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

August 27, 2012

Via Electronic Mail:

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

Re: Request for Interpretive Guidance – Transition Period under § 4.13(a)(3) (the "Rule")

Dear Mr. Barnett:

Managed Funds Association[1] ("MFA") submits this letter to the Staff of the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "CFTC" or the "Commission") to request interpretive guidance relating to regulatory treatment of funds whose trading may begin to exceed the quantitative gross futures and swaps market exposure and margin restrictions (the "4.13(a)(3) Quantitative Restrictions") established by the Rule.

The common and highly problematic circumstance with which numerous market participants are confronted is that in which the sponsor of a fund which has to date operated within the 4.13(a)(3) Quantitative Restrictions determines that, on an ongoing basis, it is no longer feasible (without material damage to investors) to continue to do so, and decides to transition the fund to operating as a § 4.7 or a § 4.24/4.25 pool but needs to avoid having to suspend operations or curtail its trading while the sponsor is registering as a CPO/CTA. This

[1] The Managed Funds Association ("MFA") represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and all other regions where MFA members are market participants.

problem has taken on a new urgency with the inclusion of swaps within the range of CFTC jurisdictional instruments.

There seems little regulatory purpose in requiring investors in such circumstances to incur the incremental risks and losses of continued compliance for the brief period while the sponsor goes through the CFTC registration process. MFA suggests that the Commission staff should grant interpretive relief providing a "transition period" so that the sponsor of a fund previously exempted under the Rule can continue to manage the fund in what the sponsor believes to be the best interests of investors, while the sponsor is registering with the CFTC.[2]

The need for some formal transition period guidance is compounded, of course, by the fact that it is not just the fund sponsor which is implicated by such non-compliance; the FCMs, CTAs and other NFA members dealing with such fund are required by NFA Bylaw 1101 — the prohibition on "doing business with non-members" — to cease dealing with the fund the moment the CPO falls out of compliance with the 4.13(a)(3) Quantitative Restrictions (thereby becoming a person required to be registered with the CFTC which is not so registered and, accordingly, covered by NFA Bylaw 1101). A sponsor relying on the Rule will have made representations in all of its counterparty and brokerage agreements that the sponsor either is or does not need to be registered with the CFTC. Those representations will no longer be accurate during the transition period.

MFA submits that if a sponsor had formed a fund with the intent of complying with the 4.13(a)(3) Quantitative Restrictions (as demonstrated by the sponsor's exemptive filing under the Rule) but then realizes that such compliance is not in the best interests of investors, such sponsor should be permitted to exceed the 4.13(a)(3) Quantitative Restrictions while registering with the CFTC, provided that the sponsor so notifies the CFTC and uses its best efforts to complete the CFTC registration process as promptly as practicable. The regulatory risk of permitting such interim relief (really only a temporary extension of the Rule exemption) is minimal. The difference, over the brief period of time between a sponsor: (i) actually being registered as a CPO/CTA; and (ii) having notified the CFTC that the sponsor is in the process of registering and agreeing to comply prior to registration with all substantive restrictions imposed on registered CPOs (as well as maintain books and records subject to audit by the NFA to confirm such compliance) is negligible. On the other hand, the risk to investors of compelling continued compliance with the 4.13(a)(3) Quantitative Restrictions while the registration process is completed is potentially material.

MFA believes that fund sponsors should be required to file a transition notice with the CFTC to alert the Commission and the NFA to the sponsor's intention to register. We believe such a notice is desirable from a regulatory perspective as it will call NFA's attention to the fact that the sponsor while no longer complying with the 4.13(c)(3) Quantitative Restrictions is not

[2] *See, e.g.,* 76 FR 42950 (July 19, 2011), Rules Implementing Amendments to the Investment Advisers Act of 1940 (providing a registration buffer to "prevent costs and disruption to advisers that otherwise may have to switch between federal and state registration frequently because of, for example, the volatility of the market values of the assets they manage").

yet registered and assist the NFA — if it deems appropriate — in both monitoring the trading of the fund during the transition period as well as the diligence with which the sponsor addresses the registration process.

We urge the CFTC to consider interpretive guidance under the Rule to the effect that:

If a sponsor, having previously filed an exemptive notice under the Rule, submits a notice — signed by a principal authorized to bind the sponsor — to the CFTC to the effect that the sponsor has determined continued compliance with the 4.13(a)(3) Quantitative Restrictions to be adverse to the interests of the fund, such sponsor may continue to operate the fund, taking positions without regard for the 4.13(a)(3) Quantitative Restrictions, provided that such sponsor uses its best efforts to become registered as a CPO as promptly as reasonably practicable. The sponsor would undertake in its notice to the CFTC to maintain all books and records required of registered CPOs as well as to comply with all substantive restrictions imposed on registered CPOs from the date of such notice.

Under the Commodity Exchange Act ("CEA"), the Commission has authority to register CPOs and CTAs,[3] to exclude any entity from registration as a CPO or CTA,[4] and to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of [the CEA]."[5] We respectfully request that the Staff issue interpretive guidance under the Rule so as to avoid the potentially materially adverse consequences to investors and other market participants of funds either temporarily exceeding or no longer being prudently able to comply with, the 4.13(a)(3) Quantitative Restrictions.

MFA appreciates the opportunity to request interpretive guidance addressing transition period issues relating to the implementation of the Rule. If the Commission or its Staff has questions, please do not hesitate to call the undersigned or Jennifer Han, Associate General Counsel, at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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

CC:

The Hon. Gary Gensler, Chairman
The Hon. Bart Chilton, Commissioner
The Hon. Jill E. Sommers, Commissioner

[3] Section 4m of the CEA.

[4] Sections 1a(11) and (12) of the CEA.

[5] Section 8a(5) of the CEA.

The Hon. Scott D. O'Malia, Commissioner
The Hon. Mark P. Wetjen, Commissioner
Dan Berkovitz, General Counsel
Amanda Olear, Special Counsel
Division of Swap Dealer and Intermediary Oversight

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