

November 9, 2012

VIA ELECTRONIC MAIL

Ms. Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Delayed Compliance Date of Amended Part 4; Former Appendix A of the CFTC's Part 4 Regulations, 17 CFR Part 4

Dear Ms. Warfield:

The Investment Adviser Association¹ (“IAA”) and Managed Funds Association² (“MFA”) (together, the “Associations”) respectfully submit this letter to request a delayed compliance date for commodity pool operators (“CPOs”) of and commodity trading advisors (“CTAs”) to funds of funds (“FOFs”) and that the delayed compliance date be granted expeditiously. Many of our members will be subject to registration and regulation as CPOs and/or as CTAs as a result of amendments to CFTC Regulations 4.13(a)(3) and 4.5, the rescission of CFTC Regulation 4.13(a)(4), and related amendments to CFTC Regulation 4.14(a)(8). In addition, a number of our members manage FOFs that invest in one or more commodity pools and currently rely, or seek to rely, on the rescinded Guidance on the Application of Rule 4.13(a)(3) in the Fund-of-Funds Context contained in Appendix A of the Part 4 Regulations. We write to request that the CFTC provide relief for these FOF firms.

¹ IAA is a not-for-profit association that represents the interests of investment adviser firms registered with the Securities and Exchange Commission that provide investment advice to private funds and to registered investment companies. Founded in 1937, the IAA's membership consists of more than 550 advisers that collectively manage in excess of \$10 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

² 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, the Americas, Australia and many other regions where MFA members are market participants.

Appendix A provided guidance regarding the application of the Regulation 4.13(a)(3) *de minimis* thresholds in the context of FOFs. The CFTC rescinded Appendix A in February 2012.³ In the Release announcing that rescission, the CFTC stated that the sponsor of the underlying fund (in an FOF) will be required to register as a CPO and that “it is the position of the [CFTC] that a fund investing in an unaffiliated commodity pool is itself a commodity pool.”⁴ On August 14, 2012, the CFTC Division of Swap Dealer and Intermediary Oversight staff stated in a response to a Frequently Asked Question (“FAQ”) that “CPOs of funds-of-funds may continue to rely on Appendix A until the [CFTC] adopts revised guidance.”⁵ The CFTC has not yet adopted revised guidance.

Advisers and pool operators seeking to rely on CFTC guidance in Appendix A with respect to the application of the *de minimis* limitations in Regulations 4.13(a)(3) and 4.5 to FOFs have been analyzing the CFTC’s positions in the Release and the FAQs to determine whether they would meet the thresholds in revised Regulations 4.13(a)(3) and 4.5, whether they could rely on some future CFTC guidance as to FOF scenarios, or whether they would need to register as CPOs or CTAs. Appendix A provides interpretive guidance for a limited number of FOF scenarios, but there are a wide range of FOF structures and additional interpretive guidance is needed.

We and other organizations have and continue to seek additional guidance and relief with respect to the scenarios in Appendix A and Part 4 compliance for CPOs of FOFs. We understand that the CFTC staff is working to address these issues, but the December 31 deadline is quickly approaching. Without the requisite guidance from the CFTC on how the *de minimis* restrictions apply to a wider variety of common FOF structures, firms are not able to determine whether or not they must register. Further complicating the process, funds in which FOFs invest are also

³ Commodity Pool Operators and Commodity Trading Advisers: Compliance Obligations, Final Rule, 77 Fed. Reg. 11252 (Feb. 24, 2012) (“Release”), available at <http://www.cftc.gov/ucm/groups/public/@Irfederalregister/documents/file/2012-3390a.pdf>; *correction notice published at* 77 Fed. Reg. 17328 (Mar. 26, 2012).

⁴ Release, 77 Fed. Reg. at 11268. The CFTC noted in the Release that several commenters urged the CFTC to consider retaining the exemption in Regulation 4.13(a)(4) for funds that do not directly invest in commodity interests, but do so through an FOF structure, and who are advised by an SEC-registered investment adviser. The CFTC stated in the Release that it was withholding consideration of an FOF exemption until it has received data regarding FOF firms on Forms CPO-PQR and/or CTA-PR, as applicable, to enable it “to better assess the universe of firms that may be appropriate to include within the exemption, should the [CFTC] decide to adopt one.” *Id.* The CFTC did not provide an exemption for FOF when it adopted the revised Regulations 4.13 and 4.5, but noted in the Release that its staff would consider requests for exemptive relief for FOF on a case-by-case basis. Given the uncertainty as to the registration requirements for the FOF industry as of this date, as well as the significant time and financial resources necessary to complete CFTC and National Futures Association (“NFA”) registration requirements, we urge the CFTC to consider providing the relief requested to extend the registration compliance date.

⁵ See CFTC “Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions – CPO/CTA: Amendment to Compliance Obligations” (Aug. 14, 2012).

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still analyzing their registration status and whether they can come within various exemptions; the treatment of their foreign exchange transactions will materially affect this analysis. Until their investee funds determine their regulatory status, FOF managers are not able to gather the requisite information to make necessary determinations and calculations to determine their own status. Thus, at present, FOF managers do not have sufficient time and information to analyze and comply with the appropriate CFTC registration requirements or the NFA membership, licensing, and compliance obligations before the December 31, 2012 deadline.

We respectfully request that the CFTC or its staff issue final FOF guidance as soon as possible, and grant firms the necessary time to determine how the regulation applies to their business models, fund structures, and investment strategies. Firms should not be expected to comply with a December 31, 2012 CPO and CTA registration deadline without the necessary guidance from the CFTC that helps inform whether the operator of or adviser to a FOF may rely on an Appendix A-type scenario or must register as a CPO or CTA. Firms are making determinations presently and many will have invested significant resources to register as CPOs and CTAs, adopt policies and procedures, and complete the registration process unnecessarily, if and when the CFTC or its staff releases revised FOF final guidance that ultimately results in their being able to rely on Regulations 4.13(a)(3) or 4.5. Accordingly, we respectfully request the CFTC promptly extend the compliance date for FOF operators, advisers (including subadvisers) to register or claim an exemption with respect to FOF until the later of: (i) six months from the date the CFTC or its staff issues final fund of funds guidance replacing Appendix A; or (ii) June 30, 2013. Further, to the extent a FOF operator or adviser has non-FOF accounts as well as FOF accounts, we request that such operators and advisers have until the later of: (i) six months from the date the CFTC or its staff issues final FOF guidance replacing Appendix A; or (ii) June 30, 2013 to comply with the Commission's Part 4 regulations with respect to such FOF accounts.

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We appreciate the CFTC's consideration of our request to extend the compliance date for operators of and advisers to FOFs to the later of: (i) six months from the date the CFTC issues final fund of funds guidance replacing Appendix A; or (ii) June 30, 2013. Please do not hesitate to contact Karen L. Barr or Monique S. Botkin of IAA at (202) 293-4222 or Stuart J. Kaswell or Jennifer Han of MFA at (202) 730-2600 if we may provide any additional information regarding our comments or any other matters.

Sincerely,

/s/ Karen L. Barr
Karen L. Barr
General Counsel
Investment Adviser Association

/s/ Stuart J. Kaswell
Stuart J. Kaswell
Executive Vice President & Managing
Director, General Counsel
Managed Funds Association

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cc: The Honorable Gary Gensler, Chairman
The Honorable Jill E. Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott D. O'Malia, Commissioner
The Honorable Mark P. Wetjen, Commissioner

Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight
Amanda Olear, Special Counsel, Division of Swap Dealer and Intermediary Oversight