



March 27, 2014

Via Electronic Filing:

Internal Revenue Service
CC:PA:LPD:PR (REG-140974-11)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington D.C. 20044

Re: MFA Comments on IRS REG-140974-11

Dear Ladies and Gentlemen:

Managed Funds Association (“MFA”)¹ appreciates the opportunity to respond to proposed IRS Reg 140974-11 and the related temporary and final regulations released on December 31, 2013 (the proposed, temporary and final regulations together, the “Regulations”). MFA and its members strongly support rules to promote accurate and complete tax filings; however, for the reasons discussed below, we believe that requiring hedge funds and other funds that have made a mark-to-market election under Section 475(f) of the Internal Revenue Code (“475(f) funds”) to track and report ownership of passive foreign investment companies on Form 8621 (“PFICs”) would impose significant burdens on such funds without providing the Internal Revenue Service (the “IRS”) with meaningful information.

Because 475(f) funds are required to mark-to-market all realized and unrealized gains and losses on their investments, including positions held in PFICs, on an annual basis and pay ordinary income on all gains, the two primary policy concerns underlying the PFIC rules (potential deferral of taxes by U.S. taxpayers and converting ordinary income into capital gains) do not apply to 475(f) funds. With respect to 475(f) funds, all investments, whether PFICs or not, create the same substantive tax obligations for the fund. Because 475(f) funds

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.

do not present the policy concerns underlying the PFIC rules, the PFIC rules generally do not apply to 475(f) funds.² As such, prior to the release of the Regulations, 475(f) funds have not been required to file Form 8621 nor track which of their investments were PFICs.

The requirement to report ownership of all PFICs on Form 8621 under the provisions of the Regulations implementing Section 1298(f) of the Tax Code would impose new, substantial burdens on 475(f) funds, which may have up to thousands, tens of thousands or even more transactions per year. Given that the policy basis underlying the PFIC rules generally are not relevant to 475(f) funds and the fact that the tax obligations of a 475(f) fund are the same whether the fund has investments that are PFICs or not, we do not believe there is a meaningful policy rationale to require 475(f) funds to track and report their PFIC investments on Form 8621. Further, under IRC Section 6038D, *Specified Foreign Financial Asset* rules also enacted under the HIRE Act, there exists an exception for reporting foreign assets held in a financial account or entity that is covered by a Section 475(f) election.³ We respectfully request that the IRS provide a similar exception to the 1298(f) reporting regime for 475(f) funds by amending the Regulations to provide that taxpayers that have made a 475(f) election are not required to report PFIC interests or to complete Form 8621 for any tax year and with respect to any position to which the 475(f) election applies.

Because the temporary regulations requiring PFIC reporting apply to the 2013 tax year, we believe it is important for the IRS to address this issue quickly. Absent further IRS action, 475(f) funds will be forced to spend significant resources to complete Form 8621 for the 2013 tax year or be subject to the provisions of the temporary rule that stay the statute of limitations with respect to their 2013 tax returns, creating legal and compliance uncertainty and risk for those funds.

Conclusion

MFA appreciates the opportunity to provide comments on the Regulations. MFA and its members would welcome an opportunity to meet with the staff from the IRS to discuss these and any other issues in connection with implementation of the Regulations. If you have any questions regarding any of these comments, or if we can provide further information with respect to these or other issues, please do not hesitate to contact Benjamin Allensworth or me at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell

Executive Vice President &
Managing Director, General Counsel

² See Treasury Regulation 1.1291-1(c)(4)(i).

³ Treasury Regulation 1.6038D-3T(b)(2)