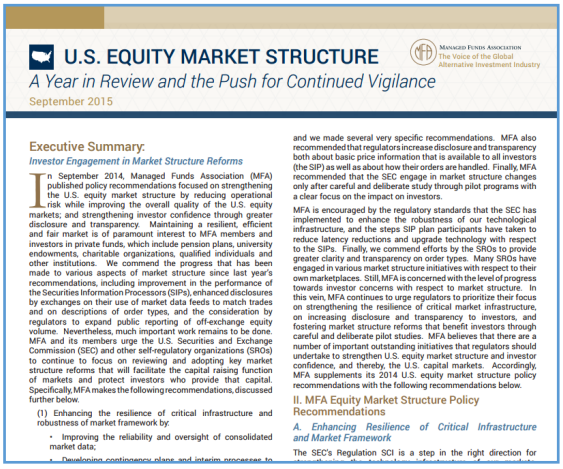
MFA Policy Brief

September 2015

MFA Releases Updated Equity Market Structure Recommendations



U.S. EQUITY MARKET STRUCTURE

A Year in Review and the Push for Continued Vigilance

September 2015

Executive Summary:

Investor Engagement in Market Structure Reforms

In September 2014, Managed Funds Association (MFA) published policy recommendations focused on strengthening the U.S. equity market structure by reducing operational risk while improving the overall quality of the U.S. equity markets; and strengthening investor confidence through greater disclosure and transparency. Maintaining a resilient, efficient and fair market is of paramount interest to MFA members and investors in private funds, which include pension plans, university endowments, charitable organizations, qualified individuals and other institutions. We commend the progress that has been made to various aspects of market structure since last year's recommendations, including improvement in the performance of the Securities Information Processors (SIPs), enhanced disclosures by exchanges on their use of market data feeds to match trades and on descriptions of order types, and the consideration by regulators to expand public reporting of off-exchange equity volume. Nevertheless, much important work remains to be done. MFA and its members urge the U.S. Securities and Exchange Commission (SEC) and other self-regulatory organizations (SROs) to continue to focus on reviewing and adopting key market structure reforms that will facilitate the capital raising function of markets and protect investors who provide that capital. Specifically, MFA makes the following recommendations, discussed further below.

(1) Enhancing the resilience of critical infrastructure and robustness of market framework by:

- Improving the reliability and oversight of consolidated market data;

and we made several very specific recommendations. MFA also recommended that regulators increase disclosure and transparency both about basic price information that is available to all investors (the SIP) as well as about how their orders are handled. Finally, MFA recommended that the SEC engage in market structure changes only after careful and deliberate study through pilot programs with a clear focus on the impact on investors.

MFA is encouraged by the regulatory standards that the SEC has implemented to enhance the robustness of our technological infrastructure, and the steps SIP plan participants have taken to reduce latency reductions and upgrade technology with respect to the SIPs. Finally, we commend efforts by the SROs to provide greater clarity and transparency on order types. Many SROs have engaged in various market structure initiatives with respect to their own marketplaces. Still, MFA is concerned with the level of progress towards investor concerns with respect to market structure. In this vein, MFA continues to urge regulators to prioritize their focus on strengthening the resilience of critical market infrastructure, on increasing disclosure and transparency to investors, and fostering market structure reforms that benefit investors through careful and deliberate pilot studies. MFA believes that there are a number of important outstanding initiatives that regulators should undertake to strengthen U.S. equity market structure and investor confidence, and thereby, the U.S. capital markets. Accordingly, MFA supplements its 2014 U.S. equity market structure policy recommendations with the following recommendations below.

II. MFA Equity Market Structure Policy Recommendations

A. Enhancing Resilience of Critical Infrastructure and Market Framework

The SEC's Regulation SCI is a step in the right direction for

On September 29, **MFA updated its equity market structure recommendations with the Securities and Exchange Commission (SEC) and other regulators.**

MFA's recommendations would help improve critical market infrastructure, reduce operational risk, improve the overall quality of the U.S. equity markets and strengthen investor confidence through greater disclosure and transparency.

MFA also urged regulators to consider conducting regular data-driven reviews of parameters for market volatility controls; to develop and implement contingency plans and interim processes with respect to closing auctions and other technical outages; and to enhance order handling and trading data transparency and accuracy so that investors are equipped to make more informed decisions.

