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

May 22, 2013

Via Electronic & U.S. Mail

The Hon. Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581-0001

Re: Protection of Sensitive and Proprietary Information by FSOC Members

Dear Chairman Gensler:

Managed Funds Association[1] ("**MFA**") and its members are greatly concerned over recent inspector general and press reports describing the improper use of private, sensitive data that certain regulators have collected for regulatory purposes and the gaps in internal controls at regulators to protect non-public information.[2] In the course of discharging various responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("**Dodd-Frank Act**"), the Financial Stability Oversight Council ("**FSOC**") member agencies are collecting an unprecedented level and quantity of sensitive and proprietary information from market participants.[3] MFA supported enhanced information reporting during the legislative

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

[2] *See, e.g., Academic Use of CFTC's Private Derivatives Data Investigated,* Bloomberg, Mar. 7 2013; *CME Group sparked shutdown of CFTC's academic research program,* Reuters, April 24, 2013; *SEC needs better controls to protect data – watchdog,* Reuters, Apr. 3, 2013; Semiannual Report for CFTC, CFTC Office of Inspector General, Oct. 31, 2012; SEC's Controls over Sensitive/Nonpublic Information Collected and Exchanged with the Financial Stability Oversight Council and Office of Financial Research, SEC Office of Inspector General, Mar. 25, 2013; 2012 FISMA Executive Summary Report, SEC Office of Inspector General, Mar. 29, 2013; and Audit of the Financial Stability Oversight Council's Controls over Non-public Information, The Council of Inspectors General on Financial Oversight, June 2012.

[3] *See* Section 112 of the Dodd-Frank Act (requiring the FSOC to collect information from member agencies to assess systemic risk).

process that resulted in the enactment of the Dodd-Frank Act.[4] As you know, market participants invest significant research, time and resources into developing proprietary investment strategies. Such investment strategies are trade secrets, protected by law. The Dodd-Frank Act, like other statutes,[5] recognizes the legitimate commercial need to protect the confidentiality of such secrets; and sets forth confidentiality and information-sharing provisions among the regulators.

MFA strongly supports intelligent, well-informed and data-driven regulation of the U.S. securities and derivatives markets. MFA also consistently has endorsed the notion that our regulators need appropriate levels of information about markets and their participants to make thoughtful policy decisions. In light of new Dodd-Frank Act authorities and information-sharing duties and obligations, we believe it is appropriate and necessary for regulators to review their existing policies, practices and controls now before an inadvertent leak occurs or a malicious attack is carried out and to coordinate such practices and controls with fellow FSOC members.[6]

MFA respectfully submits for your agency's consideration the enclosed MFA paper, which provides a series of recommendations for increasing the robustness of policies and controls over sensitive, non-public information collected or shared as part of a regulator's oversight of financial market participants and/or financial stability. While some of the specific recommendations are addressed to the Securities and Exchange Commission and the Commodity Futures Trading Commission, as the primary regulators of investment advisers, commodity pool operators and commodity trading advisors, we believe that the recommendations are broadly applicable and may be relevant for all members of the FSOC. Accordingly, we are sending each FSOC member the enclosed MFA paper on the "Recommendations for FSOC Members/Regulators on the Protection of Non-public, Sensitive and Proprietary Information."

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[4] Testimony of the Honorable Richard H. Baker, before the Committee on Financial Services, U.S. House of Representatives, October 29, 2009, available at: http://www.managedfunds.org/downloads/MFA%20Written%20Testimony.pdf.

[5] *See e.g.*, Freedom of Information Act, 5 USC §552 (b)(4) (exception for "trade secrets and commercial or financial information obtained from a person and privileged or confidential….").

[6] *See* Section 112 of the Dodd-Frank Act.

We would welcome the opportunity to discuss our comments in greater detail. Please do not hesitate to contact me, Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, or Jennifer Han, Associate General Counsel, at (202) 730-2600 with any questions you or your staff might have regarding this letter.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker
President & CEO

CC: The Hon. Bart Chilton, Commissioner
The Hon. Jill E. Sommers, Commissioner
The Hon. Scott D. O'Malia, Commissioner
The Hon. Mark P. Wetjen, Commissioner