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## MANAGED FUNDS ASSOCIATION

Via Electronic Mail: [secretary@cftc.gov](mailto:secretary@cftc.gov)

April 28, 2003

Ms. Jean A. Webb  
Secretary of the Commission  
Commodity Futures Trading Commission (CFTC)  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

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Re: Account Identification for Eligible Bunched Orders  
(68 FR 12319, March 14, 2003)

Dear Ms. Webb:

Managed Funds Association (MFA) is pleased to provide comment on the proposed rule amendments that Commission has developed concerning Account Identification for Eligible Bunched Orders, and the accompanying release cited above (individually or collectively, the "Proposed Rules"). This letter, urging the CFTC to adopt these Proposed Rules with the suggested revisions herein, is written on behalf of Managed Funds Association. MFA is the only US-based membership organization dedicated to serving the needs of professionals the hedge fund and futures fund industries, including commodity pool operators (CPOs), commodity trading advisors (CTAs) and investment managers (IA's). Our over 600 members manage a significant portion of the estimated \$600 billion invested in these alternative investment vehicles. Capitalized terms used herein, unless otherwise defined, shall have the same meaning as set forth in the Proposed Rules.

As in the past, MFA commends the work of the Commission with respect to bunched orders. MFA has addressed this issue in the past and makes reference to our previous comment letter to the CFTC on bunched orders, dated March 16, 1998 ("1998 MFA Letter"). We believe that the Proposed Rules strike the appropriate balance between achieving the Commission's regulatory objectives of protecting customers whose accounts are bunched and reducing the unnecessarily burdensome regulatory demands placed upon those account managers.<sup>1</sup> Many of the concerns or recommendations set forth in the 1998 MFA Letter have been appropriately addressed in the Proposed Rules.

<sup>1</sup> For example, we applaud the Commission's elimination of the account certification rule in Rule 1.35(a-1)(5)(iv) that managers must make to FCMs.

We highlight a few of what we view as the most promising developments below, with one recommendation for improvement.

First, MFA is pleased with the new definitions of “eligible customers” and “eligible account managers” under the Proposed Rules. In the 1998 MFA Letter, we expressed concern that the current definition of eligible customer created confusion in the marketplace about the meaning of a sophisticated customer and increased the burden and cost of compliance without much regulatory benefit. Thus, we are pleased that the Commission is proposing to eliminate existing Rule 1.35(a-1)(5)(ii) to allow all customer orders to be eligible for inclusion in bunched orders. Similarly, with respect to the new definition of eligible account managers, in the 1998 MFA Letter, we expressed concern that the current rule on bunched orders excluded CTAs or IAs who are exempt from registration. Such exclusions, we believe, served no clear regulatory objective. Thus, we are pleased that the Proposed Rules expand the class of account managers permitted to bunch orders.

Second, we support the new information availability requirement set forth in Proposed Rule 1.35(a-1)(5)(ii). We believe that the type of information that an account manager must now make available to customers upon request in this Proposed Rule is consistent with our recommendations in the 1998 MFA Letter. If, upon request, managers present to customers the (1) general nature of the allocation methodology, (2) comparative data on results and (3) whether accounts in which the manager has an interest are included in the “bunched” orders, the CFTC achieves a critical regulatory objective of protecting investors in futures markets.. MFA believes that this new information availability requirement also helps to ensure that an account manager’s methodology in using bunched orders is fundamentally fair, non-preferential and verifiable.

Third, we believe the order allocation methodology of the Proposed Rules appears to have addressed earlier concerns by MFA. In the 1998 MFA Letter, MFA recommended that the CFTC’s framework for order allocations be made accessible to all orders of eligible account managers. The Proposed Rules accomplishes this goal while retaining the requirement that the methodology be fundamentally fair, non-preferential among customers, and verifiable as to fairness. Moreover, we applaud the fact that the verification of fairness be judged over time, rather than on an order-by-order basis.

Finally, MFA would like to make one recommendation concerning the recordkeeping requirement of the Proposed Rule. The proposal contains a provision to address cases in which account managers fail to provide the Commission with the information requested pursuant to Proposed Rule 1.35(a-1)(5)(iv)(A) or (B) (68 FR 12322). Commission action under this provision (Rule 1.35(a-1)(5)(iv)(D)) which could result in an order limiting trading to “liquidation only”, would not require prior notice and hearing; failure to respond to a request for information would be sufficient. *Id.* MFA believes that the standard for failure to provide requested information should be revised to be that of “willful failure to provide” requested information, given the summary nature of the

proceeding to curtail trading privileges. If the summary proceeding approach is retained, however, then we believe the sanction should be limited to the prohibition of the use of bunched orders, rather than limiting trading to "liquidation only."

With this one revision, MFA believes that the Proposed Rules should be published by the CFTC as final rules. I would be happy to discuss these comments with you in greater detail. Please call me at (202) 367-1140 at your convenience

Thank you for your attention to this matter.

Sincerely,

/s/ John G. Gaine  
John G. Gaine  
President