To raise broader awareness of these recommendations, **MFA conducted targeted outreach and held a briefing with key reporters**, focusing on the following areas, as detailed in its recommendations:

- **Market Data:** Concerned with the timeliness and the cost of market data, MFA recommended the SEC and the SEC Equity Market Structure Advisory Committee conduct a more in-depth examination of SIPs and market data, including the governance of the SIPs.
- **Closing Auctions and Contingency Plans:** Noting the New York Stock Exchange trading halt, MFA recommended exchanges develop plans and processes to address unexpected trading halts and other unexpected but foreseeable events.
- **Addressing Market Volatility:** With reference to recent volatility at the open and close of markets and the rapid growth in volume of exchange-traded funds, MFA recommended regulators conduct, on a regular basis, a data-driven review of the parameters used to set circuit breakers and price collars, including back-tests of these parameters against real-world market experiences, and to amend the parameters as appropriate.
- **Increasing Broker Routing Disclosures and Trading Venue Transparency:** Voicing its support of regulatory initiatives aimed at improving trading venue transparency, MFA recommended greater transparency regarding alternative trading systems or dark pool operations.

MFA's Letter to Securities and Exchange Commission Chair Mary Jo White

MFA's Recommendations on U.S. Equity Market Structure

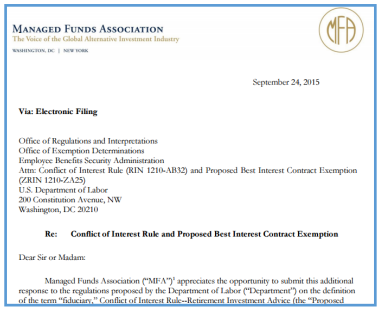
MFA Submits Supplemental Comment Letter to the Department of Labor

On September 24, MFA submitted a supplemental comment letter to the **Department of Labor** (DOL) regarding its proposed rule on the **definition of fiduciary under ERISA**.

MFA's letter explained the **extensive securities laws thresholds for investing in private funds** and **reiterated prior concerns** with the DOL's proposed rule**.**

The letter also included suggested **amendments** to the DOL's proposal to address the concerns raised by the letter.

MFA's Supplemental Comment Letter to the DOL



MANAGED FUNDS ASSOCIATION

The Voice of the Global Alternative Investment Industry

WASHINGTON, DC | NEW YORK

September 24, 2015

Via: Electronic Filing

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule (RIN 1210-AB32) and Proposed Best Interest Contract Exemption (ZRIN 1210-ZA25)
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Conflict of Interest Rule and Proposed Best Interest Contract Exemption

Dear Sir or Madam:

Managed Funds Association ("MFA")[1] appreciates the opportunity to submit this additional response to the regulations proposed by the Department of Labor ("Department") on the definition of the term "fiduciary," Conflict of Interest Rule--Retirement Investment Advice (the "Proposed

MFA Publishes White Paper Addressing Stays of Early Termination Rights

Earlier this month, MFA published a white paper titled **"Too Big to Default: Policy and Legal Perspectives on Current Bank Regulator Initiatives to Restrict End-Users' Default Rights Against Big Banks."**

The white paper presents MFA's views on the stays of early termination rights that public policymakers and regulators are considering. In the white paper, MFA identifies the following **key concerns** with the regulators' initiative:

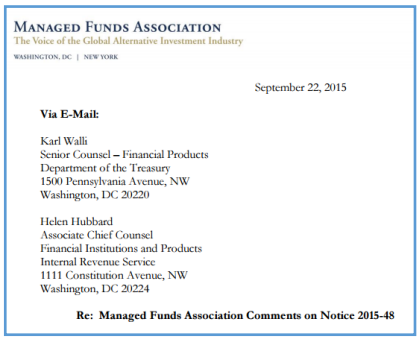
1. The Financial Stability Board (FSB) and G-20 bank regulators are **advancing the initiative without a mandate** from public policymakers;
2. The **G-20 bank regulators'** new resolution strategies have **potential flaws and unintended consequences;**
3. The **contractual approach** to imposing the FSB initiative (as manifested in the ISDA Resolution Stay Protocol) is **inherently flawed**; and
4. The initiative of the **Federal Reserve Board** and the **Federal Deposit Insurance Corporation** to suspend customer rights during U.S. bankruptcy proceedings is not a G-20 objective **and is inconsistent with congressional intent**.

In response to these concerns, in the white paper, **MFA recommends** that:

1. **IOSCO prepare a report for G-20 legislators** on the potential impact of the FSB initiative on end-users and financial markets more broadly and analyze the implications of pursuing a **contract-based approach** to imposing the FSB initiative;
2. The **U.S. President's Working Group for Financial Markets should reconvene** to consider the findings of IOSCO's report and, to the extent it concludes that certain report recommendations merit implementation in the United States, make recommendations to Congress for their implementation; and
3. The **G-20 bank regulators as well as the Fed and FDIC should defer further action on their respective initiatives** pending the outcome of the above efforts.

