MFA POLICY BRIEF

MFA Submits Letter in Response to SEC Proposal to Implement JOBS Act:

In August, the Securities and Exchange Commission (SEC) opened a public comment period, soliciting feedback on rulemaking related to the Jumpstart Our Business Startups (JOBS) Act. MFA submitted a comment letter to the SEC in response to its proposed implementation of Section 201 of Act, related to general solicitation rules.

Our letter outlined general support for the proposed approach for issuers to take reasonable steps to verify that a purchaser is an accredited investor by conducting a facts and circumstances analysis. We also recommended that the Commission include a safe harbor in the final version of Rule 506(c) that would deem an issuer to have complied with the verification requirement if a purchaser provided certifications that it is an accredited investor and has not obtained financing for the transaction, and the purchaser meets a certain minimum investment level as determined by the SEC.

See the full letter to the SEC here.

MFA Submits Comments on AIFMD Remuneration:

MFA submitted comments to the European Securities and Markets Authority (ESMA) on its consultation on guidelines on sound remuneration policies under the on Alternative Investment Fund Managers Directive (AIFMD). As ESMA establishes its guidance on implementing Annex II of the AIFMD, we believe they should ensure that the fundamental principle of proportionality is recognized in the application of the principles, particularly with respect to owner-managed AIFMs and non-EU AIFMs subject to remuneration rules in their home jurisdiction.

MFA believes that proportional application of the guidelines is appropriate in the following circumstances:

- MFA believes that only the remuneration paid to the most senior individuals in each relevant category of Identified Staff should be subject to the Guidelines.
- the Guidelines should not require AIFMs to have a strict set of guidelines for determining individual remuneration and should instead give AIFMs sufficient room for discretion in making such awards; and,
- there should be no requirement to disclose remuneration policies or amounts to the public.

See the full letter to ESMA here.

MFA Submits Comments on Hong Kong Consultation on Electronic Trading:

MFA submitted comments to the Hong Kong Securities and Futures Commission (the Commission) on its consultation paper on the regulation of electronic trading.

MFA members have a strong interest in markets that operate efficiently and with integrity, and supports efforts to implement a robust regulatory framework that fosters innovations in technology and promotes greater competition among marketplaces. We are strong proponents of advancements in technology in the markets, which have empowered investors, both institutional and retail, with more efficient methods to access the markets and execute their investment strategies globally. The markets of the 21st century are largely, and will become ever more, interconnected and the need for technology will only increase. We believe that market participants and regulators should take responsible steps to prepare for this continuing market evolution.

In our letter to the Commission, we outline our support for the requirement that intermediaries implement pre- and post-trade risk controls. MFA believes, in regulating electronic trading, there should be an important distinction between an intermediary/vendor that provides electronic connectivity services (i.e., connectivity and routing access to liquidity centers) and an end-user, such as a Fund Manager, who uses such service. An end-user should be responsible for technology, such as software programs, it develops to implement its trading strategy; but it should be held to a different standard because its trades will/should be filtered through an intermediary's electronic trading system.

As such, an end-user's trading activity will be less likely to cause market disruptions and will present less financial risk to the financial system. Intermediaries should be held to a higher standard with regard to electronic trading because they are selling the connectivity and technology to the public. As the access point to an exchange or other market centers, intermediaries present greater financial risk.

MFA's full comments can be seen here.

Buy-Side Associations Submit Requests to CFTC and Treasury on Foreign Exchange Swaps and Forwards:

MFA joined with several other buy-side trade associations (the "Associations") on a letter asking U.S. Treasury Secretary Timothy Geithner to make a final determination with respect to its proposal to exempt foreign exchange swaps and foreign exchange forwards ("FX Products") from swaps regulation by October 12, 2012. Starting October 12, certain CFTC registration requirements become effective. Alternatively, the Associations request that the Treasury issue an interim final determination to address the immediate needs of market participants to prepare for the new swaps regime.

Separately, the Associations sent CFTC Chairman Gensler a letter requesting that the CFTC provide relief by deferring the effective date of FX Products becoming "swaps". The Associations are concerned that market participants may need to register as Commodity Trading Advisors (CTAs), Commodity Pool Operators (CPOs) or Major Swap Participants (MSPs) because of their activity in foreign exchange (FX) Products, prior to the Treasury making a determination that would exempt FX Products from swaps regulation.

To view the letter sent to Treasury Secretary Geithner click here.
To view the letter sent to CFTC Chairman Gensler click here.

On October 12, the CFTC issued time-limited No-Action relief with respect to foreign exchange forwards and foreign exchange swaps.

To view the CFTC No-Action letter click here.

Seven in Ten Institutional Investors Say Alternative Investments are Essential to Diversify Risk:

A recent survey by Natixis Global Asset Management notes that seven out of 10 institutional investors believe it is essential to invest in alternatives, including hedge funds, to diversify portfolio risk. The survey also noted that a similar percentage of respondents – 63% – said it was essential to invest in alternatives to beat broader market performance.

According to the survey, of those institutional investors who do invest in alternatives, 85% said they were pleased with the performance of those investments. A full 88% said that if they had to do those investments all over again, they would increase or keep the investments the same. The survey went on, noting, "In a show of confidence, 61% of investors say the alternatives strategies they invest in will outperform last year's returns."

A Bloomberg article about the survey quoted Natixis's CEO, John T. Hailer, discussing the reasons many investors are turning to alternatives to help manage risk, saying, "In their view, markets are driven more by economic and political events than by fundamentals. As a result, decisions are often made for defensive reasons."

To view the Natixis Global Asset Management survey click here.

To view the Bloomberg article about the survey click here.