MANAGED FUNDS ASSOCIATION
Policy Brief

May-June 2016

MFA Hosts Capitol Hill Briefings for Congressional Staff

As part of MFA's ongoing educational outreach, MFA this month hosted a pair of Capitol Hill briefings, in the U.S. Senate and U.S. House of Representatives.

The briefings were designed to provide key Congressional staff with the opportunity to hear from a panel of industry leaders on the role of the alternative investment industry and its value to financial markets and investors.

Members discussed the history of the industry; hedge fund regulation; tax structure; and trading in the 21st century.

The event was successful in advancing core components of MFA's broader mission: advocate on behalf of the industry with global policymakers and regulators; educate stakeholders about the industry and the positive role it plays in the capital markets; and communicate sound industry practices and public policies that help foster efficient, transparent, and fair capital markets.

MFA Submits Comment Letters in Connection with Roundtable on Regulation AT

MFA submitted an individual letter and a joint letter with other associations to the CFTC as part of its re-opened comment period in connection with the June 10 CFTC Roundtable on certain elements of Regulation AT.

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

June 24, 2016

Via Website Submission

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

Re: RIN 3038-AD52; Proposed Regulation Automated Trading

Dear Mr. Kirkpatrick:

Managed Funds Association[1] ("**MFA**") appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") during its reopened comment period on its proposed rulemaking on Regulation AT ("**Regulation AT**") to address issues raised at the June 10, 2016 CFTC Roundtable on Regulation AT (the "**Roundtable**").[2] MFA is also submitting a more detailed joint letter with the Futures Industry

The MFA letter:

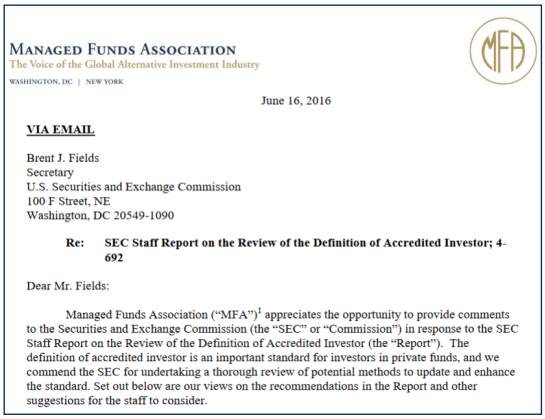
- Urged the CFTC to address marketplace risk through marketplace risk controls (including pre-trade and other risk controls)—both at the designated contract market ("DCM") and through the futures commission merchant ("FCM") providing trading access. In addition, MFA supported a regulatory framework where a market participant could choose to implement the Commission's required marketplace risk controls in lieu of going through an FCM's risk controls, and be subject to Commission oversight;
- Reiterated our concern that it would be unfeasible for CPOs and CTAs to comply with Regulation AT's proposals regarding development, monitoring and compliance with respect to third party algorithms;
- Urged the CFTC to consider adopting a principles-based source code retention requirement and to abandon its proposed source code repository requirement, which would have provided regulators with unfettered access to a registrant's proprietary source code; and,
- Urged the CFTC to address standards for the development, monitoring and compliance of algorithmic trading systems in a later stage rulemaking, after further roundtable discussions on current practices.

The joint letter on Regulation AT that MFA signed with FIA, FIA PTG, ISDA and SIFMA AMG provided additional details on questions raised at the CFTC Roundtable and on registration.

MFA's Comment Letter on Regulation AT
MFA's Joint Letter with FIA, FIA PTG, ISDA and SIFMA AMG on Regulation AT

MFA Submits Comments on Definition of Accredited Investor

On June 16, MFA submitted a comment letter to the SEC in response to the staff report on the review of the definition of accredited investor. In our letter, we support maintaining clear, objective standards in the definition that are based on the income and net worth of an investor, and ensuring that an accredited investor continues to include a person who meets one of the listed qualification methods, or who an issuer reasonably believes meets one of the qualification methods, at the time of the sale of the securities to the person. We also support the staff recommendations to increase the income and net worth thresholds to account for the effect of inflation, which would help to ensure that the thresholds have not been diluted over time. In addition, the letter further recommends that the SEC:



MANAGED FUNDS ASSOCIATION
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June 16, 2016

VIA EMAIL

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC Staff Report on the Review of the Definition of Accredited Investor; 4-692

Dear Mr. Fields:

Managed Funds Association ("MFA")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "SEC" or "Commission") in response to the SEC Staff Report on the Review of the Definition of Accredited Investor (the "Report"). The definition of accredited investor is an important standard for investors in private funds, and we commend the SEC for undertaking a thorough review of potential methods to update and enhance the standard. Set out below are our views on the recommendations in the Report and other suggestions for the staff to consider.

- Permit "knowledgeable employees" of private fund managers to qualify as accredited investors for investments in private funds of their employers;
- Further harmonize existing sophisticated investor tests by including "qualified purchasers" as accredited investors, and by amending the definition of "qualified client" to include accredited investors;
- Clarify that the grandfathering provision would apply to all securities of the particular issuer or its wholly-owned affiliates, and not only to the same securities currently owned by the investor, which is consistent with protecting the investor from dilution in the future; and
- Consider including in the definition individuals who are certified public accountants or chartered financial analysts, and individuals who have received an MBA.