MFA's White Paper on Early Termination Rights

MFA Submits Comment Letter on IRS Notice 2015-48


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

September 22, 2015

Via E-Mail:

Karl Walli
Senior Counsel – Financial Products
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Helen Hubbard
Associate Chief Counsel
Financial Institutions and Products
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Managed Funds Association Comments on Notice 2015-48

On September 22, MFA submitted a comment letter to the IRS and Treasury **raising concerns about the potentially broad scope of reportable transactions of interest under Notice 2015-48.**

In its letter, MFA encouraged Treasury and the IRS to **narrow the scope of the Notice to better address the types of transactions that are of potential concern. Requiring reporting on an overly broad set of transactions** would make it difficult for the government to analyze the information it receives **and would impose substantial burdens on taxpayers**.

MFA encouraged the IRS and Treasury to **exclude transactions that do not present the risk of inappropriate deferral or inappropriate conversion of income to long-term capital gains** because the taxpayer does not achieve any tax benefit from changing the reference assets in a basket or because the taxpayer does not have the right to change the reference assets in a basket.

MFA's Comment Letter on IRS Notice 2015—48

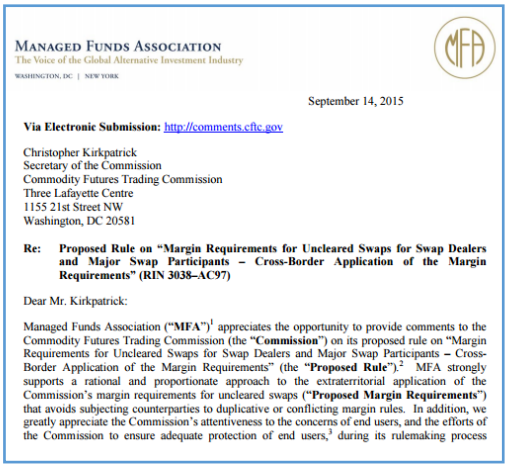
MFA and AIMA Submit Letter Seeking Guidance Regarding EU Energy Derivatives Trading

On September 14, MFA and AIMA jointly submitted a letter to the **EU Agency for the Cooperation of the Energy Regulators (ACER),** requesting guidance for investment managers and their funds under the **EU Regulation on Energy Market Integrity and Transparency** (REMIT). REMIT imposes registration and **reporting requirements on market participants that trade EU natural gas and electricity derivatives.**

ACER
Agency for the Cooperation of Energy Regulators

MFA and AIMA's Letter to ACER on EU Energy Derivatives

MFA Submits Letter to CFTC on Proposed Cross-Border Application of its Uncleared Swap Margin Rules



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

September 14, 2015

Via Electronic Submission: http://comments.cftc.gov

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Proposed Rule on "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements" (RIN 3038–AC97)

Dear Mr. Kirkpatrick:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") on its proposed rule on "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements" (the "**Proposed Rule**").[2] MFA strongly supports a rational and proportionate approach to the extraterritorial application of the Commission's margin requirements for uncleared swaps ("**Proposed Margin Requirements**") that avoids subjecting counterparties to duplicative or conflicting margin rules. In addition, we greatly appreciate the Commission's attentiveness to the concerns of end users, and the efforts of the Commission to ensure adequate protection of end users,[3] during its rulemaking process

On September 14, MFA submitted a letter to the **Commodity Futures Trading Commission (CFTC)** on its proposed rule on "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – Cross-Border Application of the Margin Requirements".

In the letter, MFA **expressed concern that the proposed rule** could result in U.S. persons, and uncleared swaps with a substantial U.S. nexus, being **subject to a foreign jurisdiction's margin rules.**

In response, MFA urged all U.S. regulators to **utilize a single, harmonized, U.S. approach to cross-border derivatives regulation** by adopting the CFTC's cross-border approach from its final interpretive guidance, subject to the following modifications:

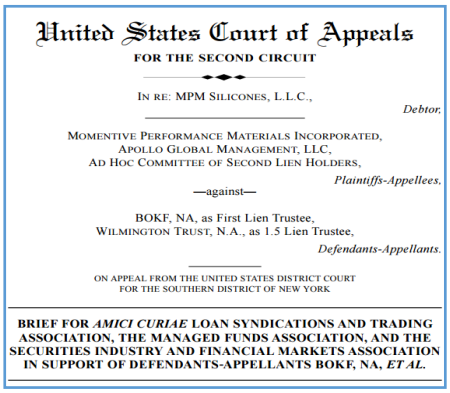
(1) **Retaining the definition of "U.S. person"** from the proposed rule, which appropriately excludes investment funds from being considered "U.S. persons" solely by virtue of having majority "U.S. person" ownership;

