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

March 1, 2012

Via Electronic Mail

Gary Barnett, Director
Division of Swap Dealer and Intermediary Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Nuveen Commodities Asset Management, LLC's Interpretative Request Concerning Rule 4.7(b)(1)(ii), 4.7(c)(1)(ii) and Rule 4.25(c)(3) and 4.35(b)

Dear Mr. Barnett:

Managed Funds Association ("MFA")[1] respectfully requests that the Commodity Futures Trading Commission ("CFTC" or "Commission") staff grant the interpretative relief as requested by Donald S. Weiss of K&L Gates regarding Nuveen Commodities Asset Management, LLC, and Rules 4.7(b)(1)(ii), 4.7(c)(1)(ii), 4.25(c)(3) and 4.35(b), in his letter to you, dated February 1, 2012 (the "Nuveen Letter"). MFA agrees with the analysis and rationale in the Nuveen Letter that a commodity trading advisor ("CTA") should not need to disclose performance with regard to its exempt accounts that are unrelated to the trading program being offered in a non-exempt commodity pool, provided that the CTA's exempt trading programs are not material to the program being offered by the pool. Specifically, we believe the exemptions from disclosing past performance in Rule 4.7(c)(1)(ii)[2] should trump the language in Rule 4.25(c)(3).[3] Requiring a CTA to disclose the performance of all of its accounts, including exempt accounts that are not material or meaningful to a pool's offered trading program serves no regulatory purpose.

In addition, and as discussed in the Nuveen Letter, we believe Rule 4.7(b)(1)(ii) regarding commodity pool operator ("CPO") performance disclosure should be interpreted consistently with Rule 4.7(c)(1)(ii), which permits a CTA to omit performance disclosure for its non-material exempt accounts

[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 $1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

[2] Rule 4.7(c)(1)(ii) provides the following relief for CTAs: "[e]xemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered."

[3] Rule 4.25(c)(3), with respect to offered pools with less than a three-year operating history, provides: "The commodity pool operator must disclose the performance of any accounts (including pools) directed by a major commodity trading advisor in accordance with . . ."

(which could include pool accounts managed by the CTA) in its CTA disclosure document. Rule 4.7(b)(1)(ii) permits a CPO to omit performance disclosure for its non-material exempt pools in its CPO disclosure document; but is silent as to whether the CPO may omit performance related to a CTA's non-material exempt accounts. We believe it makes sense to impose parallel disclosure obligations on CPOs and CTAs; permit CPOs to avoid a lengthy string of performance capsules in their disclosure documents that are, at best, irrelevant, and at worse, confusing, to an investor evaluating the strategy of the offered pool; and avoid the anomalous result where a pool operator acting as sole CTA to its pool may exclude its exempt pool/account performance (not material to the offered pool) from the offered pool's disclosure document and a CTA, acting independently, can solicit such pool's investors with a disclosure document that excludes the CTA's exempt account performance (not material to the offered program) but that pool operator engaging that CTA must include that CTA's exempt account performance that is not material to the program traded on behalf of the offered pool. We understand that it was largely for this reason that the Commission created the exemptions in Rules 4.7(b)(1)(ii) and (c)(1)(ii);[4] and note that since the adoption of Rule 4.7 industry practice has been based on this understanding.

MFA respectfully urges you to issue interpretative relief clarifying that: (1) pursuant to Rule 4.7(c)(1)(ii) and notwithstanding Rule 4.25(c)(3), a CTA need not disclose the performance of its exempt accounts that are unrelated and not material to the trading program being offered in a non-exempt commodity pool; and (2) that pursuant to Rule 4.7, a CPO of a non-exempt pool is not required to disclose a CTA's non-material exempt accounts. We believe that requiring a CTA to disclose the performance of all of its exempt accounts, irrespective of their relevance to a non-exempt commodity pool, would be contrary to the Commission's stated purposes in the adoption of Rule 4.7 and would cause great confusion and enormous cost to the industry in requiring CTAs to recreate performance data in CFTC-mandated capsule or tabular form for all of their exempt accounts.

We would be happy to discuss our comments or any other questions you may have. If you or your staff has 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: Amanda Olear, Special Counsel
Division of Swaps and Intermediary Oversight

[4] *See* 57 *FR* 34853, 34858 (Aug. 7, 1992). In the adopting release of Rule 4.7, the Commission states that "Disclosure of past performance that is atypical or not representative of overall performance results for comparable pools or accounts may in context be misleading."