MFA's Comment Letter on the Definition of Accredited Investor

MFA Testifies at Congressional Hearing Focused on Clearing, Execution Requirements

Earlier this month, the House Agriculture Committee's Subcommittee on Commodity Exchanges, Energy and Credit, , chaired by Rep. Austin Scott (R-GA), held a hearing to review the impact of G-20 clearing and trade execution requirements. On behalf of MFA, Stephen Berger, Director, Government and Regulatory Policy, Citadel LLC, and former Chair of MFA's Derivatives and Swaps Committee, testified at the hearing.

MFA's testimony provided a report on the implementation of central clearing and areas where further progress could be made, including:

- Concerns about the Basel Committee's leverage framework;
- The importance of the SEC and CFTC implementing a viable portfolio margining regime for the CDS market; and,
- Support for expanding central clearing to interest rate swaps denominated in all G-10 currencies.

The testimony also focused on swap execution facilities (SEFs) and the related trade execution requirement, where MFA emphasized the need for the CFTC, with the support of Congress, to eliminate the practice of post-trade name disclosure to remove an artificial barrier to buy-side participation on inter-dealer broker SEFs.

In his testimony, Mr. Berger said MFA has "consistently supported policymakers' efforts to reduce systemic risk in the derivatives markets by transitioning standardized and liquid OTC derivative contracts into central clearing." He identified the Basel Committee's leverage framework, which will "needlessly but significantly increase the cost of clearing for customers; the expansion of central clearing to interest rate swaps denominated in additional currencies; and to harmonize central clearing regimes globally," as areas where further progress can be made. Mr. Berger said that, although the SEF market continues to evolve, "a two-tier structure persists, preventing investors from fully participating in all of the various SEF liquidity pools. This two tier market, which reserves certain liquidity pools for dealers only and confines investors to others, hinders choice and competition and frustrates the core principle of impartial access." He added that regulatory action is needed to remove this impediment to investors' impartial access.

Members of the Subcommittee in attendance at Tuesday's hearing focused many of their questions on lingering concerns about EU equivalency determinations with respect to the U.S. central counterparties (CCPs) and the timing mismatch between the implementation of EU and US margin requirements for uncleared swaps, wondering whether U.S.-based banks might face competitive disadvantages as a result. Members also asked both the CME and ICE witnesses about CCP recovery, resolution, governance, and stress testing and whether CCPs pose any systemic risks. Several Members of the Subcommittee, including Ranking Member David Scott (D-GA) and Representative Randy Neugebauer (R-TX), noted the concerns about the Basel Committee's proposed leverage ratio that were reflected in testimony from several of Tuesday's witnesses, including representatives from ICE, CME and JPMorgan in addition to MFA.

MFA's Written Testimony
MFA's Testimony as Delivered (Video)

SEC Releases Re-Proposed Incentive Compensation Rules

Last month, the SEC released a re-proposed rule on Incentive Compensation Arrangements under section 956 of Dodd-Frank, which the statute requires to be implemented on a joint basis by the banking regulators and the SEC. The SEC re-proposal follows similar releases from several banking agencies.

The re-proposed rule generally would establish principles-based rules for covered financial institutions (including investment advisers) with assets of at least $1 billion, along with more prescriptive rules for covered financial institutions with at least $50 billion or $250 billion in assets, respectively.

Notably, the rule release contains clarifying language regarding the calculation of an adviser's assets for purposes of the thresholds, which was a key issue we raised in our 2011 letter to the SEC on the original rule proposal. In the original proposal, MFA expressed concern that the asset test for advisers could inadvertently make private fund advisers' assets under management into balance sheet assets because of accounting rules that the proposal used for purposes of determining the thresholds. In response to this concern, the SEC makes clear in the re-proposal that an adviser's balance sheet assets do not include non-proprietary assets, which we believe more appropriately tailors the scope of the rule to the statutory language.

SEC's Re-Proposed Rule on Incentive Compensation

House Republicans Release Tax Reform "Blueprint"

Earlier this month, House Republicans released their tax reform proposal, which is the final in a series of blueprints released by Speaker Paul Ryan (R-WI) that set forth policy agenda items for the election and beyond. The tax reform blueprint is a detailed outline, not legislative language, that includes a broad array of tax proposals, some of which were previously introduced this Congress. The effort is intended principally as a messaging document, as well as a roadmap for potential tax reform legislation in the next Congress, and is considered unlikely to be acted upon this year in either Chamber.

The tax reform blueprint pushes the tax system closer to a consumption tax, and calls for lower taxes on capital gains and dividends by offering a partial exclusion for that income. The blueprint also included the following business tax reforms:

- Corporate tax rate of 20 percent and pass-through tax rate of 25 percent;
- Territorial system, with no base erosion provisions;
- Eliminates the deductibility of net interest;
- No corporate AMT;
- Tax base would be border adjustable (i.e., tax imposed on value of imports; exports would not be subject to tax);
- R&D credit and low-income housing tax credit retained; and,
- Full and immediate write-off for all businesses' investments in tangible and intangible assets.