(2) **Modifying the substituted compliance approach** from the CFTC's cross-border guidance by allowing substituted compliance for trades between "U.S. persons" and non-U.S. persons solely at such parties' mutual agreement; and

(3) Prior to implementation of the final margin rules, ensure that U.S. and non-U.S. regulators (in particular EU regulators) **resolve the details of how substituted compliance will work in practice** and how regulatory conflicts will be resolved that substituted compliance alone will not address.

MFA's Letter to CFTC on Proposed Cross-Border Application of its Uncleared Swap Margin Rules

MFA, LSTA and SIFMA Submit Amicus Brief in Momentive Performance Materials Case



United States Court of Appeals
FOR THE SECOND CIRCUIT

IN RE: MPM SILICONES, L.L.C.,
Debtor.

MOMENTIVE PERFORMANCE MATERIALS INCORPORATED,
APOLLO GLOBAL MANAGEMENT, LLC,
AD HOC COMMITTEE OF SECOND LIEN HOLDERS,
Plaintiffs-Appellees,
—against—
BOKF, NA, as First Lien Trustee,
WILMINGTON TRUST, N.A., as 1.5 Lien Trustee,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

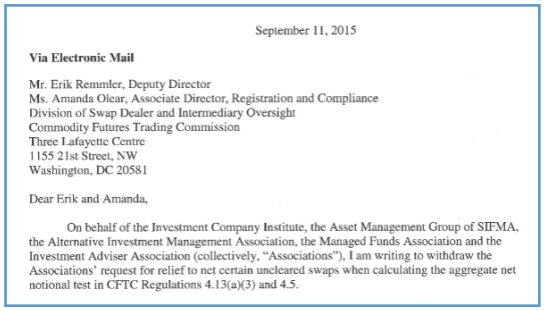
BRIEF FOR *AMICI CURIAE* LOAN SYNDICATIONS AND TRADING ASSOCIATION, THE MANAGED FUNDS ASSOCIATION, AND THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS BOKF, NA, *ET AL.*

On September 11, **MFA, LSTA and SIFMA**, jointly filed an amicus brief with the Second Circuit Court of Appeals in the Momentive Performance Materials case. **Our brief was filed in support of defendant-appellants BOKF, NA et al.** and presented the issue of whether a plan of reorganization in bankruptcy that obligates an over-secured creditor to accept property of a type traded in public markets at a value markedly less than the amount of the creditor's secured claim provides property "of at least the value" of that claim for purposes of 11 USC § 1129(b)(2)(A)(i)(II).

In our brief, MFA explained that the appeal directly **affects the rights of all secured creditors** in Chapter 11 bankruptcies in the Second Circuit. **If the lower court's ruling is allowed to stand, the decision would likely shrink the market for origination of high-yield bonds by increasing the cost of lending**. The decision would likely make it more difficult for the most financially troubled companies that need funding most urgently to raise capital.

MFA, LSTA and SIFMA's Amicus Brief in Momentive Performance Materials Case

MFA and Buyside Associations Submit Letter to CFTC for OTC Swaps Netting Relief



September 11, 2015

Via Electronic Mail

Mr. Erik Remmler, Deputy Director
Ms. Amanda Olear, Associate Director, Registration and Compliance
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Erik and Amanda,

On behalf of the Investment Company Institute, the Asset Management Group of SIFMA, the Alternative Investment Management Association, the Managed Funds Association and the Investment Adviser Association (collectively, "Associations"), I am writing to withdraw the Associations' request for relief to net certain uncleared swaps when calculating the aggregate net notional test in CFTC Regulations 4.13(a)(3) and 4.5.

On September 11, MFA, ICI, IAA and AIMA, through K&L Gates, sent a letter to **CFTC staff requesting to withdraw the Associations 2013 and 2014 no-action relief requests.** The letter regarded the **netting of certain OTC swaps transactions** when calculating the aggregate net notional test in CFTC Regulations 4.13(a)(3) and 4.5.

After many discussions with the CFTC, the associations ultimately determined that with the conditions the CFTC staff wanted to impose, the relief would not be that helpful to members.

MFA and Buyside Associates Letter to CFTC for OTC Swaps Netting Relief

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