established prices sources (such as ISDA's Commodity Reference Prices), standard terms for market disruption/adjustment events, common early termination provisions);

[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.

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(iii) Common trading/market conventions (*e.g.*, novation protocol, ability to apply/achieve objective determinations where necessary, auctions (where applicable)); and

(iv) "Eligibility" for clearing on an "established clearinghouse".

For the purpose of this definition,

> "Eligibility" shall mean that the OTC derivative asset class should be able to fit within an established clearinghouse's risk management, pricing and collateral management practices;
>
> "Established clearinghouse" shall mean a clearinghouse that includes initial margin segregation, position portability, direct and indirect (*i.e.*, agency relationship) buy-side access, as well as such other requirements (*e.g.*, with respect to risk management) as shall be determined by the appropriate regulatory agency.

During our telephone conversation, MFA and its members made the following key points:

- **MFA's Commitment to Clearing**. MFA wholly supports standardization of OTC derivative documentation. MFA also wholly supports the clearing of all derivative products that are capable of being cleared. Clearing not only decreases transaction costs, credit risk, and systemic risk, but also increases market transparency and operational efficiency. We cannot say, however, that simply because a product has standard documentation that it is capable of being cleared. One size does not fit all for OTC derivatives; some products by their nature are not capable of being cleared even if they use standard documentation. The OTC derivatives market is very diverse in terms of its range of products and corresponding range of operational maturities/market participants/terms/structures/etc. The definition of standardization should not be determined solely by legislation (*i.e.*, legislating specifics would be hugely problematic). Instead, the Working Group should look at four criteria listed above to determine whether a particular product is capable of being cleared.

- **Initial Margin Segregation, Position Portability and Customer Access to Clearinghouses**. MFA believes that in the event of a clearing member failure, clearinghouses should be designed in such a fashion as to address "initial margin" segregation (*i.e.*, the ability to place in a bankruptcy-protected account upfront collateral that is posted by hedge funds to dealers) and position portability (*i.e.*, the ability to move trades from an insolvent or defaulting dealer to a solvent dealer within an established clearinghouse).[2] In addition, MFA believes that buy-side firms should have access to clearinghouses either through a direct relationship with the established clearinghouse, or through an agency relationship with a clearing member.

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[2] *See* letter from Richard H. Baker, President and C.E.O., Managed Funds Association, dated Dec. 23, 2008 to: Timothy F. Geithner (President) Federal Reserve Bank of New York; The Honorable Christopher Cox (Chairman) U.S. Securities and Exchange Commission; and The Honorable Walter Lukken (Acting Chairman) U.S. Commodity Futures Trading Commission. A copy of this letter is attached hereto.

- **Importance of Non-standardized OTC Derivatives**. MFA believes that there are legitimate and important reasons for trading non-standardized OTC derivatives. MFA appreciates the concerns voiced by regulators for more transparency over the OTC derivatives market. MFA strongly supports current industry initiatives that encourage the reporting of OTC derivatives information to central repositories (*e.g.*, DTCC, Markit, etc.), which in turn disclose that information on a confidential basis to regulators. MFA also supports the disclosure of certain OTC derivatives information to the public on an aggregate basis. Legislative and regulatory proposals should not be unnecessarily burdensome or otherwise include measures that would chill trading of non-standardized OTC derivatives by market participants.

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MFA welcomes the opportunity to discuss further any of the points made during our telephone conversation with the Working Group or the information provided above. If you or any members of the Working Group have any questions or comments, please do not hesitate to contact my colleague, Jennifer Han (by email: Jennifer@managedfunds.org; by telephone: 202.367.1265), or me (by email: Carl@managedfunds.org; by telephone: 202.367.1210).

Respectfully submitted,

\s\ Carl E. Kennedy

Carl E. Kennedy
Legal Counsel

CC: Commodity Futures Trading Commission
Federal Reserve Bank of New York
Federal Deposit Insurance Corporation
Board of Governors of the Federal Reserve System
Office of the Comptroller of the Currency

Attachment