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MANAGED FUNDS ASSOCIATION SECRETARIAT

*The Association for investment
professionals in futures, hedge funds
and other alternative investments.*

May 1, 2000

COMMENT

Jean A. Webb, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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Re: Proposed Amendments to Rule 4.7

Dear Ms. Webb:

Managed Funds Association ("MFA") appreciates the opportunity to provide comments in response to the proposed rule (the "Proposed Rule") issued by the Commodity Futures Trading Commission ("Commission") to expand the categories of investors eligible for treatment as qualified eligible participants ("QEPs") and qualified eligible clients ("QECs") under Commission Rule 4.7 (65 Fed. Reg. 11253 (March 2, 2000)).

MFA is a national trade association of almost 700 members. MFA's membership is made up of a diverse group of alternative investment professionals, including hedge fund and commodity trading managers, commodity pool operators, and fund of funds managers. These managers are responsible for a significant portion of nearly \$250 billion invested in hedge funds and the vast majority of over \$35 billion invested in managed futures funds. MFA members also include brokers, exchanges, cash managers, foreign

exchange dealers, banks and other professionals who provide support services, such as accountants, lawyers, consultants and academics.

Members of MFA are active participants in organizing and advising commodity pools and hedge funds. Since the adoption of Rule 4.7 in 1992, a large number of Commission registrants, particularly commodity pool operators, has requested relief from Commission staff to permit them to treat as QEPs persons who possess experience and sophistication comparable to those required of investors included within the regulatory definition, but who do not completely satisfy that definition. A substantial amount of Commission resources has been devoted to examining these requests and to the preparation of the dozens of letters that have been issued by the Division of Trading and Markets since the inception of the rule. MFA believes that the proposed rule expanding the QEP and QEC definitions is an appropriate and timely method of codifying the general categories for which relief has already been granted by Commission staff in individual cases. MFA believes that the categories of QEPs and QECs included in the Proposed Rule substantially cover the categories to which QEP and QEC statuses have been extended, including principals of registrants, their family members, experienced employees of registrants, and similar sophisticated investors.

MFA commends the Commission and its staff for seeking to coordinate Commission rules with the rules that govern securities offerings. It is particularly important for MFA members who operate and advise hedge funds that the Proposed Rule seeks to harmonize regulation under the Commodity Exchange Act with the federal securities laws, and, in particular, with the definition of a "qualified purchaser" that was adopted through the National Securities Markets Improvement Act of 1996 when section



3(c)(7) was added to the Investment Company Act of 1940. MFA has advocated greater consistency among regulatory classifications of investors and the manner of counting them for purposes of various exemptions. The Proposed Rule is a significant step toward that goal.

QECs have less frequently been the subject of no action letters than have QEPs. MFA believes that the treatment of non-United States investors who are QECs should be modified in the proposal. Specifically, MFA does not believe that disclosure document distribution requirements applicable to non-United States QECs should differ between commodity trading advisors (“CTAs”) which otherwise prepare and distribute disclosure documents, and those which deal exclusively with QECs and so are not required to prepare or distribute disclosure documents. The proposed rule would require the former to distribute disclosure documents to non-United States QECs while the latter would have no such obligation. This creates a regulatory anomaly that is unprecedented, to the best of MFA’s knowledge, in Commission rules: the type of disclosure a prospective client receives is unrelated to its own status, knowledge, or sophistication, and depends only on marketing decisions made by the CTA and on the nature of the CTA’s other clients. MFA believes that disclosure requirements should focus on the investor and its characteristics and not on the manner in which a CTA conducts its business. In addition, the current language of the proposal could subject CTAs to an unreasonable regulatory burden. For example, if an advisor determines not to accept additional non-QECs, it would not be required to update its disclosure document. However, if it also intended to continue to solicit non-United States investors, an updated disclosure document would apparently still be required of that advisor for the reason that a disclosure document had



previously been filed for the purpose of soliciting non-QECs. MFA proposes that non-United States persons be included in the definition of QECs. To the extent that non-United States persons are required by applicable foreign law to receive disclosures, those requirements would, of course, apply. In any case, MFA believes that if the MFA's proposed change were adopted, there would be consistent treatment between QECs and QEPs, as well as consistent treatment of all QECs, regardless of the jurisdiction in which they were located.

Looking beyond the content of the rule as proposed, MFA believes that the Proposed Rule provides a valuable opportunity to make progress toward implementing a uniform definition of "sophisticated customer", as proposed by the National Futures Association (NFA's Petition for Rule Making to Amend CFTC Regulations 1.3, 1.55, 4.7, 35.1, and 36.1 – Letter to Jean A. Webb from Daniel J. Roth, June 5, 1999). A uniform definition of sophisticated customers would significantly simplify regulation of the futures and securities industries. Such a step would be particularly appropriate now as significant modifications of the Commodity Exchange Act, as amended, and the regulatory structure of the futures industry, are debated. In the context of the Proposed Rule, MFA believes that the NFA's sophisticated customer definition could provide the core definition of QEPs and QECs. Rule 4.7 could incorporate the sophisticated customer definition, as well as specifying additional types of investors for the specific purposes of Rule 4.7 to the extent that the sophisticated customer definition was not sufficiently inclusive.

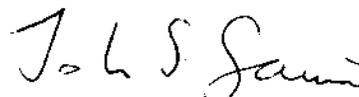


The proposal requested comment on the standard that should apply to determinations of QEP and QEC status. MFA believes that the “reasonable belief” standard proposed by the Commission is appropriate in this context.

MFA also urges the Commission and its staff to consider further harmonizing the Commodity Exchange Act with the federal securities laws by considering an exemption from commodity pool operator (“CPO”) registration for operators of privately offered investment entities limited solely to non-U.S. persons. Under both the Securities Act of 1933 and the Investment Company Act of 1940, such entities have long been considered outside of the scope of necessary U.S. regulatory oversight. Currently, however, potential non-U.S. investors in offshore pools operated by registered commodity pool operators are in many instances reluctant to participate in such pools because of the record-keeping obligations of Rule 4.23. At a minimum, we recommend that the Commission exempt entities with no U.S. participants from the record-keeping obligations of Rule 4.23 in order to make those entities more attractive to non-U.S. investors.

MFA believes that the Proposed Rule is a significant and constructive one and commends the Commission for developing it. MFA would be happy to assist the Commission and its staff on clarifying any of the issues that are raised in this comment letter.

Sincerely yours,



John G. Gainé
President

