



MANAGED FUNDS ASSOCIATION

Prepared Statement of Managed Funds Association
Before The Commodity Futures Trading Commission
On Oversight of Energy Markets

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**PREPARED STATEMENT OF MANAGED FUNDS ASSOCIATION
BEFORE THE COMMODITY FUTURES TRADING COMMISSION
ON OVERSIGHT OF ENERGY MARKETS**

SEPTEMBER 18, 2007

Chairman Lukken and Members of the Commission. My name is John Gaine. I am appearing today in my capacity as President of the Managed Funds Association, commonly known as MFA. It is always a pleasure for me to return to the Commission.

MFA is the voice of the global alternative investment industry. Our members include professionals in hedge funds, funds of funds and managed futures funds. It is estimated that MFA members represent the vast majority of the largest hedge fund groups in the world and manage a substantial portion of the over \$1.5 trillion invested in absolute return strategies.

MFA has a strong interest in the issues you are discussing today. Energy markets and energy derivatives are of increasing importance to our national economy and to market participants world-wide. MFA members trade on exchange and off exchange. We are neutral in any competitive battles that pit traditional exchanges against new trading platforms, or multi-lateral systems against bi-lateral dealer operations. Our members simply want access to efficient, transparent, fair and financially secure markets. In that sense, the interests of MFA members have been well served by the excellent work the Commission and its staff have been doing for many years.

MFA's interests have also been well served by the Commodity Futures Modernization Act of 2000. In that statute, Congress adopted a cascading regulatory approach with different levels of oversight assigned to trading in different categories of commodities, market participants and order execution facilities. The Commission has been masterful in applying these new statutory provisions to allow new market forces to compete with traditional exchanges in a host of areas, especially in energy. MFA members have benefited from these CFMA-inspired innovations.

As a collateral consequence of innovation, traditional exchanges have redoubled their efforts to improve and update their services to respond to competition from new platforms. This is just what Congress had in mind in Section 3 of the Act when it identified "responsible innovation" as one of the statute's main purposes. These designated contract markets, known as DCMs, were built on a pioneer spirit, best exemplified when I was at the Commission by the many product innovations -- in the financial and stock index futures areas -- the exchanges championed. It is therefore no surprise that they have shown an ability to adapt to the new competitive realities and to thrive under them.

MFA does not see a need for major changes to the CFMA. No case has been made to turn back the clock by re-regulating new trading platforms that have served an incubator function for derivatives trading innovation. MFA understands that the CFTC's web-site has listed 19 Exempt Commercial Markets (ECMs) that have been created since the CFMA was passed. Those markets operate as principals only, many-to-many electronic trading venues for sophisticated well-capitalized market participants.

MFA believes it is both appropriate and important to cultivate those innovative enterprises.

Less regulation does not mean no regulation. The Commission retains, as it should, the power to police price manipulation on ECMs. This power is vital, especially when an ECM offers a contract that is linked to the settlement price of a physical delivery contract traded on a DCM. In those circumstances, MFA understands that the Commission obtains from at least one ECM large trader reporting information about certain trades. We support the CFTC's efforts to work with ECMs and others to obtain access to all relevant surveillance data so that the Commission may police effectively the US futures markets.

Let me close with one historical observation. When the Commission was created in 1974, Congress entrusted it with exclusive jurisdiction over futures markets to make sure that no other agency -- whether it be the SEC, USDA or the Bureau of Mines -- would look over its shoulder and second-guess its regulatory judgments. Congress wanted an agency expert in futures markets to determine whether a threat of a manipulation existed or whether some other major market disturbance caused futures market prices not to reflect accurately the forces of supply and demand. In short, Congress wanted the Commission to be able to take appropriate action if it sniffed the possibility of manipulation in the air. Congress vested extraordinary emergency powers in the Commission to address that threat, powers the Commission once called the linchpin of the Act. The Commission has correctly used those powers very sparingly, but their existence serves a very important purpose. Exchanges and market participants alike know that the CFTC alone is ready to act when in its informed, expert

judgment, action is warranted. That power can not work if it is shared with other regulatory bodies, either at the federal level or the state level.

Nor can more than one agency police price manipulation on futures markets themselves. Otherwise exchanges, intermediaries, advisors, funds and other market participants will find themselves facing at worst conflicting, and at best, duplicative, government regulation, the very ills Congress sought to cure with exclusive jurisdiction. Multiple regulators sharing concurrent jurisdiction will not strengthen regulation, it will just water down regulation at a considerable cost to market participants. MFA encourages the Commission to assert vigorously its exclusive jurisdiction as Congress intended it and the courts have interpreted it.

Thank you for this opportunity to appear today. I would be happy to answer any questions you may have.