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## MANAGED FUNDS ASSOCIATION

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

May 1, 2003

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COMMENTS

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

Re: Additional Registration and Other Regulatory Relief for  
Commodity Pool Operators and Commodity Trading Advisors (68  
FR 12622, March 17, 2003)

Dear Ms. Webb:

Managed Funds Association (MFA) is pleased to provide comments on the proposed CFTC regulations on registration and other regulatory relief for commodity pool operators (CPOs) and commodity trading advisors (CTAs), and the accompanying release cited above (individually or collectively, the "Proposed Rules"). This letter urges the CFTC to adopt these Proposed Rules, incorporating the recommendations below, and 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. Our over 600 members manage a significant portion of the estimated \$600 billion invested in these alternative investment vehicles. Accordingly, MFA and its members, many of whom are CPOs and CTAs, have a vital interest in the Proposed Rules. Capitalized terms used herein, unless otherwise defined, shall have the same meaning as set forth in the Proposed Rules.

### Importance of Proposed Rules for the Futures Industry

MFA encourages the Commission to adopt all of the Proposed Rules as final rules as they can offer significant relief from registration,<sup>1</sup> eliminate duplicative reporting requirements and update certain regulation for CPOs and CTAs to facilitate their conduct of business.<sup>2</sup> By adopting the Proposed Rules, the Commission stays faithful to the purpose and intent of the CFMA to allow greater flexibility and innovation in rules applicable to intermediaries while at

<sup>1</sup> In particular, the MFA Proposal, described herein, as set forth in Proposed Rule 4.13(a)(4) and the NFA Proposal, or limited trading exemption, set forth in Proposed Rule 4.13(a)(3).

<sup>2</sup> MFA makes reference to our prior comment letter to the Commission in a letter dated January 13, 2003.

the same time protecting investors in futures markets. MFA has been working for over a year with the Commission on the MFA Proposal, through the Roundtables and other discussions to encourage the adoption of these types of regulations. Apart from the registration exemptions, we are similarly pleased with the elimination of duplicative reporting requirements for “Master/Feeder Fund” complexes,<sup>3</sup> revisions to the delivery requirements for disclosure documents to prospective customers<sup>4</sup>, and the elimination of the “look through” method of counting “15 persons” for the CTA exemptions under Rule 4m(1)<sup>5</sup> and support their adoption as final rules.

### **Appropriate Investor Qualifications Under the MFA Proposal**

Above all, we believe the MFA Proposal<sup>6</sup> will do the most to advance the goals of the Commission by reducing unnecessary and burdensome regulatory requirements imposed upon commodity pools comprised of certain qualified investors. The MFA Proposal, in particular, would provide an exemption from registration with the Commission for CPOs that sell only to individuals that are “qualified eligible persons” under CFTC Rule 4.7(a)(2) or to institutions that are at least “accredited investors” as defined in Regulation D of the Securities Act of 1933.<sup>7</sup> The Commission has requested comments on the issue of appropriate investor qualifications—specifically, on whether the investor qualifications under the MFA Proposal for natural persons should be the same as those set by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940, as amended (ICA).<sup>8</sup> MFA recommends that the Commission adopt the investor qualifications for natural persons in Commission Rule 4.7(a)(2), as proposed by the Commission in the MFA Proposal. Rule 4.7(a)(2) includes “qualified purchasers” under the ICA along with others that are not required to meet the Commission’s portfolio test in order to be deemed “qualified eligible persons”. These other categories of persons are registered professionals, “knowledgeable employees” as defined under the ICA, other persons who are employed by or affiliated with the pool or its CPO, certain trusts and non-U.S. persons. Inclusion of each category is either consistent with the ICA and SEC interpretations or derived from staff experience at the CFTC. Therefore, the investor qualifications in the MFA Proposal should be adopted as proposed.

### **Conclusion**

Overall, we believe the MFA Proposal will encourage more participation in commodity futures trading by pool operators that had previously declined to engage in this market. Moreover, MFA believes that the Commission should adopt all of the Proposed Rules, incorporating our recommendations above, for final rulemaking.

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<sup>3</sup> Amendments proposed to CFTC Rule 4.21 as set forth in Proposed Rules.

<sup>4</sup> Amendments proposed to CFTC Rules 4.21 and 4.31 as set forth in Proposed Rules.

<sup>5</sup> Proposed Rule 4.14(a)(10).

<sup>6</sup> In the ANPR, the MFA Proposal was codified as a proposed CFTC Rule 4.9.

<sup>7</sup> Rule 4.13(a)(4) incorporates certain definitions of “accredited investor” set forth in Rule 501 of Regulation D (see 17 CFR 230.501(a)(1)-(3), (7) and (8)).

<sup>8</sup> Section 2(a)(51)(A).

If you have any questions regarding these comments, please do not hesitate to contact me at 202.367.1140.

Sincerely,

/s/ John G. Gain  
John G. Gain  
President