The territorial system reforms included build on proposals advanced by the Speaker during his tenure as House Ways and Means Committee Chairman, as well as international reform proposals by Senators Charles Schumer (D-NY) and Rob Portman (R-OH). The blueprint also includes the following individual reforms:

- Three rate brackets: 12 percent, 24 percent, 30 percent;
- 50% exclusion for capital gains;
- Eliminate all itemized deductions except the mortgage interest and charitable deductions, which would be retained; and,
- Individual AMT & estate tax would be eliminated.

Summary of the House Republican's Tax Reform Blueprint
Text of f the House Republican's Tax Reform Blueprint

MFA Hosts Chinese Market Regulators

Last month, MFA hosted representatives from the Asset Management Association of China (AMAC). The purpose of the visit was for AMAC representatives to learn more about MFA, the fund management industry in the U.S., and MFA's role with regulators. The meeting was particularly timely as Chinese regulators continue to draft rules for private fund regulation.

During the meeting, MFA and AMAC discussed among other topics, U.S. hedge fund regulation, technology in markets, trends in algorithmic and quantitative trading. AMAC also provided insight regarding the China Securities Regulatory Commission's (CSRC) proposed program trading rule.

MFA and AMAC agreed that it would be mutually beneficial to continue their dialogue on the fund management industry and market regulation. AMAC extended an invitation for MFA to visit in Beijing.

MFA Submits Comment Letter on EC Insolvency Framework Consultation

This month, MFA filed a response to the European Commission's consultation on an effective insolvency framework within the EU. MFA believes that an effective restructuring regime is a key consideration for investment into European companies, as it increases the chances of enterprise value being preserved in a distress scenario.

In our letter, MFA supported the EC's efforts to improve and simplify the EU insolvency framework, and the introduction of measures to enable restructuring at an early stage in order to maximize value to creditors, employees, owners and the economy as a whole. We provided detailed responses to the EC's questions covering the scope of insolvency reform, saving viable businesses in difficulty, providing a second chance to entrepreneurs and consumers, and increasing the efficiency and effectiveness of the recovery of debts.

MANAGED FUNDS ASSOCIATION
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14 June 2016

Via Electronic Submission

European Commission
Directorate-general Justice
Unit A 1 Civil Justice Policy – Secretariat
Rue Montoyer 59, 2/74
1049 BRUSSELS, Belgium

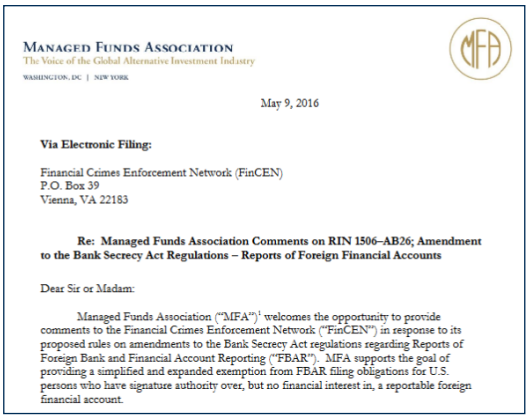
Re: Consultation on Insolvency II

Dear Sir or Madam:

Managed Funds Association ("**MFA**")[1] welcomes the opportunity to provide comments to the European Commission in response to its consultation document entitled "Consultation on an effective insolvency framework within the EU" published on 23 March 2016 (the "**Consultation**").

MFA's Letter on EC Insolvency Framework Consultation

MFA Submits Letter on Foreign Bank and Financial Account Reporting Rules



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May 9, 2016

Via Electronic Filing:

Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, VA 22183

Re: Managed Funds Association Comments on RIN 1506–AB26; Amendment to the Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts

Dear Sir or Madam:

Managed Funds Association ("MFA")[1] welcomes the opportunity to provide comments to the Financial Crimes Enforcement Network ("FinCEN") in response to its proposed rules on amendments to the Bank Secrecy Act regulations regarding Reports of Foreign Bank and Financial Account Reporting ("FBAR"). MFA supports the goal of providing a simplified and expanded exemption from FBAR filing obligations for U.S. persons who have signature authority over, but no financial interest in, a reportable foreign financial account.

In May, MFA submitted a comment letter to the Financial Crimes Enforcement Network (FinCEN) on its proposed amendments to the FBAR rules. The letter encourages FinCEN to: (1) clarify that officers and employees of registered advisers will not have FBAR filing obligations with respect to client accounts for which they only have signature authority; and (2) maintain the special reporting provisions for U.S. persons with 25 or more foreign financial accounts, at least for registered advisers that must file FBARs.

The letter also suggests that if FinCEN decides to remove the special reporting provisions it should wait until there is greater certainty regarding the persons and entities required to file FBARs and consider amending the reporting form to reduce administrative burdens on filers by permitting them to submit information in a manner consistent with how firms maintain that information as part of their regular course of business.

MFA's Letter on Foreign Bank and Financial Account Reporting Rules

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